

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF TENNESSEE
NASHVILLE DIVISION

TUITIONFUND, LLC	§	
<i>Plaintiff</i>	§	
	§	
v.	§	CASE NO.: 3:11-cv-00069
	§	JURY DEMAND
SUNTRUST BANKS, INC.;	§	
SUNTRUST BANK;	§	
REGIONS FINANCIAL CORPORATION;	§	
REGIONS BANK;	§	
VESDIA CORPORATION;	§	
CARTERA COMMERCE, INC.;	§	
CARDLYTICS, INC.,	§	
<i>Defendants</i>	§	

FIRST AMENDED COMPLAINT FOR PATENT INFRINGEMENT

COMES NOW Plaintiff TuitionFund, LLC (“TuitionFund” or “Plaintiff”) and files this First Amended Complaint against Defendants SunTrust Banks, Inc. and SunTrust Bank (collectively, “SunTrust”), Vesdia Corporation (“Vesdia”), Cartera Commerce, Inc. (“Cartera”), Regions Financial Corporation and Regions Bank (collectively “Regions”), and Cardlytics, Inc. (“Cardlytics”) (collectively “Defendants”) and alleges as follows:

I. NATURE OF THE SUIT

1. This is a claim for patent infringement arising under the patent laws of the United States, Title 35 of the United States Code.

II. THE PARTIES

2. Plaintiff **TuitionFund, LLC** is a Delaware limited liability company that maintains its principal place of business at 422 Wild Elm, Franklin, Tennessee 37064.

3. Defendant **SunTrust Banks, Inc.** is a Georgia corporation that maintains its principal place of business at 303 Peachtree Street, Atlanta, Georgia 30308. This defendant does business in Tennessee and can be served with process through its Registered Agent for Service, Raymond D. Fortin, 303 Peachtree Street, Suite 3600, Atlanta, Georgia 30308. This defendant has appeared and filed responsive pleadings to Plaintiff's Original Complaint.

4. Defendant **SunTrust Bank** is a wholly-owned banking subsidiary of Defendant SunTrust Banks, Inc. This defendant does business in Tennessee and can be served with process through its Registered Agent for Service, Raymond D. Fortin, 303 Peachtree Street, Suite 3600, Atlanta, Georgia 30308. This defendant has appeared and filed responsive pleadings to Plaintiff's Original Complaint.

5. Defendant **Vesdia Corporation** is a Delaware corporation that maintains its principal place of business at Tower Place 200, 3348 Peachtree Road, NE, Suite 300, Atlanta, GA 30326. This defendant does business in Tennessee and can be served with process through its Registered Agent for Service, Daniel Shmalo, 360 Venture Law, 845 Spring Street, Atlanta, Georgia 30308. This defendant has appeared and filed responsive pleadings to Plaintiff's Original Complaint.

6. Defendant **Cartera Commerce, Inc.** is a Delaware corporation that maintains its principal place of business at 2711 Centerville Road, Ste. 400, Wilmington, Delaware. On or around January 14, 2011, Cartera and Vesdia announced the merger of their two entities stating that the merged entities would operate under the Cartera Commerce brand. Cartera does business in Tennessee and can be served with process through its Registered Agent for Service, David L. Andre, 268 South Great Road, Lincoln, Massachusetts 01773. This defendant has appeared and filed responsive pleadings to Plaintiff's Original Complaint.

7. Defendant **Regions Financial Corporation** is a Delaware Corporation that maintains its principal place of business at 1900 Fifth Avenue North, Birmingham, Alabama 35203. This Defendant does business in Tennessee and can be served with process through its Registered Agent for Service, Corporation Service Company, 2908 Poston Avenue, Nashville, Tennessee 37203-1312. This defendant has appeared and filed responsive pleadings to Plaintiff's Original Complaint.

8. Defendant **Regions Bank** is a wholly-owned banking subsidiary of Regions Financial Corporation. This Defendant does business in Tennessee and can be served with process through its Registered Agent for Service, Corporation Service Company, 2908 Poston Avenue, Nashville, Tennessee 37203-1312. This defendant has appeared and filed responsive pleadings to Plaintiff's Original Complaint.

9. Defendant **Cardlytics, Inc.** is a Delaware corporation that maintains its principal place of business at 621 North Ave. NE, Suite C-30, Atlanta, Georgia 30308. This Defendant does business in Tennessee and can be served with process through its Registered Agent for Service, Corporation Service Company, 2711 Centerville Road, Suite 400, Wilmington, Delaware 19808. This defendant has appeared and filed responsive pleadings to Plaintiff's Original Complaint.

III. JURISDICTION AND VENUE

10. This action arises under the patent laws of the United States, Title 35 of the United States Code. The Court's jurisdiction over this action is proper under the above statutes, including 35 U.S.C. §271 *et seq.*, 28 U.S.C. § 1331, 28 U.S.C. § 1332, and 28 U.S.C. § 1338.

11. Personal jurisdiction exists generally over Defendants pursuant to 28 U.S.C. § 1391 because they have sufficient minimum contacts with the forum as a result of business

conducted within the State of Tennessee and within this district. Personal jurisdiction also exists specifically over Defendants because of Defendants' conduct in making, using, selling, offering to sell, and/or importing directly or indirectly infringing products or services, and/or Defendants' contributory infringement or inducement of infringement within the State of Tennessee and within this District.

12. Venue is proper in this Court under 28 U.S.C. §§1391(b), (c), and (d), as well as 28 U.S.C., §1400(b) for the reasons set forth above. Furthermore, venue is proper because Defendants solicit and establish banking and other business relationships with individuals and businesses in this District, which include infringing products or services as discussed below. Each act of Defendants' directly or indirectly infringing conduct in this District gives rise to proper venue.

IV. BACKGROUND

13. This cause of action asserts infringement of three patents—United States Patent No. 7,499,872 B1 entitled “Methods and Systems for Applying Rebates to Higher Education” (“the ’872 Patent”), United States Patent No. 7,653,572 B1 entitled “Methods and Systems for Providing a Rebate Program” (“the ’572 Patent”), and United States Patent No. 7,899,704 B1 entitled “Methods and Systems for Providing a Merchant Funded Rebate Program” (“the ’704 Patent”) (collectively, the “Patents-in-Suit”). A true and correct copy of the ’872 Patent is attached hereto as Exhibit A. A true and correct copy of the ’572 Patent is attached hereto as Exhibit B. The ’572 Patent is a continuation of application no. 09/703,562, filed on November 1, 2000, now the ’872 Patent. A true and correct copy of the ’704 Patent is attached hereto as Exhibit C. The ’704 Patent is a continuation of application no. 12/347,136, filed on December 31, 2008, now the ’572 Patent.

14. TuitionFund is the current owner of all rights, title, and interest in and under the '872 Patent, which duly and legally issued on March 3, 2009, with Michael P. Thompson as the named inventor. The term of the '872 Patent was extended or adjusted under 35 U.S.C. 154(b) by 1205 days. TuitionFund has standing to sue for the infringement of the '872 Patent.

15. TuitionFund is the current owner of all rights, title, and interest in and under the '572 Patent, which duly and legally issued on January 26, 2010, with Michael P. Thompson as the named inventor. Application no. 12/347,136, which resulted in the '572 Patent, is a continuation of application no. 09/703,562, which resulted in the '872 Patent. The '572 Patent is subject to a terminal disclaimer. TuitionFund has standing to sue for the infringement of the '572 Patent.

16. TuitionFund is the current owner of all rights, title, and interest in and under the '704 Patent, which duly and legally issued on March 1, 2011, with Michael P. Thompson as the named inventor. Application no. 12/649,903, which resulted in the '704 Patent, is a continuation of application no. 12/347,136, which resulted in the '572 Patent. TuitionFund has standing to sue for the infringement of the '704 Patent.

17. Defendants SunTrust and Vesdia offer SunTrust's personal and business account clients in the United States, including Tennessee and within this District, debit and credit card accounts that offer the client rebates/rewards (known as SunTrust Rewards BonusBuys and/or Bonus SunPoints), based on their purchases at certain merchants using the debit and/or credit card accounts, that can be redeemed for gift cards, merchandise, airline travel, monetary statement credits, cash contributions to numerous charities, and more, or credited to a higher education account or education account or otherwise used for educational-related purchases. Various merchants partner with SunTrust and/or Vesdia to offer these merchant funded rewards

and rebates to SunTrust's clients. Vesdia serves as the rebate network manager for the SunTrust Rewards BonusBuys and/or Bonus SunPoints programs.

18. On or around January 14, 2011, Cartera and Vesdia announced the two companies entered into a merger agreement, thereby combining the two companies. The companies announced that the merged companies would operate under the Cartera Commerce brand.

19. In offering these debit and credit card accounts featuring merchant funded rewards and rebates, SunTrust and Vesdia, each individually as well as jointly, make and use a system and method for providing a rebate program that infringes one or more claims of the Patents-in-Suit.

20. On information and belief, as a result of the merger between Cartera and Vesdia, Defendants SunTrust and Cartera offer SunTrust's personal and business account clients in the United States, including Tennessee and within this District, debit and credit card accounts that offer the client rebates/rewards (known as SunTrust Rewards BonusBuys and/or Bonus SunPoints), based on their purchases at certain merchants using the debit and/or credit card accounts, that can be redeemed for gift cards, merchandise, airline travel, monetary statement credits, cash contributions to numerous charities, and more, or credited to a higher education account or education account or otherwise used for educational-related purchases. Various merchants partner with SunTrust and/or Cartera to offer these merchant funded rewards and rebates to SunTrust's clients. Cartera serves as the rebate network manager for the SunTrust Rewards BonusBuys and/or Bonus SunPoints programs.

21. On information and belief, as a result of the merger between Cartera and Vesdia, in offering these debit and credit card accounts featuring merchant funded rewards and rebates,

SunTrust and Cartera, each individually as well as jointly, make and use a system and method for providing a rebate program that infringes one or more claims of the Patents-in-Suit.

22. In its role as the rebate network manager for the SunTrust Rewards BonusBuys and/or Bonus SunPoints programs, Vesdia makes and uses a system and method for providing a rebate program that infringes one or more claims of the Patents-in-Suit.

23. On information and belief, as a result of the merger between Cartera and Vesdia, in its role as the rebate network manager for the SunTrust Rewards BonusBuys and/or Bonus SunPoints programs, Cartera makes and uses a system and method for providing a rebate program that infringes one or more claims of the Patents-in-Suit.

24. SunTrust, with knowledge of the patents in suit, induced Vesdia to make and use a rewards program for SunTrust's personal and business account clients as described in the preceding paragraphs.

25. On information and belief, as a result of the merger between Cartera and Vesdia, SunTrust, with knowledge of the patents in suit, has induced Cartera to make and use a rewards program for SunTrust's personal and business account clients as described in the preceding paragraphs.

26. In sum, SunTrust is individually liable for infringement, jointly liable for infringement together with and through Vesdia, and liable for inducing Vesdia's direct infringement. Furthermore, Vesdia is individually liable and jointly and severally liable for infringement of the Patents-in-Suit by and through its work pertaining to the SunTrust Rewards BonusBuys and/or Bonus SunPoints programs.

27. In sum, SunTrust is individually liable for infringement and, as a result of the merger between Cartera and Vesdia, jointly liable for infringement together with and through

Cartera, and liable for inducing Cartera's direct infringement. Furthermore, Cartera is individually liable and jointly and severally liable for infringement of the Patents-in-Suit by and through its work pertaining to the SunTrust Rewards BonusBuys and/or Bonus SunPoints programs.

28. Defendants Regions and Cardlytics offer Regions's personal and business account clients in the United States, including Tennessee and within this District, debit card accounts that offer the client rebates/rewards (known as Regions Cashback Rewards), based on their purchases at certain participating merchants using their Regions Visa® CheckCard. Regions's clients receive rebates/rewards by making qualifying purchases using their Regions Visa® CheckCard from national, local and online merchants participating in the Regions Cashback Rewards program. These rebates/rewards are deposited into the participating client's checking account, which may be, for example, a college checking account used to help pay or fund higher education or a regular checking account which is used for educational-related purchases. Various merchants partner with Regions and/or Cardlytics to offer these merchant funded rewards and rebates to Regions's clients. Regions and/or Cardlytics serves as the rebate network manager for the Regions Cashback Rewards program.

29. In offering these debit card accounts featuring merchant funded rewards and rebates, Regions and Cardlytics, each individually as well as jointly, make and use a system and method for providing a rebate program that infringes one or more claims of the Patents-in-Suit.

30. In its role as the rebate network manager for the Regions Cashback Rewards program, Cardlytics makes and uses a system and method for providing a rebate program that infringes one or more claims of the Patents-in-Suit.

31. Regions, with knowledge of the Patents-in-Suit, induced Cardlytics to make and use a rewards program for Regions's personal and business account clients as described in the preceding paragraphs.

32. In sum, Regions is individually liable for infringement, jointly liable for infringement together with and through Cardlytics, and liable for inducing Cardlytics's direct infringement. Furthermore, Cardlytics is individually liable and jointly and severally liable for infringement of the Patents-in-Suit by and through its work pertaining to the Regions Cashback Rewards program.

V. CLAIMS

33. The allegations of paragraphs 1-32 above are incorporated by reference as if fully set forth herein.

34. At least the SunTrust Rewards BonusBuys and/or Bonus SunPoints rebate/reward programs offered by SunTrust, Vesdia and Cartera infringe one or more claims of the Patents-in-Suit.

35. Representatives of TuitionFund met with SunTrust as early as May 2005 to discuss TuitionFund's pending Patent Application No. 09/703,562 and the United States Patent and Trademark Office's Unofficial Allowance of Claims that issued in March 2005.

36. Throughout May and the following months, TuitionFund and SunTrust continued their conversations regarding TuitionFund's technology. In August 2007, TuitionFund prepared a non-disclosure agreement (the "NDA") covering the technology contained in the Patents-in-Suit that was subsequently executed by SunTrust Banks, Inc.

37. Subject to the provisions of the NDA, discussion continued over the course of the following months. In January 2008, Tuition Fund and SunTrust Banks, Inc. executed a Letter of Intent to enter into a formal licensing agreement.

38. TuitionFund continued to disclose additional confidential information regarding its technology to SunTrust subject to the provisions of the NDA up to and including April 2010. At that time, SunTrust indicated that it no longer desired to license the Patents-in-Suit.

39. Despite its knowledge of TuitionFund's patents and the technology disclosed therein, SunTrust proceeded with its plans to launch a merchant funded rebate/rewards program, specifically the SunTrust Rewards BonusBuys and/or Bonus SunPoints rebate/reward programs, beginning at least as early as May 2009.

40. At least the Regions Cashback Rewards program offered by Regions and Cardlytics infringes one or more claims of the Patents-in-Suit.

41. Representatives of TuitionFund discussed with representatives of Regions as early as March 2009 TuitionFund's technology, including that outlined in the '872 Patent.

42. Over the following months, TuitionFund and Regions continued their conversations and TuitionFund sought to negotiate an NDA covering the disclosure of confidential and proprietary information to further advance discussions.

43. Regions became aware of the '572 Patent at least as early as January 2010 as a result of continuing discussions between representatives of TuitionFund and Regions.

44. Despite its knowledge of TuitionFund's patents and the technology disclosed therein, Regions proceeded with its plans to launch a new merchant funded rebate/rewards program, specifically the Regions Cashback Rewards program, beginning at least as early as September 2010.

45. Based on the above-described services and products, Plaintiff asserts several causes of action against the Defendants. These causes of action are detailed as follows.

A. Direct Patent Infringement

46. The allegations of paragraphs 1-45 above are incorporated by reference as if fully set forth herein.

47. SunTrust has in the past, does now, and continues to directly infringe, literally and/or under the doctrine of equivalents, one or more claims of the Patents-in-Suit by, without TuitionFund's authority, making, using, selling, and/or offering to sell in the United States products and services, specifically the SunTrust Rewards BonusBuys and/or Bonus SunPoints programs as described herein, that embody the inventions claimed in the Patents-in-Suit. SunTrust infringes alone and/or jointly with Vesdia and/or Cartera.

48. Vesdia has in the past, does now, and continues to directly infringe, literally and/or under the doctrine of equivalents, one or more claims of the Patents-in-Suit by, without TuitionFund's authority, making, using, selling, and/or offering to sell in the United States products and services that embody the inventions claimed in the Patents-in-Suit. Plaintiff asserts that Vesdia infringes alone and/or jointly with SunTrust. At this time, Plaintiff's claims of infringement by Vesdia are limited to Vesdia's actions with regard to making, using, selling, and/or offering to sell in the United States the SunTrust Rewards BonusBuys and/or Bonus SunPoints programs as described herein.

49. Cartera has in the past, does now, and continues to directly infringe, literally and/or under the doctrine of equivalents, one or more claims of the Patents-in-Suit by, without TuitionFund's authority, making, using, selling, and/or offering to sell in the United States products and services that embody the inventions claimed in the Patents-in-Suit. Plaintiff asserts

that Cartera infringes alone and/or jointly with SunTrust. At this time, Plaintiff's claims of infringement by Cartera are limited to Cartera's actions with regard to making, using, selling, and/or offering to sell in the United States the SunTrust Rewards BonusBuys and/or Bonus SunPoints programs as described herein.

50. Regions has in the past, does now, and continues to directly infringe, literally and/or under the doctrine of equivalents, one or more claims of the Patents-in-Suit by, without TuitionFund's authority, making, using, selling, and/or offering to sell in the United States products and services, specifically the Regions Cashback Rewards program as described herein, which embodies the inventions claimed in the Patents-in-Suit. Regions infringes alone and/or jointly with Cardlytics.

51. Cardlytics has in the past, does now, and continues to directly infringe, literally and/or under the doctrine of equivalents, one or more claims of the Patents-in-Suit by, without TuitionFund's authority, making, using, selling, and/or offering to sell in the United States products and services which embody the inventions claimed in the Patents-in-Suit. Plaintiff asserts that Cardlytics infringes alone and/or jointly with Regions. At this time, Plaintiff's claims of infringement by Cardlytics are limited to Cardlytics's actions with regard to making, using, selling, and/or offering to sell in the United States the Regions Cashback Rewards program.

B. Inducement of Patent Infringement

52. The allegations of paragraphs 1-51 above are incorporated by reference as if fully set forth herein.

53. Further and in the alternative, SunTrust Banks, Inc. has in the past, does now, and continues to induce direct infringement by its wholly-owned subsidiary SunTrust Bank of at least one claim of the Patents-in-Suit in violation of one or more provisions of 35 U.S.C. § 271.

SunTrust Banks, Inc. had actual knowledge of the Patents-in-Suit and knew or should have known that its actions would induce SunTrust Bank's direct infringement of the Patents-in-Suit. SunTrust Banks, Inc.'s actions resulted in inducing SunTrust Bank to infringe the Patents-in-Suit via the SunTrust Rewards BonusBuys and/or Bonus SunPoints programs as described herein.

54. Further and in the alternative, SunTrust has in the past, does now, and continues to induce direct infringement by Vesdia of at least one claim of the Patents-in-Suit in violation of one or more provisions of 35 U.S.C. § 271. SunTrust had actual knowledge of the Patents-in-Suit and knew or should have known that its actions would induce Vesdia's direct infringement of the Patents-in-Suit. SunTrust's actions resulted in inducing Vesdia to infringe the Patents-in-Suit via the SunTrust Rewards BonusBuys and/or Bonus SunPoints programs as described herein.

55. Further and in the alternative, SunTrust has in the past, does now, and continues to induce direct infringement by Cartera of at least one claim of the Patents-in-Suit in violation of one or more provisions of 35 U.S.C. § 271. SunTrust had actual knowledge of the Patents-in-Suit and knew or should have known that its actions would induce Cartera's direct infringement of the Patents-in-Suit. SunTrust's actions resulted in inducing Cartera to infringe the Patents-in-Suit via the SunTrust Rewards BonusBuys and/or Bonus SunPoints programs as described herein.

56. Further and in the alternative, Regions Financial Corporation has in the past, does now, and continues to induce direct infringement by Regions Bank of at least one claim of the Patents-in-Suit in violation of one or more provisions of 35 U.S.C. § 271. Regions Financial Corporation had actual knowledge of the Patents-in-Suit and knew or should have known that its actions would induce Regions Bank's direct infringement of the Patents-in-Suit. Regions

Financial Corporation's actions resulted in inducing Regions Bank to infringe the Patents-in-Suit via the Regions Cashback Rewards program as described herein.

57. Further and in the alternative, Regions has in the past, does now, and continues to induce direct infringement by Cardlytics of at least one claim of the Patents-in-Suit in violation of one or more provisions of 35 U.S.C. § 271. Regions had actual knowledge of the Patents-in-Suit and knew or should have known that its actions would induce Cardlytics's direct infringement of the Patents-in-Suit. Regions's actions resulted in inducing Cardlytics to infringe the Patents-in-Suit via the Regions Cashback Rewards program as described herein.

VI. VICARIOUS LIABILITY

58. The allegations of paragraphs 1-57 above are incorporated by reference as if fully set forth herein.

59. In addition to liability for their own independent conduct, the Defendants are also liable for the conduct of their subsidiaries, affiliates, and related entities under the doctrines of joint venture, single business enterprise, and alter ego, and under applicable state and federal statutes and regulations.

60. On information and belief, SunTrust Banks, Inc. and SunTrust Bank, among other things, share common officers and directors, have common employees, share office space, have common attorneys, and have identical business and operation policies and procedures. Additionally, SunTrust Bank is wholly owned by SunTrust Banks, Inc.

61. On information and belief, SunTrust Banks, Inc. and SunTrust Bank ("SunTrust Defendants") have engaged in a business venture for joint profit, including but not limited to the implementation of the SunTrust Rewards BonusBuys and/or Bonus SunPoints rebate/reward programs. On information and belief, SunTrust Banks, Inc. and SunTrust Bank have combined

their efforts, property, skill, knowledge, employees, and officers and directors, among other things, for the purpose of undertaking this venture.

62. On information and belief, the SunTrust Defendants were engaged in a joint venture/enterprise at all times in which they are accused of infringement and immediately prior thereto. Each of the SunTrust Defendants had a shared community of interest in the object and purpose of the undertaking for which the banking entity known as SunTrust Bank was being operated/used.

63. On information and belief, each of the SunTrust Defendants had an equal right to share in the control of the operation of the SunTrust banking entity during the time of infringement regardless of whether such right was actually exercised.

64. On information and belief, the SunTrust Defendants controlled at least the operation, planning, and management of the SunTrust banking entity. On information and belief, the authority exercised by the SunTrust Defendants over the SunTrust banking entity included, but was not limited to, control of marketing, human resources management, creation and implementation of policy and procedure manuals used by the SunTrust banking entity, legal services, and financial, tax, and accounting control through fiscal policies established by the SunTrust Defendants.

65. On information and belief, the SunTrust Defendants operated as a joint venture/enterprise for the purpose of streamlining and furthering their similar business interests and collectively controlled SunTrust Bank.

66. On information and belief, at all relevant times mentioned herein, the SunTrust Defendants owned, operated and/or controlled, either directly or through the agency of each

other and/or other diverse subalterns, agents, subsidiaries, servants, or employees, the operation of SunTrust Bank.

67. Because the SunTrust Defendants named herein were engaged in a joint venture/enterprise before and throughout the time of infringement the acts and omissions of each participant in the joint venture/enterprise are imputable to all other participants.

68. Because the SunTrust Defendants named herein are the alter egos of the other, before and throughout the time of infringement, the acts and omissions of each of the SunTrust Defendants are imputable to the other SunTrust Defendants.

69. The actions of the SunTrust Defendants and each of their servants, agents and employees, as set forth herein, are imputed to each of the SunTrust Defendants, jointly and severally.

70. On information and belief, Regions Financial Corporation and Regions Bank (“Regions Defendants”), among other things, share common officers and directors, have common employees, share office space, have common attorneys, and have identical business and operation policies and procedures. Additionally, Regions Bank is wholly owned by Regions Financial Corporation.

71. On information and belief, Regions Financial Corporation and Regions Bank have engaged in a business venture for joint profit, including but not limited to the implementation of the Regions Cashback Rewards program. On information and belief, Regions Financial Corporation and Regions Bank have combined their efforts, property, skill, knowledge, employees, and officers and directors, among other things, for the purpose of undertaking these ventures.

72. On information and belief, the Regions Defendants were engaged in a joint venture/enterprise at all times in which they are accused of infringement and immediately prior thereto. Each of the Regions Defendants had a shared community of interest in the object and purpose of the undertaking for which the banking entity known as Regions Bank was being operated/used.

73. On information and belief, each of the Regions Defendants had an equal right to share in the control of the operation of the Regions banking entity during the time of infringement regardless of whether such right was actually exercised.

74. On information and belief, the Regions Defendants controlled at least the operation, planning, and management of the Regions banking entity. On information and belief, the authority exercised by the Regions Defendants over the Regions banking entity included, but was not limited to, control of marketing, human resources management, creation and implementation of policy and procedure manuals used by the Regions banking entity, legal services, and financial, tax, and accounting control through fiscal policies established by the Regions Defendants.

75. On information and belief, the Regions Defendants operated as a joint venture/enterprise for the purpose of streamlining and furthering their similar business interests and collectively controlled Regions Bank.

76. On information and belief, at all relevant times mentioned herein, the Regions Defendants owned, operated and/or controlled, either directly or through the agency of each other and/or other diverse subalterns, agents, subsidiaries, servants, or employees, the operation of Regions Bank.

77. Because the Regions Defendants named herein were engaged in a joint venture/enterprise before and throughout the time of infringement, the acts and omissions of each participant in the joint venture/enterprise are imputable to all other participants.

78. Because the Regions Defendants named herein are the alter egos of the other, before and throughout the time of infringement, the acts and omissions of each of the Regions Defendants are imputable to the other Regions Defendants.

79. The actions of the Regions Defendants and each of their servants, agents and employees, as set forth herein, are imputed to each of the Regions Defendants, jointly and severally.

VII. INJUNCTION

80. The allegations of paragraphs 1-79 above are incorporated by reference as if fully set forth herein.

81. Defendants will continue to infringe the Patents-in-Suit unless enjoined by this Court. TuitionFund therefore requests that this Court enter an order under 35 U.S.C. § 283 preliminarily and permanently enjoining Defendants from continuing to make or use only the infringing merchant funded reward systems or methods described herein.

VIII. DAMAGES

A. Reasonable Royalty

82. The allegations of paragraphs 1-81 above are incorporated by reference as if fully set forth herein.

83. For the above-described infringement, TuitionFund has been injured and seeks damages to adequately compensate it for Defendants' infringement of the Patents-in-Suit as it relates to the SunTrust Rewards BonusBuys and/or Bonus SunPoints Reward programs, and the

Regions Cashback Rewards program, all as described herein. Such damages should be no less than the amount of a reasonable royalty under 35 U.S.C. § 284.

B. Enhanced Damages, Attorneys' Fees, and Expenses

84. The allegations of paragraphs 1-83 above are incorporated by reference as if fully set forth herein.

85. TuitionFund contends that Defendants willfully infringed the Patents-in-Suit as they relate to the SunTrust Rewards BonusBuys and/or Bonus SunPoints Reward programs and the Regions Cashback Rewards program, all as described herein. TuitionFund requests that the Court enter a finding of willful infringement and enhanced damages under 35 U.S.C. § 284 up to three times the amount found by the trier of fact.

86. TuitionFund further requests that the Court enter an order finding that this is an exceptional case within the meaning of 35 U.S.C. §285. Pursuant to such an order TuitionFund seeks recovery of its reasonable attorneys' fees and expenses.

IX. PRAYER FOR RELIEF

87. TuitionFund respectfully requests the following relief:

- a. A judgment that the '872, '572, and '704 Patents are infringed, directly and/or indirectly, by Defendants as described herein;
- b. A judgment and order preliminarily and permanently enjoining each Defendant, its agents, employees, representatives, successors and assigns, and those acting in privity or in concert with them, from further directly infringing, contributorily infringing and/or inducing infringement of the '872, '572, and '704 Patents as they relate to the SunTrust Rewards BonusBuys and/or Bonus SunPoints rewards programs and the Regions Cashback Rewards program, all as described herein;

- c. A judgment and order requiring each Defendant to pay TuitionFund damages under 35 U.S.C. § 284, including treble damages for willful infringement as provided by 35 U.S.C. § 284, and supplemental damages for any continuing post-verdict infringement up until entry of the final Judgment with an accounting as needed;
- d. A judgment and order requiring each Defendant to pay TuitionFund pre-judgment and post-judgment interest on the damages awarded;
- e. A judgment and order finding this to be an exceptional case and requiring each Defendant to pay the costs of this action (including all disbursements) and attorneys fees as provided by 35 U.S. C. § 285;
- f. Such other and further relief as the Court deems just and proper.

X. JURY DEMANDED

88. TuitionFund requests a jury trial of all issues triable of right by a jury.

Respectfully submitted,



Anthony K. Bruster
TX State Bar No. 24036280
Edward Chin
TX State Bar No. 5051168
Drake Martin
TN STATE BAR NO. 018786
NIX PATTERSON & ROACH, L.L.P.
5215 N. O'Connor Blvd., Suite 1900
Irving, Texas 75039
972.831.1188 (telephone)
972.444.0716 (facsimile)
akbruster@nixlawfirm.com
edchin@me.com
drakemartin@nixlawfirm.com

Brady Paddock
TN State Bar No. 025201
Ben King
TX State Bar No. 24048592
NIX PATTERSON & ROACH, L.L.P.
2900 St. Michael Drive, Suite 500
Texarkana, TX 75503
903.223.3999 (telephone)
903.223.8520 (facsimile)
benking@nixlawfirm.com
bpaddock@nixlawfirm.com

Derek T. Gilliland
TX State Bar No. 24007239
NIX PATTERSON & ROACH, L.L.P.
205 Linda Drive
Daingerfield, Texas 75638
903.645.7333
903.645.3827 (fax)
dgilliland@nixlawfirm.com

Steven Howard Slater
TX State Bar No. 00784985
Natalie Swider
TX State Bar No. 24063211
Brian Carlson
TX State Bar No. 24001839
SLATER & MATSIL LLP
17950 Preston Road, Ste. 1000
Dallas, TX 75252
972.732.1001
972.732.9218 (fax)
slater@slater-matsil.com
swider@slater-matsil.com
carlson@slater-matsil.com

GEORGE EDWARD BARRETT
STATE BAR NO. BPR#2672
DAVID W. GARRISON
STATE BAR NO. BPR#24968
SCOTT P. TIFT
STATEBAR NO. BPR#27592
BARRETT JOHNSTON, LLC
217 Second Avenue, N
Nashville, TN 37201
615.244.2202 (telephone)
615.252.3798 (facsimile)
dgarrison@barrettjohnston.com
gbarrett@barrettjohnston.com
stift@barrettjohnston.com

ATTORNEYS FOR PLAINTIFF
TUITIONFUND L.L.C.

CERTIFICATE OF SERVICE

I hereby certify that on April 12, 2011, Plaintiff TuitionFund electronically filed its First Amended Complaint for Patent Infringement with the Clerk of the Court using CM/ECF and served via the Court's Electronic Filing System, upon the following:

Robert S. Patterson
Melissa Balengee Alexander
BRADLEY ARANT BOULT CUMMINGS LLP
1600 Division Street, Suite 700
Nashville, TN
malexander@babco.com
bpatterson@babco.com

*Attorneys for Defendants, SunTrust Banks, Inc.
SunTrust Bank, Cartera Commerce, Inc. and
Vesdia Corporation*

John D. Simmons
Dennis J. Butler
Christina D. Frangiosa
Mark T. Vogelbacker
PANITCH SCHWARZE BELISARIO & NADEL, LLP
One Commerce Square
2500 Market Street, Suite 2200
Philadelphia Pennsylvania 19103
jsimmons@panitchlaw.com
dbutler@panitchlaw.com
cfrangiosa@panitchlaw.com
mvogelbacker@panitchlaw.com

*Attorneys for Defendants, SunTrust Banks, Inc.
SunTrust Bank, Cartera Commerce, Inc. and
Vesdia Corporation*

Robert E. Boston
Joseph A. Woodruff
WALLER LANSDEN DORTCH & DAVIS, LLP
511 Union Street, Suite 2700
Nashville, TN 37219
bob.boston@wallerlaw.com
woody.woodruff@wallerlaw.com

*Attorneys for Defendants Regions Financial Corporation,
Regions Bank, and Cardlytics, Inc.*

Brian J. Malcom
WALLER LANSDEN DORTCH & DAVIS, LLP
1901 Sixth Avenue North, Ste 1400
Birmingham, AL 35203
brian.malcom@wallerlaw.com

*Attorneys for Defendants Regions Financial Corporation,
Regions Bank, and Cardlytics, Inc.*

Michael S. Conner
Jessica J. Sibley
ALSTON & BIRD, LLP
Bank of America Plaza
101 South Tryon Street, Suite 4000
Charlotte, NC 28280-4000
Mike.Conner@alston.com
Jessica.Sibley@alston.com

*Attorneys for Defendants Regions Financial Corporation,
Regions Bank, and Cardlytics, Inc.*

Matthew Urbanawiz, Esq.
ALSTON & BIRD LLP
One Atlantic Center
1201 West Peachtree Street
Atlanta, GA 30309-3424
Matt.Urbanawiz@alston.com

*Attorneys for Defendants Regions Financial Corporation,
Regions Bank, and Cardlytics, Inc.*

Tim Bechen
WILLIAMS MULLEN
Williams Mullen Center
200 South 10th Street, Suite 1600
Richmond, VA 23219
tbechen@williamsmullen.com

*Attorneys for Defendants and SunTrust Banks, Inc.
SunTrust Bank*



Anthony K. Bruster