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11 FDIC LEGAL DIVISION
 12 1601 Bryan Street
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15 Attorneys for
 16 **Federal Deposit Insurance Corporation,**
 17 **as Receiver for SunFirst Bank**
 18

19 **IN THE UNITED STATES DISTRICT COURT**
 20 **FOR THE DISTRICT OF NEVADA**
 21

FEDERAL TRADE COMMISSION,

Plaintiff,

v.

JEREMY JOHNSON, et al.,

Defendants.

Case No. 2:10-cv-02203-MMD-GWF

**MOTION TO SUBSTITUTE PARTY-
 INTERVENOR**

MOTION TO SUBSTITUTE COUNSEL

22
 23 The Federal Deposit Insurance Corporation, as Receiver for SunFirst Bank (“FDIC-R”),
 24 by and through undersigned counsel, and pursuant to Rule 25, Fed. R. Civ. P., hereby
 25 respectfully moves the Court to substitute the FDIC-R in place of SunFirst Bank as intervenor
 26 and to substitute counsel in the above-captioned matter. In support of this Motion, the FDIC-R
 27 states as follows:

28 1. On November 4, 2011, the Utah Department of Financial Institutions closed
 29 SunFirst Bank, St. George, Utah, and appointed the FDIC its Receiver. See Exhibit “A.”

1 On the same date, the FDIC accepted the appointment as Receiver pursuant to 12 U.S.C. §
2 1821(c)(3)(A). See Exhibit “B.”

3 2. As Receiver for SunFirst Bank, and by express operation of law, the FDIC
4 "succeed[s] to . . . all rights, titles, powers, and privileges . . . and the assets of the institution."
5 12 U.S.C. § 1821(d)(2)(A)(i). As to particular assets germane to this case, the FDIC-R is the
6 holder of a certain Credit Agreement and Disclosure dated December 2, 2009, executed by
7 defendant Sharla Johnson, and is the beneficiary under a certain Revolving Credit Deed of Trust
8 of even date and recorded on December 7, 2009. The FDIC-R stands in SunFirst Bank's place
9 and operates as its successor. *See*, 12 U.S.C. §§ 1821(d)(2)(A)(i) and 1821(d)(2)(B).

10 Rule 25(c), Fed. R. Civ. P., provides, in relevant part:

11 If an interest is transferred, the action may be continued by or
12 against the original party unless the court, on motion, orders the
13 transferee to be substituted in the action or joined with the original
14 party.
15

16 3. Because the FDIC-R has succeeded to all of SunFirst Bank’s assets, interests,
17 operations, claims, and defenses, the FDIC-R is now the real party in interest in this action and
18 should be substituted as intervenor in the place of SunFirst Bank. Indeed, federal courts
19 routinely enter orders substituting the FDIC as receiver in cases such as this one. *See, e.g.,*
20 *Yeomalakis v. FDIC*, 562 F.3d 53, 58 (1st Cir. 2009) (appellate court granted motion of FDIC as
21 Receiver to be substituted for failed institution); *In re Community Bank of Northern Virginia*,
22 418 F.3d 277, 293 n.6 (3rd Cir. 2005) (“FDIC succeeded to all ‘rights, titles, powers, and
23 privileges of . . . insured depository institution’” and was ordered substituted “as the true party in
24 interest”); *Amerifirst Properties, Inc. v. FDIC*, 880 F.2d 821, 823 n.2 (5th Cir. 1989) (following
25 appointment of FDIC as Receiver for insolvent bank, court granted motion to substitute FDIC
26 “as the real party in interest”); *Phipps v. FDIC*, 417 F.3d 1006, 1009 (8th Cir. 2005) (after

1 briefing, FDIC was appointed Receiver and was granted leave to substitute itself for failed
2 institution as appellee); *see also Village of Oakwood v. State Bank & Trust Co.*, 481 F.3d 364,
3 368 (6th Cir. 2007) (holding that, “[e]ven if a claim arises under state law between a bank and
4 nondiverse plaintiffs, the district court could still exercise jurisdiction if the FDIC, in its capacity
5 as receiver, is substituted as a party for that bank under Fed. R. Civ. P. 25(c)’”).

6 4. The substitution of the FDIC-R in the place and stead of SunFirst Bank would
7 accord with the FDIC-R’s congressionally-delegated powers and obligations, as set forth in Title
8 12 of the United States Code, as well as the case law cited above. Accordingly, this Court
9 should enter an Order substituting the FDIC-R in place of SunFirst Bank.

10 5. The FDIC-R designates Sam E. Taylor, Jr. and Rodrigo M. Rodriguez as its
11 counsel of record and respectfully requests that the court substitute Mr. Taylor and Mr.
12 Rodriguez for Nathan K. Fisher as counsel of record.

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15 Dallas Regional Office
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31 **WHEREFORE**, the FDIC-R respectfully requests that this Court grant this Motion and
32 enter an order substituting the FDIC-R in place of SunFirst Bank as intervenor in this action and

1 substituting counsel, together with such other and further relief deemed just and proper under the
2 circumstances.

3 Dated: June 10, 2013

4 Respectfully submitted,

5
6 **FEDERAL DEPOSIT INSURANCE CORPORATION,**
7 as Receiver for SunFirst Bank

8
9 By: /s/ Sam E. Taylor, Jr.

10 Sam E. Taylor, Jr. TX SBN 24035600
11 Rodrigo M. Rodriguez TX SBN 17148485
12 Federal Deposit Insurance Corporation
13 1601 Bryan St.
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16 **Attorneys for FDIC,**
17 **as Receiver for SunFirst Bank**

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19
20
21 By: /s/ Nathan K. Fisher [w/permission]

22 Nathan K. Fisher 6642
23 444 East Tabernacle, Building B, Suite 201
24 St. George, Utah 84770

25
26
27 **IT IS SO ORDERED:**

28
29
30 

31 **Dated:** June 11, 2013

32 GEORGE FOLEY, JR.
33 United States Magistrate Judge

34
35
36
37
38 **CERTIFICATE OF SERVICE**

39
40 I hereby certify that a true and correct copy of the foregoing **MOTION TO**
41 **SUBSTITUTE PARTY-INTERVENOR** and **MOTION TO SUBSTITUTE COUNSEL** was
42 served via the ECF system on the 10th day of June, 2013, on all registered attorneys, and via US
43 Mail, first class postage prepaid, on June 11, 2013, to:
44

1 Loyd Johnston
2 2988 Kings Court Lane
3 Washington, Utah 84780
4 Defendant (Pro se)

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6 Bryce Payne
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9 Defendant (Pro se)

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16 Jason Vowell
17 491 North Bluff Street, Suite 306
18 Saint George, UT 84770

Tara-Lynn Adams
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21 The following non-CM/EDF participants were served by electronic mail on June 10, 2013:

23 Sharla Johnson jsajohnson@mac.com

26 **SPECIAL NOTICE PARTIES -- MAIL**

28 Aaron D. Randall
29 Hughes, Thompson Randall & Mellen P.C.
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44
45 /s/ Sam E. Taylor, Jr.

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Commissioner of Financial
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IN THE FIFTH JUDICIAL DISTRICT COURT
IN AND FOR WASHINGTON COUNTY, STATE OF UTAH

In the Matter of:	:	CERTIFICATE OF APPOINTMENT
The Possession of SUNFIRST BANK	:	OF FEDERAL DEPOSIT INSURANCE
by the COMMISSIONER OF	:	CORPORATION AS RECEIVER
FINANCIAL INSTITUTIONS	:	OR LIQUIDATOR
	:	
	:	
	:	Case No. <i>110503396</i>
	:	Judge G. Rand Beacham

G. Edward Leary, Commissioner of Financial Institutions of the State of Utah (“Commissioner”), as Commissioner in possession of SunFirst Bank (“Bank”), having determined and found that the deposits of the Bank are insured by the Federal Deposit Insurance Corporation (“FDIC”), and having heretofore taken possession of the Bank pursuant to Utah Code Ann. § 7-2-6(1)(a) (West Supp. 2011), and the Court having approved the taking of possession,

Exhibit “A”

HEREBY APPOINTS the FDIC as receiver or liquidator of the Bank pursuant to Utah Code Ann. § 7-2-9(2)(a) (West Supp. 2011).


Upon receiving notice, in writing, of the acceptance of this appointment, the Commissioner shall thereupon file this Certificate of Appointment in his office and with the Clerk of the Court, whereupon, by operation of law and pursuant to Utah Code Ann. § 7-2-9 (West Supp. 2011):

(a) the possession of all assets, business and property of the Bank shall be vested in the FDIC, without the execution of any instruments of conveyance;

(b) the Commissioner shall be relieved from any and all further responsibility and liability for the receivership or liquidation; and

(c) the FDIC, as receiver or liquidator, shall have all the powers and privileges provided by law with respect to the receivership or liquidation of the Bank, and with respect to the depositors and other creditors of the Bank.

DATED this 4th day of November, 2011.


G. EDWARD LEARY
Commissioner of Financial Institutions
of the State of Utah



November 4, 2011

G. Edward Leary
Commissioner of Financial Institutions
Utah Department of Financial Institutions
324 South State Street, Suite 201
Salt Lake City, Utah 84110

**Subject: SunFirst Bank
St. George, Utah – In Receivership
Acceptance of Appointment as Receiver**

Dear Commissioner Leary:

Please be advised that the Federal Deposit Insurance Corporation accepts its appointment as Receiver of the above-subject depository institution, in accordance with the Federal Deposit Insurance Act, as amended.

Sincerely,

FEDERAL DEPOSIT INSURANCE CORPORATION

By: Terry B. Knapper
Title: Receiver-in-Charge

Exhibit "B"