

IN THE UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF ARKANSAS
EL DORADO DIVISION

MELVIN L. THOMAS III and
BILLY D. LAWSON, JR., on
behalf of themselves and
all others similarly situated

PLAINTIFFS

VS.

CASE NO. 12-1016

BANCORPSOUTH BANK and
BANCORPSOUTH, INC.

DEFENDANTS

ORDER

Plaintiffs filed this putative class action on February 28, 2012 (doc. 1) challenging Defendants' overdraft fee policies and practices. On March 26, 2012, at the parties' request, the Court conducted a hearing and entered an order certifying the class and preliminarily approving the Settlement Agreement; both contingent upon final approval of the Settlement (doc. 22).

On March 27, 2012, Defendants filed a motion to stay in an earlier-filed action, *Swift v. BancorpSouth, Inc.*, pending in the Southern District of Florida, Case No. 1:10-cv-23872-JLK, as part of a multidistrict litigation proceeding, *In Re: Checking Account Overdraft Litigation*, Case No. 09-MD-02036-JLK. In *Swift*, Judge King denied the motion and enjoined Defendants and their attorneys from proceeding in the case *sub judice* pursuant to its authority under the All Writs Act, 28 U.S.C. §1651, and the "first-to-file rule".

The Court finds that the interests of justice require that

this case be transferred to the Southern District of Florida, where virtually identical actions are pending against Defendants. See 28 U.S.C. § 1404(a). The Court further finds that the convenience of the parties and witnesses requires the case be transferred, given that Defendants have been engaged in identical litigation for nearly two years prior to the commencement of this action and approximately eighteen (18) months after *Swift* was transferred to the Southern District of Florida for inclusion in the multidistrict litigation proceeding. Further, if the Settlement in this case were to receive final approval, according to Defendants themselves, it would encompass the claims of all proposed class members in the first-filed *Swift* action other than named Plaintiff Shane Swift.

The Final Fairness Hearing scheduled for July 30, 2012, is CANCELED. Pursuant to the parties' Settlement Agreement, the preliminary approval of the settlement and the class certification are hereby VACATED without final approval from this Court. Plaintiffs' Motions for Rule 16 Status Conference (doc. 36) and for Immediate Temporary Protective Order and Scheduling of Permanent Protective Order Hearing (doc. 39) are DENIED.

Based on the foregoing, the Court finds the interests of justice require that this action be immediately TRANSFERRED to the Southern District of Florida and administratively TERMINATED.

IT IS SO ORDERED this 8th day of June 2012.

/s/ Robert T. Dawson
Honorable Robert T. Dawson
United States District Judge