

**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF GEORGIA  
ATLANTA DIVISION**

**In Re SunTrust Banks, Inc.  
ERISA Litigation**

**CIVIL ACTION FILE  
No. 1:08-cv-03384-RWS**

**ORDER PRELIMINARILY APPROVING SETTLEMENT**

Currently before the Court for preliminary approval is a settlement (the “Settlement”) of this class action (the “Action”) asserting claims for alleged violations of the Employee Retirement Income Security Act of 1974, as amended, 29 U.S.C. §§ 1001-1461 (“ERISA”), with respect to the SunTrust Banks, Inc. 401(k) Savings Plan (the “Plan”) as against Defendants SunTrust Banks, Inc., Frances L. “Mimi” Breeden, Mark A. Chancy, Alston Correll, Larry L. Prince, David F. Dierker, Kenneth Houghton, David H. Hughes, Thomas G. Kuntz, Donna D. Lange, Jerome T. Lienhard II, Gregory L. Miller, G. Gilmer Minor, III, Thomas E. Panther, William H. Rogers, Jr., Christopher J. Shults, James M. Wells, III, and the SunTrust Banks, Inc. Benefits Plan Committee.

The terms of the Settlement are set out in a Stipulation of Settlement dated March 9, 2018 (the “Settlement Agreement”) that has been executed by counsel for Plaintiffs Dennis Erwin, William Fisch, Chrys Trau, and Donna Smothermon (the “Named Plaintiffs”) and counsel for Defendants (collectively with Named

Plaintiffs, the “Parties”). Capitalized terms not otherwise defined in this Order shall have the same meaning as ascribed to them in the Settlement Agreement.

The Court previously certified a class on August 17, 2016 [ECF 248]. Pursuant to Plaintiffs’ Motion for Preliminary Approval, the Court considered the Settlement and whether the Settlement is sufficient to warrant the issuance of the Class Notice to the Settlement Class. Upon reviewing the Settlement Agreement,

**IT IS HEREBY ORDERED, ADJUDGED AND DECREED** as follows:

1. **Jurisdiction**. The Court has jurisdiction over the subject matter of this Action and over all Parties to this Action, including all members of the Settlement Class.

2. **Class Certification**. The previously certified class (the “Settlement Class”) is a non-opt-out class under Federal Rules of Civil Procedure 23(a) and 23(b)(1) and defined as follows:

All persons, other than Defendants and members of their immediate families, who were participants in or beneficiaries of the SunTrust Banks, Inc. 401(k) Savings Plan (the “Plan”) at any time between May 15, 2007 and March 30, 2011, inclusive (the “Class Period”) and whose accounts included investments in SunTrust common stock (“SunTrust Stock”) during that time period and who sustained a loss to their account as a result of the investment in SunTrust Stock (the “Class”).

3. As indicated in its prior certification Order, pursuant to Federal Rule of Civil Procedure 23(g), the Court appointed Named Plaintiffs as the

representatives of the Settlement Class and appointed the law firms of Kessler Topaz Meltzer & Check, LLP, Stull, Stull & Brody, and Squitieri & Fearon, LLP as Class Counsel and the law firm of Holzer & Holzer, LLC as Liaison Class Counsel.

4. Because this Action is certified as a non-opt-out class action under Federal Rules of Civil Procedure 23(a) and 23(b)(1), members of the Settlement Class shall be bound by any judgment concerning the Settlement in this Action.

5. **Preliminary Approval of Settlement.** The Settlement documented in the Settlement Agreement is hereby PRELIMINARILY APPROVED, as the Court preliminarily finds that: (a) the proposed Settlement resulted from arm's-length negotiations under the supervision of Robert A. Meyer, Esq., an experienced mediator in ERISA and other complex class actions; (b) the Settlement Agreement was executed only after Class Counsel and counsel for Defendants researched and investigated multiple legal and factual issues pertaining to Named Plaintiffs' claims; (c) there is a genuine controversy between the Parties involving Defendants' compliance with the fiduciary requirements of ERISA; (d) the Settlement appears on its face to be fair, reasonable, and adequate; and (e) the Settlement evidenced by the Settlement Agreement is sufficiently fair, reasonable, and adequate to warrant sending notice of the Action and the Settlement to the Settlement Class.

6. **Preliminary Approval of Plan of Allocation.** The Court preliminarily finds that the Plan of Allocation is fair and reasonable, and complies with its prior class certification Order regarding severance agreements signed by former employees that included a release of claims against SunTrust.

7. **Fairness Hearing.** A hearing (the “Fairness Hearing”) pursuant to Federal Rule of Civil Procedure 23(e) is hereby SCHEDULED to be held before the Court on June 28, 2018, at 10:00 AM .~~xxx~~ in Courtroom 2105 at the United States Courthouse, Richard B. Russell Federal Building and United States Courthouse, 75 Ted Turner Drive, SW, Atlanta, GA 30303 (or such other date and place set by the Court), to determine whether the proposed Settlement of the Action on the terms and conditions provided for in the Settlement Agreement is fair, reasonable, and adequate and should receive final approval by the Court; whether the Settlement Class, and its representation by Named Plaintiffs and Class Counsel, satisfy the requirements of Federal Rule of Civil Procedure 23; whether Class Counsel’s application for an award of attorneys’ fees and reimbursement of litigation expenses and Case Contribution Awards for Named Plaintiffs should be granted; and any other issues necessary for final approval of the Settlement.

8. **Class Notice.** The Parties have presented to the Court a proposed Class Notice, annexed as Exhibit B to the Settlement Agreement. The Court APPROVES the form and content of the Class Notice finding that it fairly and

adequately: (1) describes the terms and effect of the Settlement Agreement and the Settlement; (2) gives notice to the Settlement Class of the time and place of the Fairness Hearing; and (3) describes how recipients of the Class Notice may object to approval of the Settlement. Having reviewed the Settlement Agreement, which provides for the manner of distributing the Class Notice to members of the Settlement Class, the Court further finds that such proposed manner is adequate, and directs that no later than sixty (60) days before the Fairness Hearing, Class Counsel shall cause the Class Notice, with any non-substantive modifications thereto as may be agreed upon by the Parties, to be distributed to each member of the Settlement Class who can be identified through Defendants' good-faith, commercially reasonable efforts at his or her last-known address and/or email address maintained by the Plan's record-keeper. Class Counsel will establish follow up procedures for any returned mailings. By no later than sixty (60) days before the Fairness Hearing, Class Counsel also shall cause the Class Notice to be published on the website identified in the Class Notice. By no later than thirty (30) days before the Fairness Hearing, Class Counsel shall file with the Court proof of Plaintiffs' timely compliance with the foregoing mailing and publication requirements.

9. **Objections to Settlement.** "Objector" shall mean any member of the Settlement Class who wishes to object to the fairness, reasonableness or adequacy

of the Settlement; any term of the Settlement Agreement; the Plan of Allocation as described in the Class Notice; or the proposed award of attorneys' fees and expenses or the Case Contribution Awards for Named Plaintiffs. Any Objector must file with the Court a statement of his, her, or its objection(s), specifying the reason(s), if any, for each such objection made, including any legal support and/or evidence that such Objector wishes to bring to the Court's attention or introduce in support of such objection. Any Objector must also, as a part of his or her statement or through an attachment thereto, provide evidence or affirm that he or she is a member of the Settlement Class. To file an objection, the Objector must mail the objection and all supporting law and/or evidence to counsel for the Parties, as described below. The addresses for filing objections are as follows:

<b>Class Counsel</b>	<b>Defendants' Counsel</b>
Mark K. Gyandoh, Esq. KESSLER TOPAZ MELTZER & CHECK, LLP 280 King of Prussia Road Radnor, Pennsylvania 19087 Telephone: (610) 667-7706 Facsimile: (610) 667-7056	David Tetrick, Jr., Esq. KING & SPALDING LLP 1180 Peachtree Street Atlanta, Georgia 30309 Telephone (404) 572-3526 Facsimile: (404) 572-5139

10. An Objector, or, if represented by counsel, his, her, or its counsel, must both effect service of the objection on counsel listed above and file the objection with the Court such that any objection is received at least fourteen (14) calendar days prior to the Fairness Hearing, or by no later than June 14,

2018. The Parties' counsel shall confer with one another about any and all objections that come into their possession, and will promptly furnish one another with copies of any and all objections not received by all such counsel.

11. Any member of the Settlement Class or other person who does not timely file and serve a written objection complying with the terms of this paragraph shall be deemed to have waived, and shall be foreclosed from raising any objection to the Settlement, and any untimely objection shall be barred.

12. **Appearance at Fairness Hearing.** Any Objector who files and serves a timely, written objection in accordance with the paragraph above may also appear at the Fairness Hearing either in person or through counsel retained at the Objector's expense. Objectors or their attorneys intending to appear at the Fairness Hearing must effect service of a "Notice of Intention to Appear" setting forth, among other things, the name, address, and telephone number of the Objector (and, if applicable, the name, address, and telephone number of the Objector's attorney) on counsel identified above at least fourteen (14) calendar days prior to the Fairness Hearing, or by no later than June 14, 2018. Any Objector who does not timely file and serve a "Notice of Intention to Appear" in accordance with this paragraph shall not be permitted to appear at the Fairness Hearing, except for good cause shown.

13. **Response to Objectors.** The Parties shall respond to any Objector at least seven (7) calendar days prior to the Fairness Hearing, or by no later than June 21, 2018.

14. **Compliance with Class Action Fairness Act.** Defendants shall, on or before ten (10) days prior to the Fairness Hearing, file with the Court proof of compliance with the notice provisions of the Class Action Fairness Act of 2005, as codified at 28 U.S.C. § 1715. Defendants shall pay all costs associated with providing the notice required by the Class Action Fairness Act

15. **Class Notice Expenses.** The expenses of effectuating Class Notice shall be paid out of the Settlement Amount.

16. **Fees and Expenses Incurred by the Independent Fiduciary.** The Court understands that under the terms of the Settlement Agreement, Defendants shall, at their expense, retain an Independent Fiduciary for the purpose of evaluating the Settlement and authorizing and approving the Settlement as a fiduciary of the Plan in accordance with Prohibited Transaction Exemption 2003-39. Defendants shall bear any costs of all fees and expenses incurred by the Independent Fiduciary (including fees and expenses incurred by consultants, attorneys, and other professionals retained or employed by the Independent Fiduciary) in the course of reviewing the Settlement on behalf of the Plan.

17. **Motion in Support of Final Settlement Approval, Application for Fee, Expense and Incentive Awards.** Named Plaintiffs' motion in support of final approval of the Settlement and related relief shall be filed with the Court and served on all counsel of record at least thirty (30) calendar days prior to the Fairness Hearing, or by no later than May 24, 2018. Further, any application by Class Counsel for attorneys' fees and reimbursement of litigation expenses and for Case Contribution Awards for Named Plaintiffs, and all papers in support thereof, shall be filed with the Court and served on all counsel of record at least thirty (30) calendar days prior to the Fairness Hearing, or by no later than May 24, 2018. Copies of such materials shall be available for inspection at the office of the Clerk of this Court, and made available on the website identified in the Class Notice.

18. **Supplemental Briefs.** Any supplemental brief filed by any Party regarding the Settlement shall be filed with the Court at least seven (7) calendar days prior to the Fairness Hearing, or by no later than June 21, 2018.

19. **Injunction.** Pending final determination of whether the Settlement should be approved, Named Plaintiffs, all members of the Settlement Class, and the Plan are each hereby **BARRED AND ENJOINED** from instituting or prosecuting any claim, dispute, or action whatsoever that asserts any Released Claim against any Released Parties.

20. **Termination of Settlement.** If the Settlement is terminated in accordance with the Settlement Agreement or if the Settlement is not finalized for any other reason, this Order and all Class Findings shall become null and void, and shall be without prejudice to the rights of the Parties, all of whom shall be restored to their respective positions existing immediately before this Court entered this Order.

21. **Use of Order.** In the event this Order becomes of no force or effect, no part of it shall be construed or used as an admission, concession, or declaration by or against any Defendants, or any of their successors or assigns, of any fault, wrongdoing, breach, or liability, nor shall the Order be construed or used as an admission, concession, or declaration by or against Named Plaintiffs or the Settlement Class that their claims lack merit or that the relief requested in the Action is inappropriate, improper, or unavailable, or as a waiver by any party of any defenses or claims he, she, or it may have with respect to the claims asserted in the Action.

22. **Continuance of Hearing.** The Court reserves the right to continue the Fairness Hearing without further written notice.

SO ORDERED this 12<sup>th</sup> day of March, 2018

  
RICHARD W. STORY  
United States District Judge