

AMERICAN ARBITRATION ASSOCIATION

RUDOLF ZIMMERMAN, both
individually and behalf of a class of
other similarly situated persons,

Claimant,

v.

SUNTRUST BANK,

Respondent.

DEMAND FOR CLASS ARBITRATION

I. INTRODUCTION

1. This class arbitration is an action to remedy the failure of Respondent SUNTRUST BANK (“Respondent”) to pay Claimant Rudolf Zimmerman (“Claimant” and/or “Zimmerman”) overtime premium pay as required by the Fair Labor Standards Act (“FLSA”), 29 U.S.C. § 201 et seq..
2. Claimant Zimmerman seeks unpaid wages, liquidated damages, costs and attorneys' fees as well as declaratory relief under the FLSA.
3. Claimant Zimmerman brings this case on behalf of other similarly situated employees pursuant to 29 U.S.C. § 216(b) and the Supplemental Rules for Class Action Arbitration of the American Arbitration Association (“AAA

Class Action Rules”).

II. JURISDICTION AND VENUE

4. Jurisdiction is conferred upon this entity by 29 U.S.C. § 216(b) of the Fair Labor Standards Act, by 28 U.S.C. § 1331, this action arising under laws of the United States, and by 28 U.S.C. § 1337, this action arising under Acts of Congress regulating commerce. Jurisdiction over Claimant’s claims for declaratory relief is conferred by 28 U.S.C. §§ 2201 and 2202. Arbitration is the appropriate venue and jurisdiction under the Federal Arbitration Act, Title 9 of the U. S. Code, the Employment Arbitration Rules of the American Arbitration Association and the AAA Class Action Rules, and the agreement of the parties.

III. PARTIES

A. Claimant

5. Claimant Zimmerman was an employee of Respondent.
6. Claimant Zimmerman worked for Respondent as a Client Technology Specialist (“CTS”) employee.
7. Claimant is engaged in commerce in his work for Respondent.

B. Represented Parties under FLSA

8. The term "Claimant" as used in this complaint refers to the named Claimant and

any additional represented parties pursuant to the provision of the AAA Class Action Rules.

9. Claimant Zimmerman represents similarly situated former CTS employees of Respondent who were not paid time and one-half premium pay by Respondent for work hours over forty in a work week and who have not asserted their FLSA claims in any other Court or tribunal.
10. Claimant Zimmerman brings this case under the provisions of the AAA Class Action Rules as a class action for class members, who are CTS employees of Respondent throughout the United States who signed an arbitration agreement with Respondent.

C. Respondent

11. Respondent lists its business address as 303 Peachtree St. N.E., Atlanta, GA 30308.
12. Respondent is a Georgia corporation headquartered in Georgia. Respondent may be served with process through its registered agent, Raymond D. Fortin, 303 Peachtree St., NE, Ste. 3600, Atlanta, GA 30308.
13. Respondent operates approximately 1,700 bank branches across the southeastern United States. Respondent offers retail and commercial banking as well as trust services, credit cards, mortgage banking, mutual funds, insurance, equipment

leasing, asset management, and securities underwriting and dealing.

14. Respondent grossed more than \$500,000 in the past fiscal year.
15. Respondent is an enterprise engaged in commerce for purposes of the Fair Labor Standards Act.
16. All actions and omissions described in this complaint were made by Respondent directly or through its supervisory employees and agents.

IV. ARBITRATION

17. Claimant Zimmerman entered into an agreement with Respondent that requires the arbitration of all disputes pursuant to the Rules of the American Arbitration Association. Specifically, the Attachment to Severance Benefits Agreement, Waiver and Release Agreement to Arbitrate states: “I am agreeing to arbitrate any dispute, claim or controversy that may arise between SunTrust and me related to the Agreement and my employment with SunTrust. Section 6 a of the Severance Benefits Agreement, Waiver and Release attached as Exhibit A provides in relevant part: “I agree that any claim arising from or relating to this Agreement or a breach of this Agreement shall be settled by arbitration in accordance with the employment arbitration rules of the American Arbitration Associations and through the offices of the Association nearest my last SunTrust office site at the time

arbitration is sought.”

18. There are other CTS employees who have also entered into this Severance Benefits Agreement, Waiver and Release with Respondent.
19. Claimant Zimmerman and other CTS employees have a dispute with Respondent that requires arbitration.
20. Counsel for Claimant Zimmerman are qualified to proceed with a class arbitration under the Rules of the American Arbitration Association.

V. FACTS

21. Claimant Zimmerman resides in Old Hickory, Tennessee.
22. Claimant Zimmerman began his employment with Respondent on or about March 29, 1999.
23. Claimant Zimmerman is no longer employed by Respondent.
24. Claimant Zimmerman was primarily employed by Respondent to provide "client technology support" to some employees of Respondent SunTrust Bank.
25. Claimant Zimmerman and other CTS class members regularly worked more than 40 hours per week for Respondent.
26. Respondent failed to pay Claimant Zimmerman and the class members overtime compensation at the rate of time and one-half for all hours worked over 40 in a week.

27. Respondent's failure to pay Claimant Zimmerman and the class members the proper wages required by law was willful.
28. In an investigation culminating in September 2006, the U.S. Department of Labor found that CTS 1-3 employees were not exempt from the Fair Labor Standards Act and that SunTrust was required to pay such employees overtime premium pay. The U.S.D.O.L. found that a CTS-4 employee who had supervisory responsibilities over 2 full-time-equivalents was exempt under the management exemption, 29 U.S.C. §213(a). However, not all CTS-4 employees have supervisory responsibilities.
29. Following the completion of the U.S.D.O.L. investigation, in or about October 2006, respondent SunTrust began paying claimant CTS employees overtime premium pay, however it began doing so using the "fluctuating work week" method of paying time and one half, purportedly under 29 C.F.R. §778.114.
30. Respondent SunTrust is unauthorized to utilize the half-time method of paying overtime because claimants and SunTrust did not have a mutual understanding that the salary would be fixed, within the meaning of the regulation. Since SunTrust's employment manual specifically calls for deduction from CTS employees' wages if they miss a day without certain

leave allowances, SunTrust and its CTS employees could not have a mutual understanding that they would be paid a fixed weekly wage.

VI. CLASS ACTION ALLEGATIONS

31. During the statutory period, Claimant Zimmerman and similarly situated employees were paid on a salary basis without receiving time and one half premium pay by Respondent for work hours over 40 in a work week.
32. Claimant Zimmerman and similarly situated employees routinely worked in excess of forty hours per week without being paid overtime compensation as required by the FLSA.

Claimant Zimmerman seeks to represent a class composed of all similarly situated CTS employees, who worked for SunTrust Bank, who were not paid overtime by SunTrust Bank for work hours over 40 in a work week at the rate of one and one-half times their regular rate of pay, and who have not asserted their FLSA claims in any other Court or tribunal, covering a three-year period prior to the date of this Demand for Arbitration.¹

¹ Claimant Zimmerman's claim was subject to tolling of the statute of limitation for the additional period that his claim was pending in the U.S. District Court.

VII. CAUSE OF ACTION.

**COUNT I
(FAIR LABOR STANDARDS ACT)**

33. Respondent failed to pay overtime wages to Claimant Zimmerman and the class members in violation of the Fair Labor Standards Act, 29 U.S.C. § 201 et seq. and its implementing regulations.
34. Respondent's failure to pay proper wages for each hour worked over 40 per week was willful within the meaning of the FLSA.
35. Respondent's failure to comply with the FLSA overtime protections caused Claimant Zimmerman and the class members to suffer loss of wages and interest thereon.

PRAYER FOR RELIEF

WHEREFORE, Claimant Zimmerman requests that this Arbitrator enter an order:

1. Certifying this arbitration as a class action;
2. Declaring that the Respondent violated the Fair Labor Standards Act;
3. Declaring that the Respondent's violations of the FLSA were willful;
4. Granting judgment to Claimant Zimmerman and the class members for their claims of unpaid wages as secured by the Fair Labor Standards Act, as well as liquidated damages;
5. Awarding Claimant Zimmerman and the class members their costs,

including expert costs, and reasonable attorneys' fees; and

6. Granting such further relief as the Arbitrator finds just.

Dated: September 22, 2008

Respectfully submitted,

/s/ Ryan D. Barack

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**ATTORNEYS FOR CLAIMANT,
individually and on behalf of others
similarly situated**