

EXHIBIT B

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
MIAMI DIVISION

CASE NO. 09-MD-02036-JLK

**IN RE: CHECKING ACCOUNT
OVERDRAFT LITIGATION**

MDL No. 2036

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

Childs, et al. v. Synovus Bank, et al.
N.D. Ga. Case No. 1:10-CV-03027-ODE
S.D. Fla. Case No. 1:10-CV-23938-JLK

**JOINT DECLARATION OF ROBERT C. GILBERT AND E. ADAM WEBB
IN SUPPORT OF PLAINTIFFS' AND CLASS COUNSEL'S MOTION FOR FINAL
APPROVAL OF CLASS SETTLEMENT AND APPLICATION FOR SERVICE
AWARDS, ATTORNEYS' FEES, AND EXPENSES**

Robert C. Gilbert and E. Adam Webb declare as follows:

1. We are two of Settlement Class Counsel and Class Counsel, respectively, for Plaintiffs and the Settlement Class under the Settlement Agreement and Release ("Settlement" or "Agreement") with Synovus Bank and Synovus Financial Corp. that was preliminarily approved by this Court on December 3, 2014.¹ (DE # 4015). We submit this declaration in support of Plaintiffs' and Class Counsel's Motion for Final Approval of Class Settlement and Application for Service Awards, Attorneys' Fees, and Expenses. Unless otherwise noted, we have personal

¹ All capitalized defined terms have the same meaning as defined in the Agreement attached as Exhibit A to the Motion for Final Approval.

knowledge of the facts set forth in this declaration, and could testify competently to them if called upon to do so.

2. After more than three years of litigation and settlement negotiations, the Parties entered into the Settlement providing for a \$3,750,000 cash recovery for the Settlement Class, plus Synovus' payment of an additional \$150,000 towards the fees and costs associated with providing Notice to the Settlement Class and the administration of the Settlement. Under the Settlement, all eligible identifiable Settlement Class Members will receive their *pro rata* share of the Net Settlement Fund without having to submit claim forms or take any other affirmative steps.

3. The Action involved sharply opposing positions on several fundamental legal and factual issues. Plaintiffs and Class Counsel maintain that the claims asserted in the Action are meritorious and that Plaintiffs would prevail if the Action proceeded to trial. Synovus maintains that Plaintiffs' claims are unfounded and cannot be maintained as a class action, denies any liability, demonstrated that it will litigate its defenses vigorously, and that class members who remained customers of Synovus after September 23, 2013 were subject to arbitration. Continued litigation presented risks, delays, and expenses that include, but are not limited to, a motion to compel arbitration as to some portion of the class, summary judgment, and pretrial motions, trial, final appellate review, and the countless uncertainties of litigation, particularly in the context of a large and complex multi-district litigation.

4. In light of the risks, delays, and expenses associated with continued litigation, the Settlement represents an excellent result by providing guaranteed benefits to the Settlement Class in the form of direct cash compensation.

D. Background of the Litigation.

5. Plaintiffs sought monetary damages, restitution, and declaratory relief from Synovus, on behalf of themselves and all others similarly situated, who incurred Overdraft Fees as a result of Synovus' practice of posting Debit Card Transactions to an Account in the order from highest to lowest dollar amount ("High-to-Low Posting"). Plaintiffs alleged that Synovus systemically engaged in High-to-Low Posting of Debit Card Transactions to maximize the Bank's Overdraft Fee revenues. According to Plaintiffs, Synovus' practices violated the Bank's contractual and good faith duties, were substantively and procedurally unconscionable, and resulted in conversion and unjust enrichment.

6. Synovus denied all of Plaintiffs' allegations of wrongdoing. The Bank consistently defended its conduct by, *inter alia*, highlighting language in the relevant Account agreements that it contended expressly advised its customers of and permitted the very High-to-Low Posting practices at issue. The Bank advanced additional defenses, including preemption under applicable federal and state laws and regulations, and that some class members were subject to individual arbitration agreements as to the claims at issue in the Action.

E. Class Counsel's Investigation.

7. Class Counsel devoted substantial time to investigating the potential claims against Synovus. Class Counsel interviewed customers and potential plaintiffs to gather information about the Bank's conduct and its impact upon customers. This information was essential to Class Counsel's ability to understand the nature of Synovus' conduct, the language of the Account agreements, and potential remedies.

F. The Course of Proceedings.

8. On September 21, 2010, Plaintiffs Natalie Childs and Jeramie Childs initiated this litigation against Synovus, Case No. 1:10-cv-03027-CAP ("*Childs*") in the United States District

Court for the Northern District of Georgia, alleging improper assessment and collection of Overdraft Fees and seeking, *inter alia*, monetary damages, interest, attorney's fees, restitution, and equitable relief.

9. On November 25, 2010, *Childs* was transferred to the United States District Court for the Southern District of Florida, where it joined other actions coordinated in *In Re: Checking Account Overdraft Litigation*, Case No. 1:09-md-02036-JLK ("MDL 2036"), and was assigned to Senior Judge James Lawrence King.

10. On October 21, 2011, Plaintiffs filed an Amended Class Action Complaint (DE # 2026), alleging unfair assessment and collection of overdraft fees and seeking monetary damages, restitution, interest, attorney's fees, and equitable relief from Synovus.

11. On November 22, 2011, Synovus filed a motion to dismiss the Amended Class Action Complaint (DE # 2158). On December 22, 2011, Plaintiffs filed their opposition to that motion (DE # 2328), and on January 11, 2012, Synovus filed its reply (DE # 2374). On July 27, 2012, the Court granted in part and denied in part Synovus' motion to dismiss (DE # 2858).

12. On January 25, 2012, Plaintiff Richard Green filed a case against Synovus in the United States District Court for the Middle District of Georgia, Case No. 4:12-cv-00027-CDL ("*Green*"), alleging improper assessment and collection of Overdraft Fees and seeking, *inter alia*, monetary damages, interest, attorney's fees, restitution, and equitable relief.

13. On August 3, 2012, *Green* was transferred to the United States District Court for the Southern District of Florida, where it joined *Childs* and other actions coordinated in MDL 2036.

14. On August 15, 2012, Synovus filed an answer to the *Childs*' Amended Class Action Complaint (DE # 2882), denying any and all wrongdoing and liability whatsoever and asserting various affirmative defenses.

15. On September 5, 2012, *Green* was consolidated into *Childs* through the filing of a Second Amended Complaint (DE # 2941). On September 24, 2012, Synovus answered the Second Amended Complaint (DE # 2969), denying any and all wrongdoing and liability whatsoever and asserting various affirmative defenses.

16. The Parties thereafter conducted pretrial discovery. Synovus produced approximately 135,000 pages of documents, in addition to voluminous electronic data files and spreadsheets. Class Counsel took the depositions of four Synovus employees and expert witnesses. Synovus took the depositions of Plaintiffs, as well as of Plaintiffs' expert witness.

17. On July 24, 2013, Plaintiffs moved for leave to add John Jenkins Sr. as a named Plaintiff (DE # 3542). On August 9, 2013, Synovus filed its opposition (DE # 3596), and on August 19, 2013, Plaintiffs filed their reply (DE # 3604). On August 23, 2013, the Court granted Plaintiffs' motion to add Mr. Jenkins as a Plaintiff (DE # 3622).

18. On July 26, 2013, Plaintiffs moved for class certification. (DE # 3547). On March 18, 2014, Synovus filed its opposition to class certification (DE # 3810), and on April 17, 2014, Plaintiffs filed their reply (DE # 3830).

19. On March 18, 2014, Synovus filed its contingent motion to compel arbitration. (DE # 3809). On April 4, 2014, Plaintiffs filed their opposition to the contingent motion (DE # 3823), and on April 14, 2014, Synovus filed its reply (DE # 3829).

20. On March 18, 2014, Synovus filed its motion to strike portions of Plaintiffs' class certification expert's declaration in support of class certification. (DE # 3808). On March 28,

2014, Plaintiffs filed their opposition to the motion (DE # 3814), and on April 7, 2014, Synovus filed its reply (DE # 3825).

G. Settlement Negotiations.

21. Beginning in mid-2013, the Parties initiated preliminary settlement discussions. The settlement discussions reached an impasse in late 2013.

22. On February 3, 2014, Synovus entered into a settlement of a related action styled *Thomas Griner and Fern Cohn v. Synovus Bank, d/b/a Bank of North Georgia, et al.*, Case No. 10-C-11235-3 (“*Griner*”), which received final approval from the Georgia state court on or about May 20, 2014.

23. The *Griner* settlement resolved all claims that were being pursued on behalf of Georgia customers in *Childs*. Since Georgia customers made up approximately seventy percent (70%) of the putative class in *Childs*, the *Griner* settlement greatly reduced the size of the class in *Childs*.

24. In mid-2014, the Parties resumed settlement discussions following approval of the settlement in *Griner*. On August 23, 2014, the Parties executed a Summary Agreement memorializing the material terms of the Settlement of the remaining non-Georgia claims. On August 25, 2014, Settlement Class Counsel and Synovus filed a Joint Notice of Settlement (DE # 3936), and requested a suspension of all pretrial deadlines pending the drafting and execution of a final settlement agreement. The Court granted the request on August 27, 2014 (DE # 3937). Following further negotiations and discussions, the Parties resolved all remaining issues, culminating in the execution of the Agreement on November 11, 2014. On November 14, 2014, the Parties executed an amendment to paragraph 73 of the Agreement.

H. Settlement Class and Recovery Under the Agreement.

25. Synovus timely deposited \$3,750,000 into an Escrow Account following Preliminary Approval. Agreement ¶ 78. That deposit created the Settlement Fund. In addition, Synovus deposited the additional sum of \$150,000 to cover Settlement Expenses. *Id.* The Settlement Fund will be used to: (i) pay all Automatic Distributions of payments to eligible members of the Settlement Class; (ii) pay all Court-ordered awards of attorneys' fees, costs and expenses of Class Counsel; (iii) pay all Court-ordered service awards to the Class Representative Plaintiffs; (iv) distribute any residual funds as set forth in paragraph 95 of the Agreement; (v) pay all Taxes pursuant to paragraph 80 of the Agreement; (vi) pay any costs of Settlement Administration other than those to be paid by Synovus pursuant to paragraph 59 of the Agreement; and (vii) pay any additional fees, costs, and expenses not specifically enumerated in paragraph 81 of the Agreement, subject to approval of Settlement Class Counsel and Synovus. *Id.* at ¶ 81.

26. All identifiable Settlement Class Members who experienced a Positive Differential Overdraft Fee will receive pro rata distributions from the Net Settlement Fund, provided they do not opt-out of the Settlement. *See* Agreement Section XII. The Positive Differential Overdraft Fee analysis determines, among other things, which Synovus Account holders were assessed additional Overdraft Fees that would not have been assessed if the Bank had used an alternative posting sequence or method for posting Debit Card Transactions other than High-to-Low Posting, and how much in additional Overdraft Fees those Account holders paid. The calculation involves a multi-step process that is described in detail in the Agreement. *Id.* at ¶ 84.

27. Settlement Class Members do not have to submit claims or take any other affirmative steps to receive relief under the Settlement. The amount of their damages has been

determined by Settlement Class Counsel and their expert through analysis of Synovus' electronic data. *See* Agreement Section XI. As soon as practicable, but no later than 90 days from the Effective Date, Synovus and the Settlement Administrator will distribute the Net Settlement Fund to all eligible identifiable Settlement Class Members who do not opt out of the Settlement. *Id.* at ¶¶ 86-94.

28. Payments to Settlement Class Members who are Current Account Holders will be made by crediting such Account Holders' Accounts, and notifying them of the credit. Agreement ¶ 91. Synovus will then be entitled to a reimbursement for such credits from the Net Settlement Fund. *Id.* at ¶ 92. Past Account Holders (and any Current Account Holders whose Accounts cannot feasibly be automatically credited) will receive their payments by checks mailed by the Settlement Administrator. *Id.* at ¶¶ 91, 93.

29. Any uncashed or returned checks will remain in the Settlement Fund for one year from the date the first distribution check is mailed, during which time the Settlement Administrator will make reasonable efforts to effectuate delivery of the Settlement Fund Payments. Agreement ¶ 94.

30. Any residual funds remaining in the Settlement Fund one year after the first Settlement Fund Payments are mailed will be distributed pursuant to Section XIII of the Agreement. Agreement ¶ 95.

I. Class Release.

31. In exchange for the benefits conferred by the Settlement, all Settlement Class Members who do not opt out will be deemed to have released Synovus and all related persons from claims related to the subject matter of the Action. The detailed release language is found in Section XIV of the Agreement.

J. Settlement Notice.

32. The Notice Program (Agreement Section VIII) was designed to provide the best notice practicable, and was tailored to take advantage of the information Synovus had available about Settlement Class Members. Agreement ¶¶ 65-75. Synovus agreed to pay \$150,000 towards the fees and costs associated with the Notice Program and Settlement administration. *Id.* at ¶ 59.

33. The Notice Program was reasonably calculated under the circumstances to apprise the Settlement Class of the pendency of the Action, the terms of the Settlement, Class Counsel's Fee Application and request for Service Awards, and their rights to opt-out of the Settlement Class or object to the Settlement. The Notices and Notice Program constituted sufficient notice to all persons entitled to notice. The Notices and Notice Program satisfied all applicable requirements of law, including, but not limited to, Federal Rule of Civil Procedure 23 and the constitutional requirement of due process.

34. The Notice Program was comprised of three (3) parts: (1) direct mail postcard notice ("Mailed Notice") to all identifiable Settlement Class Members; (2) publication notice ("Published Notice") designed to reach those Settlement Class Members for whom direct mail notice was not possible; and (3) a "Long Form" notice with more detail than the direct mail or publication notices, that has been and remains available on the Settlement Web Site and via mail upon request. Agreement ¶ 69.

35. All forms of Notice to the Settlement Class included, among other information: a description of the Settlement; a date by which Settlement Class Members may exclude themselves from or "opt out" of the Settlement Class; a date by which Settlement Class Members may object to the Settlement; the date on which the Final Approval Hearing will occur; and the

address of the Settlement Website at which Settlement Class Members may access the Agreement and other related documents and information. Agreement ¶¶ 65-67.

36. In addition to the information described above, the “Long-Form” notice also described the procedure Settlement Class Members must use to opt out of the Settlement or to object to the Settlement, and/or to Class Counsel’s Fee Application and/or request for Service Awards. All opt-outs and objections must be postmarked by the Opt-Out Deadline. Agreement ¶ 67.

a. The Mailed Notice Program

37. The Mailed Notice Program was administered and timely completed by the Notice Administrator in accord with paragraphs 70-72 of the Agreement.

b. The Published Notice Program

38. The Published Notice Program was administered and timely completed by the Notice Administrator in accord with paragraph 73 of the Amendment to the Agreement.

c. The Settlement Website and the Toll-Free Settlement Line

39. The Notice Administrator timely established and has maintained the Settlement Website as a means for Settlement Class Members to obtain notice of, and information about, the Settlement. Agreement ¶¶ 54, 65. The Settlement Website includes hyperlinks to the Settlement, the “Long-Form” notice, the Preliminary Approval Order, and such other documents as Settlement Class Counsel and counsel for Synovus agreed to post on the Settlement Website. *Id.* These documents will remain on the Settlement Website at least until Final Approval. *Id.*

40. The Notice Administrator also timely established and has maintained an automated toll-free telephone line for Settlement Class Members to call with Settlement-related inquiries, and answer the questions of Settlement Class Members who call with or otherwise communicate such inquiries. Agreement ¶ 64(d).

K. Settlement Termination

41. Except as provided in paragraph 95(c) of the Agreement, either Party may terminate the Settlement if the Settlement is rejected or materially modified by the Court or an appellate court. Agreement ¶ 104. Synovus also has the right to terminate the Settlement if the number of Settlement Class Members who timely opt out of the Settlement Class equals or exceeds the number or percentage specified in the separate letter executed concurrently with the Agreement by Synovus' counsel and Settlement Class Counsel. Agreement ¶ 105. The number or percentage will be confidential except to the Court which, upon request, will be provided a copy of the letter for *in camera* review. *Id.*

L. Service Awards and Attorneys' Fees and Costs.

42. Class Counsel will seek, and Synovus will not oppose, Service Awards of \$10,000 per Class Representative, or \$10,000 for married couples in which both spouses are Class Representatives. Agreement ¶ 102. If the Court approves them, the Service Awards will be paid from the Settlement Fund, and will be in addition to the relief the Class Representatives will be entitled to under the terms of the Settlement. *Id.* The requested awards will compensate the Class Representatives for their time and efforts in the Action, and for the risks they assumed in prosecuting the case against Synovus. Among other things, each of the Class Representatives responded to Synovus' written discovery requests and were deposed at great length.

43. Synovus will not oppose Class Counsel's request for attorneys' fees of up to thirty percent (30%) of the \$3,750,000 Settlement Fund, plus reimbursement of litigation costs and expenses. Agreement ¶ 99. The Parties negotiated and reached this agreement regarding attorneys' fees and costs only after reaching agreement on all other material terms of this Settlement. Agreement ¶ 103.

M. Considerations Supporting Settlement.

1. The Settlement is the Product of Good Faith, Informed, and Arm's Length Negotiations.

44. Settlement negotiations were informed by the experience of counsel in the litigation, certification, trial, and settlement of nationwide class action cases. In particular, Class Counsel had the benefit of years of experience and a familiarity with the facts of this Action, as well as numerous other cases involving similar claims.

45. As detailed above, Class Counsel conducted discovery and significant motion practice relating to the Plaintiffs' claims and the Bank's defenses. Class Counsel's analysis enabled them to gain an understanding of the legal and factual issues in the Action, and prepared them for well-informed settlement negotiations.

46. Class Counsel were well-positioned to evaluate the strengths and weaknesses of Plaintiffs' claims, as well as the appropriate basis upon which to settle them, as a result of the litigation and settlement of similar cases reached within and outside of MDL 2036.

47. Class Counsel also gained a thorough understanding of the practical and legal issues they would continue to face litigating these claims based, in part, on similar claims challenging Wells Fargo's high-to-low posting practices prosecuted in *Gutierrez v. Wells Fargo Bank, N.A.*, 730 F. Supp. 2d 1080 (N.D. Cal. 2010). Wells Fargo appealed the final judgment in *Gutierrez* to the United States Court of Appeals for the Ninth Circuit, which affirmed in part and reversed in part and remanded for further proceedings. *See Gutierrez v Wells Fargo Bank, N.A.*, 704 F.3d 712 (9th Cir. 2012).

2. Risks Associated with Trial Favor Settlement.

48. While Class Counsel are confident in the strength of Plaintiffs' case, we are also pragmatic in our awareness of the various defenses available to Synovus, and the risks inherent

in continued litigation. While Plaintiffs avoided dismissal on various theories advanced at the motion to dismiss stage and were poised to obtain class certification, the ultimate success of Plaintiffs' claims would turn on these and other questions that were certain to arise in the context of summary judgment, trial, and post-judgment appellate review.

49. Protracted litigation carries inherent risks and inevitable delay. Under the circumstances, Class Counsel determined that the Settlement outweighs the risks of continued litigation.

3. The Settlement Amount is Reasonable Given the Range of Possible Recovery.

50. In reaching the Settlement, Settlement Class Counsel were forced to consider the potential impact of Synovus' various defenses, in addition to all of the other litigation risks created in this complex multidistrict proceeding.

51. The \$3,750,000 cash recovery obtained through the Settlement represents approximately thirty-six percent (36%) of Plaintiffs' and Settlement Class Members' most probable damages recovery, *if* Plaintiffs and the putative class were successful in all respects through trial and on plenary appeal.

52. Given these risks, the \$3,750,000 cash recovery obtained through the Settlement is outstanding. Synovus' agreement to pay an additional \$150,000 towards the fees and costs associated with the Notice Program and administration of the Settlement further enhances the recovery.

53. The recovery achieved by this Settlement must be measured against the fact that any recovery by Plaintiffs' and Settlement Class Members through continued litigation could only have been achieved if: (i) Plaintiffs succeeded in obtaining class certification; (ii) Plaintiffs succeeded in defeating the Bank's contingent motion to compel arbitration as to certain absent

class members (DE # 3809); (iii) Plaintiffs and any certified class defeated summary judgment; (iv) Plaintiffs and any certified class established liability and recovered damages at trial; and (v) the final judgment was affirmed on appeal. The Settlement is an extremely fair and reasonable recovery for the Settlement Class in light of Synovus' defenses, and the challenging and unpredictable path of litigation that Plaintiffs and the Settlement Class would have faced absent the Settlement.

4. The Complexity, Expense, and Duration of Ongoing Litigation Favors Settlement.

54. The Settlement is the best vehicle for approximately 42,000 Settlement Class Members to receive the relief to which they are entitled in a prompt and efficient manner. Ongoing litigation would involve substantial, expensive fact and expert discovery, lengthy additional pretrial proceedings in this Court and the appellate courts and, ultimately, a trial and appeal. Absent the Settlement, the Action would likely continue for two or three more years.

5. The Factual Record Is Sufficiently Developed to Enable Plaintiffs and Settlement Class Counsel to Make a Reasoned Judgment Concerning This Settlement.

55. The Action was settled with the benefit of extensive briefing and decisions from this Court involving Synovus and other banks involved in MDL 2036. Class Counsel also had the benefit of 135,000 pages produced by Synovus, as well as deposition testimony from a number of fact and expert witnesses. Review of those documents and deposition testimony positioned Settlement Class Counsel to evaluate with confidence the strengths and weaknesses of Plaintiffs' and the proposed class claims and the prospects for success at summary judgment, at trial, and on appeal. Settlement Class Counsel, with the benefit of their experience in MDL No. 2036, were well positioned to evaluate with confidence the strengths and weaknesses of Plaintiffs' claims and Synovus' defenses.

6. Plaintiffs Faced Significant Obstacles to Prevailing.

56. Protracted litigation involves risks, delay, and expenses; this case is no exception. While Class Counsel believe that Plaintiffs had a solid case against Synovus, we are mindful that Synovus advanced significant defenses that we would have been required to overcome in the absence of the Settlement. This Action involved several major litigation risks, including preemption and arbitration.

57. Apart from the risks, continued litigation would have involved substantial delay and expense, which further counsels in favor of Final Approval. While Plaintiffs avoided dismissal on various theories advanced at the motion to dismiss stage, the ultimate success of Plaintiffs' claims would turn on these and other questions that were certain to arise in the context of motions for summary judgment, at trial, and on appeal. The uncertainties and delays from this process would have been significant. Given the myriad risks attending these claims, as well as the certainty of substantial delay and expense from ongoing litigation, the Settlement cannot be seen as anything except a fair compromise.

7. The Benefits Provided by the Settlement Are Fair, Adequate, and Reasonable Compared to the Range of Possible Recovery.

58. This Settlement provides reasonable benefits to the Settlement Class. Class Counsel's expert's analysis of Synovus' transactional data showed that the most probable damages Plaintiffs and the Settlement Class could reasonably have anticipated recovering at a trial in the Action was \$10,541,213. Through Settlement, Plaintiffs and the Settlement Class Members have achieved a recovery of approximately thirty-six percent (36%) of those damages without further risks or delays.

59. The \$3,750,000 cash recovery obtained through this Settlement is a fair and reasonable recovery to the Settlement Class in light of Synovus' merits defenses, as well as the

challenging, unpredictable path of litigation that Plaintiffs would otherwise have continued to face in the trial and appellate courts.

60. The Automatic Distribution process further supports Final Approval. All Settlement Class Members who experienced a Positive Differential Overdraft Fee will receive their cash benefits automatically, without needing to fill out any claim forms – or indeed to take any affirmative steps whatsoever.

8. The Opinions of Class Counsel, the Plaintiffs, and Absent Class Members Favor Approval of the Settlement.

61. Class Counsel believe this Settlement represents an excellent result in the face of significant risks, and represents the best vehicle for Settlement Class Members to receive the relief to which they are entitled in a prompt and efficient manner.

62. The recovery achieved by this Settlement must be measured against the fact that any recovery by Plaintiffs and Settlement Class Members through continued litigation could only have been achieved if (i) Plaintiffs succeeded in obtaining class certification; (ii) Plaintiffs succeeded in defeating the Bank's contingent motion to compel arbitration as to certain absent class members (DE # 3809); (iii) Plaintiffs and any certified class defeated summary judgment; (iv) Plaintiffs and any certified class established liability and recovered damages at trial; and (v) the final judgment was affirmed on appeal. Given the extraordinary obstacles that Plaintiffs faced in the litigation, this recovery is a significant achievement by any objective measure.

63. To date, there has been virtually no opposition to the Settlement. As of January 31, 2015, only one (1) Settlement Class Member had requested to be excluded from the Settlement Class. As of the same date, there were no objections to the Settlement.

64. Based on these and other reasons, we are of the opinion that the Settlement is deserving of Final Approval.

N. **Service Awards.**

65. Pursuant to the Settlement, Class Counsel request, and Synovus does not oppose, Service Awards of \$10,000 per Class Representative, or \$10,000 for married couples in which both spouses are Class Representatives. Agreement ¶ 102. If the Court approves them, the Service Awards will be paid from the Settlement Fund, and will be in addition to the relief the Class Representatives will be entitled to under the terms of the Settlement. *Id.*

66. Service awards compensate named plaintiffs for the services they provided and the risks they incurred during the course of the class action litigation. Courts, including this Court, have found service awards to be an efficient and productive way to encourage members of a class to become class representatives.

67. The factors for determining a service award include: (1) the actions the class representatives took to protect the interests of the class; (2) the degree to which the class benefited from those actions; and (3) the amount of time and effort the class representatives expended in pursuing the litigation.

68. The above factors, as applied to this Action, demonstrate the reasonableness of Service Awards to the Class Representatives. The Class Representatives provided assistance that enabled Class Counsel to successfully prosecute the Action and reach the Settlement, including (1) submitting to interviews with Class Counsel, (2) locating and forwarding responsive documents and information (i.e., monthly account statements and account agreements), and (3) appearing for lengthy depositions taken by Synovus' counsel. In so doing, the Class Representatives were integral to forming the theory of the case. The Class Representatives not only devoted time and effort to the litigation, but the end result of their efforts, and those of Class Counsel, conferred a substantial benefit on the Settlement Class.

69. If the Court approves them, the total Service Awards will be \$30,000. This amount represents less than 0.008% of the Settlement Fund, a ratio that falls well below the range of reasonable service awards.

O. Attorneys' Fees and Expenses.

70. Pursuant to the Settlement, Class Counsel request that the Court award attorneys' fees of thirty percent (30%) of the \$3,750,000 Settlement Fund, plus reimbursement of \$85,311.83 representing certain litigation costs and expenses we incurred in the prosecution and settlement of the Action. Synovus agreed not to oppose our request for such fees and expenses. We negotiated and reached this agreement regarding attorneys' fees and expenses only after reaching agreement on all other material terms of this Settlement.

71. The Court-approved Notice disseminated to the Settlement Class indicated that Class Counsel intended to request a fee equal to thirty percent (30%) of the \$3,750,000 common fund created through our efforts, plus reimbursement of litigation costs and expenses.

1. The Claims Against Synovus Required Substantial Time and Labor.

72. Prosecuting and settling the claims in the Action demanded considerable time and labor, making this fee request reasonable. Throughout the pendency of the Action, the organization of Class Counsel ensured that we were engaged in coordinated, productive work to maximize efficiency and minimize duplication of effort.

73. Class Counsel devoted substantial time to investigating the claims of potential plaintiffs against Synovus. We interviewed Synovus customers and potential plaintiffs to gather information about Synovus' conduct and its effect on consumers. This information was essential to our ability to understand the nature of Synovus' conduct, the language of the account agreements at issue, and potential remedies.

74. Class Counsel also expended significant resources researching and developing the legal theories and arguments presented in our pleadings and motions, and in opposition to Synovus' motions before this Court.

75. Substantial time and resources were also dedicated to conducting discovery. Class Counsel took the depositions of Synovus employees, and two of its expert witnesses. Synovus took the depositions of Plaintiffs, as well as of Plaintiffs' data expert. Class Counsel also served and responded to interrogatories, requests for production, and requests for admission.

76. Settlement negotiations consumed further time and resources. Direct settlement discussions and negotiations during 2013 and 2014 required substantial additional time and effort. Even after we reached an agreement in principle, detailed negotiations and discussions ensued regarding specific terms of the Agreement. This work consumed a significant amount of time.

77. All told, our steadfast and coordinated work paid dividends for the Settlement Class. Each of the above-described efforts was essential to achieving the Settlement currently before the Court. Taken together, the time and resources we devoted to prosecuting and settling this Action support the fee we are now seeking.

2. **The Issues Involved Were Novel and Difficult, and Required the Exceptional Skill of a Talented Group of Attorneys.**

78. The Court has regularly witnessed and commented upon the high quality of our legal work, which conferred a significant benefit on the Settlement Class in the face of numerous litigation obstacles. It required the acquisition and analysis of substantial factual information and complex legal issues. Moreover, the management of this very large MDL, including the Action against Synovus, among others, presented challenges that many law firms are simply not able to meet.

79. Indeed, litigation of a case like this requires counsel highly trained in class action law and procedure as well as the specialized issues these cases present. Class Counsel possess these attributes, and their participation on the team added value to the representation of this Settlement Class of approximately 46,000 Account holders.

80. The record before the Court shows that the Action involved a wide array of complex and novel challenges. We met every challenge, at every juncture.

81. In assessing the quality of representation by Class Counsel, the Court also should consider the quality of Synovus' counsel. Synovus was represented by extremely able and diligent attorneys, led by George W. Walker, III of Pope, McGlamry, Kilpatrick, Morrison & Norwood, P.C. Mr. Walker and his colleagues were worthy, highly competent adversaries, with great experience in class action cases. Prior to the involvement of Pope, McGlamry, Synovus was represented for two years by Alston & Bird LLP, the largest law firm in the state of Georgia, where Synovus is based.

3. Class Counsel Achieved a Successful Result.

82. The Settlement we achieved is excellent in light of the hurdles we faced. Instead of facing additional years of costly and uncertain litigation, all Settlement Class Members who experienced a Positive Differential Overdraft Fee and do not opt-out will receive distributions under the Settlement. Moreover, the Settlement Fund is unlikely to be diminished by the fees and expenses associated with the Notice Program and Settlement administration as Synovus has paid \$150,000 towards all such fees and expenses. Furthermore, payments to eligible Settlement Class Members will be forthcoming automatically, through direct deposit for Current Account Holders or checks for Past Account Holders. The Settlement represents an excellent result by any measure.

4. The Claims Against Synovus Entailed Considerable Risk.

83. Prosecuting the Action was risky from the outset. Synovus asserted that the relevant Account agreements expressly authorized it to engage in High-to-Low Posting, that Plaintiffs' state law claims for relief were preempted, and that some of the class members' claims against it in this case were subject to arbitration. If Defendants were successful in their defense against Plaintiffs and putative class members, this litigation would have ground to a halt and this Settlement would never have been achieved.

84. Each of these risks, by itself, could have impeded Plaintiffs' and the putative class's successful prosecution of these claims at trial and on appeal. Together, they clearly demonstrate that Plaintiffs' claims against Synovus were far from a "slam dunk" and that, in light of all the circumstances, the Settlement achieves an excellent class-wide result.

5. Class Counsel Assumed Substantial Risk to Pursue the Action on a Pure Contingency Basis.

85. Class Counsel prosecuted the Action on a contingent fee basis. In undertaking to prosecute this complex action on that basis, we assumed a significant risk of nonpayment or underpayment. That risk favors awarding the requested attorneys' fees.

86. Public policy concerns – especially ensuring the continued availability of experienced and capable counsel to represent classes of injured plaintiffs whose individual claims would defy vindication – further support the requested attorneys' fees.

87. The progress of the Action to date shows the inherent risk we assumed in taking this case on a contingency fee basis. There can be no dispute that the Action entailed substantial risk of nonpayment.

6. The Requested Fee Comports with Customary Fees Awarded in Similar Cases.

88. The fee requested here matches the fees typically awarded in similar cases. As numerous decisions have recognized, a fee award of thirty percent (30%) of a common fund is well within the range of a customary fee. The requested fee also falls within the range of awards in other MDL 2036 settlements approved by this Court, as well as many other cases brought in this Circuit and District.

7. Other Factors Support Approving Class Counsel's Fee Request.

89. Other factors also support granting our fee request. As noted above, the time and expense demands on us were considerable. Moreover, our fee request is firmly rooted in the economics involved in prosecuting a class action. Without adequate compensation and financial reward, cases such as this simply could not be pursued.

8. Reimbursement of Certain Costs and Expenses.

90. Class Counsel also respectfully request reimbursement of \$85,311.83, representing limited out-of-pocket costs and expenses we necessarily incurred in connection with the prosecution of the Action and the Settlement. These costs and expenses are comprised of: (1) \$67,898.29 in fees and expenses incurred for experts, principally Arthur Olsen, whose services were critical in determining the damages for the Settlement Class, in identifying Settlement Class Members, and in allocating the Settlement Fund, and (2) \$17,413.54 in court reporter fees and transcripts. These costs and expenses are recorded in the books and records maintained by Plaintiffs' Coordinating Counsel, and were reasonably and necessarily incurred in furtherance of our prosecution of the Action and the Settlement.

91. We have limited the categories of expenses for which we are seeking reimbursement to those enumerated above. We are not seeking reimbursement for many thousands of dollars in other expenses, including (but not limited to) travel expenses.

* * *

I declare under penalty of perjury of the laws of Florida and the United States that the foregoing is true and correct, and that this declaration was executed in Miami, Florida, on February 5, 2015.

/s/ Robert C. Gilbert
Robert C. Gilbert

I declare under penalty of perjury of the laws of Georgia and the United States that the foregoing is true and correct, and that this declaration was executed in Atlanta, Georgia, on February 5, 2015.

/s/ E. Adam Webb
E. Adam Webb