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**

PLAINTIFFS' MOTION FOR FINAL APPROVAL OF SETTLEMENT AND RELATED RELIEF

Pursuant to Federal Rule of Civil Procedure 23(e) Plaintiffs Dennis Erwin, William Fisch, Chrys Trau, and Donna Smothermon ("Named Plaintiffs") respectfully move for an Order:[1]

A. Granting final approval to the proposed Settlement in this class action;

B. Approving the Class Notice program as satisfying due process and Rule 23;

C. Approving the Settlement Class pursuant to Rules 23(a) and 23(b)(1); and

D. Entering the Order and Final Judgment proposed by the parties as part of the Settlement

[1] A form of [Proposed] Order and Final Judgment was filed as Exhibit 1-C to the Stipulation of Settlement, dated March 9, 2018 (the "Settlement Agreement") (ECF 285-3). Capitalized terms used herein are defined in the Settlement Agreement. Plaintiffs have, to the extent possible, filled in the blanks (without making any other changes) and have filed that version of the [Proposed] Order and Final Judgment as the proposed order for Plaintiffs' pending motions to be heard at the Fairness Hearing.

The grounds for the Motion are set forth in the supporting Memorandum filed herewith, as well as in the contemporaneously filed Joint Declaration of Mark K. Gyandoh, Michael J. Klein, and Stephen J. Fearon, Jr., and all of the exhibits attached thereto, as well as the Record in this Action.

Dated: May 24, 2018

Respectfully submitted,

KESSLER TOPAZ MELTZER & CHECK, LLP

/s/ Mark K. Gyandoh
Mark K. Gyandoh
Julie Siebert-Johnson
280 King of Prussia Road
Radnor, Pennsylvania 19087
(610) 667-7706
(610) 667-7056 (fax)
mgyandoh@ktmc.com
jsjohnson@ktmc.com

STULL, STULL & BRODY
Michael J. Klein
6 East 45th Street
New York, New York 10017
(212) 687-7230
(212) 490-2022 (fax)
mklein@ssbny.com

SQUITIERI & FEARON, LLP
Stephen J. Fearon, Jr.
32 East 57th Street, 12th Floor
New York, New York 10022
(212) 421-6492
(212) 421-6553 (fax)
stephen@sfclasslaw.com

Co-Lead Class Counsel

HOLZER & HOLZER, LLC
Corey D. Holzer, GA Bar No. 364698
Marshall P. Dees, GA Bar No. 105776
200 Ashford Center North, Suite 300
Atlanta, Georgia 30338
(770) 392-0090
(770) 392-0029 (fax)
cholzer@holzerlaw.com
mdees@holzerlaw.com

Liaison Class Counsel

CERTIFICATE OF COMPLIANCE

Pursuant to L.R. 7.1D, the undersigned certifies that the foregoing complies with the font and point selections permitted by L.R. 5.1C. This Motion was prepared on a computer using the Times New Roman font (14 point).

Date: May 24, 2018

/s/ Mark K. Gyandoh
Mark K. Gyandoh

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

IN RE SUNTRUST BANKS, INC. ERISA LITIGATION	)	**CIVIL ACTION FILE NO. 1:08-CV-3384-RWS**

CERTIFICATE OF SERVICE

I hereby certify that on this 24th day of May 2018, the foregoing was electronically filed with the Clerk of Court using the CM/ECF system, which serves notification of such filing to all counsel of record. I further certify that the foregoing will published on the website identified in the Class Notice as soon as practicable.

/s/ Mark K. Gyandoh
Mark K. Gyandoh

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**

PLAINTIFFS' MEMORANDUM OF LAW IN SUPPORT OF MOTION FOR FINAL APPROVAL OF SETTLEMENT AND RELATED RELIEF

KESSLER TOPAZ MELTZER & CHECK, LLP
Mark K. Gyandoh
Julie Siebert-Johnson
280 King of Prussia Road
Radnor, Pennsylvania 19087
(610) 667-7706
(610) 667-7056 (fax)
mgyandoh@ktmc.com
jsjohnson@ktmc.com

Co-Lead Class Counsel

SQUITIERI & FEARON, LLP
Stephen J. Fearon, Jr.
32 East 57th Street
12th Floor
New York, New York 10022
(212) 421-6492
(212) 421-6553 (fax)
stephen@sfclasslaw.com

Co-Lead Class Counsel

STULL, STULL & BRODY
Michael J. Klein
6 East 45th Street
New York, New York 10017
(212) 687-7230
(212) 490-2022 (fax)
mklein@ssbny.com

Co-Lead Class Counsel

HOLZER & HOLZER, LLC
Corey D. Holzer
GA Bar No. 364698
Marshall P. Dees
GA Bar No. 105776
200 Ashford Center North, Suite 300
Atlanta, Georgia 30338
(770) 392-0090
(770) 392-0029 (fax)
chozer@holzerlaw.com
mdees@holzerlaw.com

Liaison Class Counsel

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Plaintiffs[1] submit this memorandum in support of their motion seeking final approval of the proposed Settlement of this ERISA class action.[2]

I. INTRODUCTION

Some cases are easy. This one was hard. As this Court is aware, Plaintiffs have actively litigated this case for almost ten years, through at least two sea-changes in governing law, in this Court and twice in the Court of Appeals. There were many times when it looked like there would be no recovery for Plaintiffs or the Class, especially after the Court dismissed all of the claims. But Plaintiffs and Class Counsel continued to fight for the Class and eventually succeeded on appeal, twice.

Now, after nearly a decade of litigation and after vigorous negotiations supervised by Robert A. Meyer, Esq., of JAMS, a well-respected and experienced mediator, Plaintiffs and Class Counsel are proud to present for final approval a proposed Settlement that creates a cash settlement fund of $4,750,000 as well as non-monetary relief for the benefit of the Settlement Class. If approved by the Court, the Settlement will create substantial benefits for Settlement Class Members and

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[1] Capitalized terms are defined in the Stipulation of Settlement, dated March 9, 2018 (the "Settlement Agreement") (ECF 285-3)

[2] Class Counsel is concurrently filing a motion and supporting memorandum of law seeking an award of attorneys' fees, reimbursement of expenses, and Case Contribution Awards. They are also filing the Joint Declaration of Mark K. Gyandoh, Michael J. Klein, and Stephen J. Fearon, Jr. in support of the Settlement Motion and the Fee Motion (the "Joint Declaration" or "Joint Decl.").

resolve all claims asserted by Plaintiffs on behalf of the SunTrust Banks, Inc. 401(k) Plan (the "Plan")[3] and the Settlement Class.

Pursuant to the Preliminary Approval Order, Plaintiffs have provided notice to the Settlement Class about the proposed Settlement and the response has been overwhelmingly positive thus far. Plaintiffs and Class Counsel recommend the proposed Settlement as providing an immediate and meaningful recovery that is fair, reasonable, and adequate. Joint Decl. ¶¶ 8 – 9. They now request that the Court grant final approval to the proposed Settlement because, as set forth below, it easily satisfies all of the prerequisites for final approval.

II. FACTUAL AND PROCEDURAL BACKGROUND

A. This Is a Complex ERISA Class Action That Plaintiffs Have Vigorously Litigated For Nearly Ten Years

Plaintiffs filed this ERISA class action in 2008 alleging that they owned SunTrust Stock in the Plan during the Class Period of May 15, 2007 through March 30, 2011. ECF 1. Plaintiffs alleged that Defendants were Plan fiduciaries during that time and violated ERISA by continuing to offer SunTrust Stock as a Plan investment when it was imprudent to do so because of SunTrust's severe financial problems.

3 Plaintiffs note that the Plan is called the "SunTrust Banks, Inc. 401(k) Plan" but certain filings, including the Complaint and the order submitted to, and entered by, the Court certifying the Class erroneously called the Plan the "SunTrust Banks, Inc. 401(k) Savings Plan." This scrivener's error was corrected in the Class Notice and is corrected in the final approval order submitted herewith. Because SunTrust only offered one 401(k) plan, the error was harmless and there is no basis for confusion.

Plaintiffs alleged that Defendants damaged the Plan and its participants, who lost significant retirement assets by investing in SunTrust Stock in the Plan.

Plaintiffs advanced three primary claims alleging separate "public information" and "nonpublic information" claims.[4]

Plaintiffs alleged that because Defendants breached their fiduciary duties, the Plan and its participants lost a significant portion of their retirement savings that had been invested in SunTrust Stock through the Plan. As the market learned the truth about SunTrust's financial problems, SunTrust's stock price dropped from more than $77 per share to less than $28 per share, taking with it the value of the Plan's holdings in SunTrust Stock.

B. Before Agreeing To The Settlement, Class Counsel Thoroughly Investigated And Understood The Claims And Defenses In The Action

Class Counsel fully investigated the claims in the Action, beginning before they even filed the first Complaint. They began investigating the possible claims in order to make a demand on the fiduciaries as part of the Plan's administrative review process. *See* Joint Decl. ¶ 2. Specifically, without conceding that they were required

[4] Count I alleged that the Defendants violated ERISA and breached their fiduciary duties by failing to prudently and loyally manage the Plan's investment in SunTrust Stock. ECF 176 ¶ 6. Count II alleged that certain Defendants failed to properly monitor their fiduciary appointees to ensure that they were evaluating the continued prudence of offering SunTrust Stock as a Plan investment option. ECF 176 ¶ 7. And Count III alleged that Defendants co-fiduciaries failed to prevent other fiduciaries from breaching their duties. ECF 176 ¶ 8.

to pursue administrative remedies, Plaintiffs made a written demand on SunTrust's Benefits Plan Committee explaining why Plaintiffs believed that the Plan's fiduciaries had breached their duties and harmed the Plan and its participants. *Id.* Plaintiffs demanded that the fiduciaries make the Plan whole for the losses it suffered by offering and investing in SunTrust Stock. *Id.*

As part of preparing for that process, Class Counsel reviewed voluminous public records regarding SunTrust, considered relevant and then-recent case law, and analyzed the potential legal claims available to Plaintiffs and the Class. They devoted significant effort to properly framing the claims and anticipating the defenses that the fiduciaries most likely would assert, including in the administrative review procedure. *Id.*

Plaintiffs' written demands began a lengthy administrative review process in which Class Counsel interacted with Defendants' Counsel and the Benefits Plan Committee. As this review progressed, counsel exchanged a series of letters explaining their clients' positions and the fiduciaries produced documents about SunTrust, the Plan, and the Benefits Plan Committee's investigation of Plaintiffs' claims, helping each side better understand the other's claims and defenses. *Id.*

Once that administrative review process was completed, Plaintiffs began this action in 2008, litigating the claims and pursuing additional discovery. *Id.*

C. Summary of the Lengthy Litigation

The Joint Declaration, the Settlement Agreement, and the lengthy docket in this Action detail its lengthy history. *See* Joint Decl. ¶ 5. Plaintiffs will not repeat it here but instead will simply note the following abbreviated details about the litigation for purposes of this motion.

The case began on July 11, 2008 when Named Plaintiffs filed the first of several Class Action Complaints against Defendants alleging ERISA claims on behalf of participants in the Plan. ECF 1. In the Fall of 2009, the Court entered Orders consolidating the ERISA actions [ECF 50], and appointing interim lead counsel and liaison counsel for the Class [ECF 53].

In 2010, after the Court granted in part and denied in part Defendants' motion to dismiss [ECF 106], Defendants sought permission for interlocutory review, which the Court granted [ECF 107] and Plaintiffs cross-appealed. ECF 124.

On October 11, 2011, the Eleventh Circuit stayed the appeals pending the issuance of a mandate in another ERISA action involving similar pleading issues, *Lanfear v. Home Depot*, No. 10-13002. Three months later, on January 30, 2013, having adopted a presumption of prudence in *Lanfear* that would largely have protected Defendants' actions, the Court of Appeals lifted the stay, and on March 5, 2013 it entered judgment remanding the Action to this Court for consideration of the same.

On September 26, 2013, this Court granted Defendants' second motion to dismiss and entered judgment. ECF 161. If that judgment stood, Plaintiffs and the Class would have recovered nothing. But Plaintiffs continued to fight for the Class and they appealed the decision, hoping to overturn it in part or in full. After full briefing, and after the Supreme Court abrogated *Lanfear* (in a separate action called *Fifth Third Bancorp v. Dudenhoeffer*),[5] on October 8, 2014 the Court of Appeals vacated the judgment and remanded the Action to this Court for further proceedings.

Having succeeded again on appeal, Named Plaintiffs filed an Amended Consolidated Complaint [ECF 176], which Defendants, again, moved to dismiss. ECF 188. On June 18, 2015, the Court granted in part and denied in part Defendants' motion to dismiss, dismissing the public information claim but upholding the non-public information claim. ECF 194.

On August 17, 2016, the Court granted Plaintiffs' motion for class certification, certifying the proposed Class (the same class set forth in the Settlement Agreement) and appointing Class Counsel and Liaison Class Counsel. ECF 248.

During this time, the Parties were engaged in full-blown merits discovery, including depositions of expected trial witnesses, and Plaintiffs continued to obtain documents and data from Defendants and non-parties in an effort to strengthen and prove the Class's claims. Joint Decl. ¶ 2. Plaintiffs also conducted thorough

[5] *Fifth Third Bancorp v. Dudenhoeffer*, 134 S. Ct. 2459 (2014).

depositions of the fiduciaries as well as certain SunTrust directors and high-level officers during the same time that Defendants were deposing each of the four Named Plaintiffs. *Id.* at ¶¶ 2, 5.

D. The Parties Began To Discuss Settlement While They Were Preparing Their Expert Reports And Their Substantive Summary Judgment Motions

In late 2016, while the Parties were preparing to serve expert reports and to file summary judgment motions, counsel began discussing a possible class-wide settlement. Counsel engaged in direct negotiations and fully explored the arguments each side intended to advance on summary judgment motion and at trial. Ultimately, when they were unable to make further progress through direct negotiations, counsel for the Parties agreed to jointly retain an experienced mediator, Robert A. Meyer, Esq. of JAMS, to mediate a possible settlement. Joint Decl. ¶ 7. Counsel for both sides previously had positive experiences using Mr. Meyer as a mediator and were well-aware of his excellent reputation as an experienced and well-regarded mediator for complex class actions, including ERISA cases. *Id*.

On January 24, 2018, the Parties participated in a full-day mediation under the auspices of Mr. Meyer and, after spirited but professional arm's-length negotiations, reached an agreement in principle to settle the Action and signed a term sheet. Over the course of the subsequent weeks, counsel negotiated the precise terms of the

Settlement, which were incorporated into the Settlement Agreement for which Plaintiffs now seek final approval.

E. The Proposed Settlement Creates A $4.75 Million Settlement Fund And Provides Non-Monetary Relief

Pursuant to the Settlement, Defendants created a Settlement Fund of $4,750,000 to be allocated to Settlement Class Members pursuant to a Court-approved Plan of Allocation discussed below. The Parties have also agreed upon certain nonmonetary relief, including accelerated vesting, matching contributions being funded in cash instead of stock, and enhanced fiduciary training. *See* Settlement Agreement at ¶ 7.4.

If the Court approves the Settlement, Plaintiffs and the Plan will release and dismiss their claims, as set forth more fully in the Settlement Agreement. The Settlement Agreement also sets forth the proposed Notice Plan to Settlement Class Members, and provides for the payment of attorneys' fees, reimbursement of litigation expenses, and Case Contribution Awards to the Named Plaintiffs, all of which are subject to Court approval.

F. The Plan of Allocation

The Plan of Allocation is based upon similar plans that have been approved in other ERISA class actions. It is premised on calculating a Plan participant's *pro rata* distribution by considering the class member's transactions in, and holdings of, SunTrust Stock in the Plan during the Class Period. It uses each individual's balance

in the Plan on May 30, 2007, the first day of the Class Period, plus any acquisitions of SunTrust Stock during the Class Period, and then subtracts all dispositions of SunTrust Stock during the Class Period and the balance, if any, of SunTrust Stock remaining on March 30, 2011, the last day of the Class Period. In other words, it calculates each Class Member's losses from investing in SunTrust Stock. The Plan of allocation excludes Defendants and their immediate family members, and, accounting for the Court's holding in the August 17, 2016 Class Certification Order [ECF 248], any Settlement Class member who signed a severance agreement or release, releasing ERISA claims, when their employment with SunTrust ended will be excluded from receiving a distribution from the Settlement. Otherwise, all Class Members are treated identically, and those whose calculated recovery amount is above a modest *de minimis* threshold will recover a proportionate share of their losses.

G. Reasons for the Settlement

Plaintiffs entered into this Settlement with a full and comprehensive understanding of the strengths and weaknesses of the claims, based on Class Counsel's nearly ten years of litigating this Action and other complex class actions. Joint Decl. ¶¶ 8-9. The Parties have aggressively litigated the claims and have completed voluminous discovery, including document review and merits depositions. Class Counsel's investigation and discovery efforts enabled Plaintiffs

to identify key documents and testimony supporting their allegations and helped Class Counsel fully evaluate Defendants' defenses.

Before agreeing to the Settlement, each side understood the other Party's contentions and theories of liability and damages, even if they disagreed about the merits and damages, and each side understood the risks and expenses of further litigation. The Parties were about to devote significant resources to the final stage of the litigation, including trial, meaning that this was an opportune time to resolve the claims.

Based upon their extensive litigation, their analysis of the risks inherent in continuing litigation and establishing liability and damages, and the likelihood of appeals associated with any trial verdict, Class Counsel support the proposed Settlement and the certain and immediate benefit it provides to the Settlement Class Members. Joint Decl. ¶¶ 8-9.

H. The Court Preliminarily Approved The Proposed Settlement And Directed Class Counsel To Provide Notice To The Class

On March 13, 2018 the Court preliminarily approved the proposed Settlement and preliminarily certified the Settlement Class, which it had already certified as a litigation class. ECF 286. In that Order, the Court also appointed Class Counsel and Liaison Class Counsel, preliminarily approved the Plan of Allocation, scheduled a fairness hearing, approved the Class Notice, and directed Class Counsel to provide the Class Notice to the Settlement Class. *Id.* The Court also established a schedule

for objections from any Class members and set a schedule for the events leading to the Fairness Hearing. ECF 286 ¶¶ 9-12.

I. The Notice Plan

In accordance with the Preliminary Approval Order, Class Counsel retained JND Class Action Administration LLC as the Settlement Administrator [ECF 285-3, ¶ 1.39] which then fully complied with the notice provisions of the Preliminary Approval Order. As part of that process JND mailed more than 51,500 Court-approved Notices to Settlement Class members, performed follow-up mailings, and responded to inquiries from Settlement Class members. *See* Declaration of Settlement Administrator Jennifer M. Keough ("JND Decl."), attached as Exhibit O to the Joint Declaration, at ¶¶ 3-5.

As set forth in its accompanying declaration, JND also established a web page and toll-free automated interactive telephone line concerning the proposed Settlement. *See* JND Decl. at ¶¶ 6-7.

J. There Have Been Relatively Few Objections to the Proposed Settlement or the Related Relief Plaintiffs Seek

To date, the response to the proposed Settlement has been overwhelmingly positive. Although the Settlement Administrator has mailed more than 51,500 notices about the proposed Settlement, to date only two Settlement Class members have objected to any portion of the Settlement or the related relief described in the Notice.

June 14, 2018 is the deadline for Settlement Class members to object to the Settlement and the relief requested in this motion. In accordance with the Preliminary Approval Order, Plaintiffs will address all objections in a supplemental filing on or before June 21, 2018.

III. Court Approval Is Required For Settlement Of A Class Action Per FED. R. CIV. P. 23(e)

When considering a proposed class action settlement under Rule 23, a court's analysis should be "informed by the strong judicial policy favoring settlements as well as the realization that compromise is the essence of settlement." *In re Chicken Antitrust Litig. Am. Poultry*, 669 F.2d 228, 238 (5th Cir.1982); *see also Bennett v. Behring Corp.*, 737 F.2d 982, 986 (11th Cir. 1984) ("our judgment is informed by the strong judicial policy favoring settlement as well as by the realization that compromise is the essence of settlement."); *Ingram v. The Coca-Cola Company*, 200 F.R.D. 685, 688 (N.D. Ga. 2001) (Story, J.) ("There is a strong judicial policy in favor of settlement in order to conserve scarce resources that would otherwise be devoted to protracted litigation.").

In evaluating a proposed class settlement, "absent fraud, collusion or the like, the Court should be hesitant to substitute its own judgment for that of experienced counsel representing the class." *In re Domestic Air Transp. Antitrust Litig.*, 148 F.R.D. 297, 315 (N.D. Ga. 1993) (citation omitted). Indeed, "[s]ettlement agreements are highly favored in the law and will be upheld whenever possible

because they are a means of amicably resolving doubts and uncertainties and preventing lawsuits." *In re Nissan Motor Corp. Antitrust Litig*., 552 F.2d 1088, 1105 (5th Cir. 1977).[6] Class settlements also are favored because they minimize the parties' expenses and reduce the strain major litigation imposes upon already scarce judicial resources. *See In Re: The Home Depot, Inc. Consumer Data Security Breach Litig.*, 2016 WL 6902351 (N.D. Ga. Aug. 23, 2016) (approving class action settlement in data breach consumer class action).

IV. The Settlement Is Fair, Adequate and Reasonable

In deciding whether to approve the Settlement, the Court must analyze whether it is "fair, adequate, reasonable, and not the product of collusion." *Leverso v. Southtrust Bank*, 18 F.3d 1527, 1530 (11th Cir. 1994); *see also Bennett v. Behring Corp*., 737 F.2d 982, 986 (11th Cir. 1984).

The Court of Appeals has identified six factors to be considered in the analysis: (1) the existence of fraud or collusion behind the settlement; (2) the complexity, expense, and likely duration of the litigation; (3) the stage of the proceedings and the amount of discovery completed; (4) the probability of the plaintiffs' success on the merits; (5) the range of possible recovery; and (6) the

[6] Fifth Circuit cases decided before October 1, 1981 are binding precedent in the Eleventh Circuit. *See, e.g.*, *U.S. v. Pritt*, 458 F. App'x. 795, 800 n.5 (11th Cir. 2012) ("In *Bonner v. City of Prichard*, 661 F.2d 1206, 1209 (11th Cir.1981) (*en banc*), this Court adopted as binding precedent all decisions of the former Fifth Circuit handed down before October 1, 1981.").

opinions of class counsel, the class representatives, and the substance and amount of opposition to the settlement. *Leverso*, 18 F.3d at 1530 n.6; *see also Bennett*, 737 F.2d at 986. The following analysis of these factors shows the proposed Settlement is fair, adequate, and reasonable and thus should be approved.

A. The Parties Negotiated the Settlement at Arm's-Length

Before the Parties discussed the possibility of settlement, they litigated aggressively – but professionally – against each other for years and consistently had an arm's-length relationship. When they eventually began discussing a possible Settlement, their negotiations were protracted and spirited and occurred over months with both sides continuing to litigate aggressively as demonstrated by, for example, Plaintiffs seeking and receiving an order to compel documents withheld as privileged while negotiations were ongoing.

The negotiations were conducted by experienced counsel, involved numerous email and phone communications, and eventually included the active involvement of a nationally recognized mediator who oversaw and facilitated the negotiations. Joint Decl. ¶ 7. This history demonstrates that the Settlement was not collusive. *See, e.g.*, *In re the Home Depot, Inc., Customer Data Sec. Breach Litig.*, 2016 WL 6902351, at *5 (approving class action settlement and finding no collusion when an "experienced mediator" oversaw negotiations by informed counsel); *Ingram*, 200 F.R.D. at 693 (the court had "no doubt that this case has been adversarial, featuring a

high level of contention between the parties" and crediting the judgment of experienced counsel who negotiated the settlement using a mediator); *In re Motorsports Merchandise Antitrust Litig.*, 112 F. Supp. 2d 1329, 1338 (N.D. Ga. 2000) ("This was not a quick settlement, and there is no suggestion of collusion.").

B. The Settlement Will Avert Years of Complex and Expensive Litigation and Inevitable Appeals

If not settled, this case inevitably would result in a massive further expenditure of time by the Parties and the Court and further expenses, as would be true of any national class action involving complex facts, such as those here. Absent the Settlement, the Parties would have moved forward with intense expert discovery, followed by briefing on summary judgment, decertification motions, *Daubert* challenges, a lengthy trial, and appeals. During this process, likely lasting years, the Parties would incur additional fees and out-of-pocket expense and the Court would spend its own resources.

If approved by the Court, the Settlement would avoid this outcome, end the litigation, save the Parties and Court considerable time, effort and money, and provide immediate and substantial relief to the Settlement Class. *See In re U.S. Oil & Gas Litig.*, 967 F.2d 489, 493 (11th Cir. 1992) (noting that complex litigation "can occupy a court's docket for years on end, depleting the resources of the parties and taxpayers while rendering meaningful relief increasingly elusive"); *In re the Home Depot, Inc., Customer Data Sec. Breach Litig.*, 2016 WL 6902351, at *5-*6

(approving a settlement that provided immediate benefits and would avoid the "risks of continuing to litigate the case."); *In re Domestic Air Transp. Antitrust Litig.*, 148 F.R.D. 297, 325-26 & n.32 (N.D. Ga. 1993)

C. The Factual Record is Sufficiently Developed to Enable Class Counsel to Make a Reasoned Judgment Regarding the Litigation and the Settlement

Courts consider "the degree of case development that class counsel have accomplished prior to settlement" to ensure that "counsel had an adequate appreciation of the merits of the case before negotiating." *In re General Motors Corp. Pick-up Truck Fuel Tank Prods. Liab. Litig.*, 55 F.3d 768, 813 (3d Cir. 1995). At the same time, "[t]he law is clear that early settlements are to be encouraged, and accordingly, only some reasonable amount of discovery should be required to make these determinations." *Ressler v. Jacobson*, 822 F. Supp. 1551, 1555 (M.D. Fla. 1992).

Here, Class Counsel had ample information to evaluate the strengths and weaknesses of the Action and the merits of the Settlement based upon extensive investigation, litigation, motion practice, full merits discovery, and expert discovery. *See* Joint Decl. ¶¶ 2-4. *See, e.g.*, *In re the Home Depot, Inc., Customer Data Sec. Breach Litig.*, 2016 WL 6902351 at *6 (approving a class action settlement where counsel for the plaintiffs "understand the merits of the case and had sufficient information to evaluate the benefits of settlement against further

litigation."); *Ingram*, 200 F.R.D. at 691 (approving a class action settlement where counsel were able to "make a reasoned judgment about the merits of the case during settlement negotiations."); *Mashburn v. Nat'l Healthcare, Inc.*, 684 F. Supp. 660, 669 (M.D. Ala. 1988) (a case is sufficiently developed if class counsel can adequately assess "the probability of . . . success on the merits, the possible range of recovery, and the likely expense and duration of the litigation.").

D. Plaintiffs Faced Meaningful Obstacles to Success

A settlement is fair, adequate, and reasonable when the interests of the class as a whole are better served if the litigation is settled rather than pursued. *In re Checking Account Overdraft Litig.*, 2014 WL 11370115 at *8 (S.D. Fla. Jan. 3, 2014). A critical factor in assessing whether the class is made better off by settling is the probability of success if the case were tried. *See, e.g.*, *In re Domestic Air*, 148 F.R.D. at 314; *Ressler*, 822 F. Supp. at 1555. The Court's role is not to decide the case, but rather to make "a limited inquiry into whether the possible rewards of continued litigation with its risks and costs are outweighed by the benefits of the settlement." *Ressler*, 822 F. Supp. at 1552-53. In its inquiry, the Court should give "great weight to the recommendations of counsel for the parties, given their considerable experience in this type of litigation." *Warren v. City of Tampa*, 693 F. Supp. 1051, 1060 (M.D. Fla. 1988); *see also In re Domestic Air*, 148 F.R.D. at 312-13.

Although Plaintiffs are confident in their claims, they recognize success is far from certain. In fact, this Court previously dismissed all of the claims in the Action twice. Defendants vigorously denied any wrongdoing and aggressively defended against Plaintiffs' claims. Defendants asserted that they did not violate their duties and that they acted appropriately at all times. Defendants also asserted that Plaintiffs would have Defendant improperly base their decisions about the Plan investments upon inside information, something that Defendants argued would be improper and would put them at risk of violating the federal securities laws. Defendants also argued that they could not be liable for continuing to offer SunTrust Stock as a Plan investment because the events that caused SunTrust's Stock to plummet, including the Great Recession and the meltdown of the financial markets in 2008, were not foreseeable to the fiduciaries and were market-wide and not specific to SunTrust. In addition to other arguments that Defendants made, Defendants consistently argued that damages did not exist or were limited, especially because the price of SunTrust Stock began to increase again after the end of the Class Period and now trades at approximately $68 per share.

Plaintiffs here, as in any complex class action, faced enormous risks, including, *inter alia*: (i) that proving liability and class wide damages would be difficult; (ii) the Court might grant summary judgment or disqualify key experts under *Daubert*; (iii) the finder of fact might render an adverse verdict; and (iv) the

Eleventh Circuit might reverse any favorable outcome at the trial level. These risks are substantial, and any one of them, if realized, would derail the case.

Weighing the substantial risks that make the probability of success uncertain, the delay and expense of ongoing litigation, and the benefits of immediate and certain relief, Class Counsel, after an arm's-length mediation, determined that the Settlement is a fair compromise for the Settlement Class. Joint Decl. ¶¶ 7-8. Their determination was thus appropriate and supports final approval. *See Ingram*, 200 F.R.D. at 691 (approving a class action settlement where "Class Counsel credibly attested to their ability to make a reasoned judgment about the merits of the case during settlement negotiations."). *See also Bennett v. Behring Corp.*, 96 F.R.D. 343, 349-50 (S.D. Fla. 1982), *aff'd*, 737 F.2d 982 (11th Cir. 1984) (plaintiffs faced a "myriad of factual and legal problems" creating "great uncertainty as to the fact and amount of damage," making it "unwise [for plaintiffs] to risk the substantial benefits which the settlement confers . . . to the vagaries of a trial").

E. The Benefits Provided by the Settlement Are Fair, Adequate, and Reasonable Compared to the Range of Possible Recoveries

The next factor in the fairness analysis is the range of possible recoveries if the case were tried. In applying this factor, "the Court's role is not to engage in a claim-by-claim, dollar-by-dollar evaluation, but rather, to evaluate the proposed settlement in its totality." *Figueroa v. Sharper Image Corp.*, 517 F. Supp. 2d 1292, 1326 (S.D. Fla. 2007). The Court also is not called upon to decide whether Class

Counsel have reached the best deal possible, nor whether class members will receive as much from the Settlement as they might recover from winning at trial. *See, e.g.*, *In re Checking Account Overdraft Litig.*, 2014 WL 11370115 at *8; *Ressler*, 822 F. Supp. at 1552-53 ("As settlements are constructed upon compromise, the merits of the parties' claims and defenses are deliberately left undecided. Judicial evaluation of a proposed settlement of a class action thus involves a limited inquiry into whether the possible rewards of continued litigation with its risks and costs are outweighed by the benefits of the settlement.")

The Court's evaluation of this factor is guided by several "important maxims," one of which is "the fact that a proposed settlement amounts to only a fraction of the potential recovery does not mean the settlement is unfair or inadequate." *Behrens v. Wometco Enter., Inc.*, 118 F.R.D. 534, 542 (S.D. Fla. 1988), *aff'd*, 899 F.2d 21 (11th Cir. 1990). Indeed, a "settlement can be satisfying even if it amounts to a hundredth or even a thousandth of a single percent of the potential recovery" (*id.*) because it must be evaluated considering the attendant risks. *In re Checking Account Overdraft Litig.*, 2014 WL 11370115 at *10; *see also Bennett*, 737 F.2d at 986 ("compromise is the essence of settlement"). Courts regularly find settlements to be fair where "[p]laintiffs have not received the optimal relief." *Warren*, 693 F. Supp. at 1059; *see also In re Domestic Air*, 148 F.R.D. at 325

("That the proposed settlement amounts to a fraction of [the] potential recovery does not render the proposed settlement inadequate or unfair").

The proposed Settlement easily passes muster. As in most litigation, the range of potential recovery spans from a finding of non-liability through varying levels of injunctive relief and monetary benefits to Settlement Class members. *See Figueroa*, 517 F. Supp. 2d at 1326. Here, the Settlement provides for a cash recovery of $4,750,000, which is a significant percentage of the damages Defendants' experts thought were the best-case scenario for the Class ($36 million) (ECF 222-1), and has already been funded by Defendants, plus the non-monetary relief described in the Settlement Agreement. While Plaintiff had arguments damages could be higher - the numbers were not finalized – but would not have been more than double the amount of Defendants' expert.

The Settlement merits final approval because it promptly resolves the remaining claims against Defendants, avoids additional protracted and expensive litigation that could lead to little or no recovery at all, and affords real, substantial, and immediate relief to the Settlement Class. *See Cross v. Wells Fargo Bank*, No. 15-cv-01270, Final Approval Order slip op. at ¶ 10 (N.D. Ga. Feb. 10, 2017) (Story, J.) (order granting final approval to a class action settlement that was "fair, reasonable and adequate");[7] *Ingram*, 200 F.R.D. at 690 (approving a class action

7 Attached to the Joint Decl. as Exhibit N-1.

settlement that "achieved a reasonable result with respect to the major objectives of the litigation.").

F. The Opinions of Class Counsel, the Class Representatives, and Absent Class Members Favor Approving the Settlement

The fairness of the Settlement is enthusiastically endorsed by experienced Class Counsel who prosecuted this action for almost a decade and supported by the class representatives who oversaw this litigation for the same period. That is strong evidence that the Settlement is fair. *See, e.g.*, *Warren*, 693 F. Supp. at 1060 (a court should afford "great weight to the recommendations of counsel for the parties, given their considerable experience in this type of litigation"); *see also Domestic Air*, 148 F.R.D. at 312-13; *Mashburn*, 684 F. Supp. at 669 ("If plaintiffs' counsel did not believe these factors all pointed substantially in favor of this settlement as presently structured, this Court is certain that they would not have signed their names to the settlement agreement."). *See also* Joint Decl. ¶ 6 and Exs. E - H (declarations from the Named Plaintiffs).

Moreover, to date only two class members have objected to any portion of the Settlement, showing overwhelming support for the Settlement from the Class.[8]

Courts have consistently approved Class Action settlements like this where there is overwhelmingly positive support of the settlement but there are relatively

[8] Plaintiffs will address the objections in a supplemental brief on or before June 21, 2018 in accordance with the Preliminary Approval Order.

few objections.[9] The few objections received so far do not undermine the fairness, adequacy, and reasonableness of the Settlement. Respectfully, the objections are also deficient for reasons that will be discussed in a supplemental filing to the Court on June 21st according to the schedule set in the Preliminary Approval Order.

G. The Court Previously Certified The Same Class That Now Is The Settlement Class

During the litigation, the Court certified the class that now is defined as the Settlement Class. ECF 248 (Class Certification Order); ECF 285-3 ¶ 1.41 (Settlement Agreement's definition of the Settlement Class); ECF 286 ¶ 2 (the Preliminary Approval Order certifying the Settlement Class). In its Preliminary

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[9] *See, e.g.*, *In re the Home Depot, Inc., Customer Data Sec. Breach Litig.*, 2016 WL 6902351, at *4 (approving a class action settlement where the number of objectors amounted to an "infinitesimal percentage" of the class and indicated "strong support for the settlement", weighing strongly in favor of final approval); *Cross*, Final Approval Order slip op. at ¶ 19 (approving settlement over objections from class members); *Ingram*, 200 F.R.D. at 687 (approving settlement where there were thirteen objectors and noting that the "central question at issue is not whether any particular provision could have been negotiated in a slightly different or marginally more favorable way . . . [and that the Court] may not unilaterally rewrite the terms of the bargain struck between the parties."); *In re Checking Account Overdraft Litig.*, 2013 WL 11320088, at *10 (S.D. Fla. Aug. 2, 2013) ("Furthermore, the Court also finds it telling that, of over 27,490 members of the Settlement Class, only two members of the Settlement Class have requested to be excluded from, and no Settlement Class Members have objected to the Settlement."); *Lipuma v. American Express Co.*, 406 F. Supp. 2d 1298, 1324 (S.D. Fla. 2005) (finding that a low percentage of objections "points to the reasonableness of a proposed settlement and supports its approval"); *Association for Disabled Americans v. Amoco Oil Co*., 211 F.R.D. 457, 467 (S.D. Fla. 2002) ("[a] small number of objectors from a plaintiff class of many thousands is strong evidence of a settlement's fairness and reasonableness.").

Approval Order, the Court conditionally certified the Settlement Class. ECF 286 ¶ 2. Nothing has changed regarding the Rule 23 factors since the Court entered the Class Certification Order or the Preliminary Approval Order and the Settlement Class satisfies the four requirements of Rules 23(a) and 23(b)(3).

V. The Notice Program As Implemented Satisfies Due Process And Rule 23

The Preliminary Approval Order approved the notice program, found that it met the requirements of due process and Rule 23, and directed that it be carried out. ECF 286, ¶ 8. Since then, the notice program was carried out under the supervision of Class Counsel by JND Legal Administration LLC ("JND"), the nationally-recognized firm appointed as the Settlement Administrator. *See* JND Decl. ¶ 2 (attached to the Joint Decl. as Exhibit O). Accordingly, a notice and claims package was individually mailed to Class members at their last known address, follow up efforts were made to reach Settlement Class members whose notices were returned as undeliverable, and relevant information was made available on a website and toll-free number. JND Decl. ¶¶ 4-7. There is reason to believe 97% of the Class received Notice. *Id.* ¶ 5. In addition, as found by the Preliminary Approval Order, the Notice was understandable, described the action, set forth the terms of the Settlement, and contained all of the information reasonably necessary for Settlement Class members to exercise their rights.

Accordingly, the Court should find that the Class was provided with the best notice practicable under the circumstances and that the notice program, as implemented, satisfies the requirements of due process and Rule 23. Indeed, Your Honor and Judges in this district have found similar notice plans to satisfy due process. *See, e.g.*, *In re Beazer Homes USA, Inc. ERISA Litig.*, No. 07-cv-00952, Order and Final Judgment slip op. at 5 (N.D. Ga. Nov. 15, 2010) (Story, J.); *Spivey v. Southern Co.*, No. 04-cv-1912, Order and Final Judgment slip op. at 3-4 (N.D. Ga. Aug. 14, 2007) (Story. J.). *See also In re Mirant Corp. ERISA Litig.*, No. 03-cv-1027, Order and Final Judgment slip op. at 3-4 (N.D. Ga. Nov. 16, 2006) (Story, J.);[10] *In re Colonial BancGroup, Inc. ERISA Litig.*, 2012 WL 4856704, at *2 (M.D. Ala. Oct. 12, 2012).

VI. CONCLUSION

For the reasons set forth above, Plaintiffs request that the Court enter an Order approving the Settlement and granting the related relief Plaintiffs seek in this motion.

Dated: May 24, 2018

Respectfully submitted,

KESSLER TOPAZ MELTZER & CHECK, LLP

/s/ Mark K. Gyandoh
Mark K. Gyandoh

[10] These Orders are attached to the Joint Declaration as Exhibit N-2 through N-4, respectively.

Julie Siebert-Johnson
280 King of Prussia Road
Radnor, Pennsylvania 19087
(610) 667-7706
(610) 667-7056 (fax)
mgyandoh@ktmc.com
jsjohnson@ktmc.com

STULL, STULL & BRODY
Michael J. Klein
6 East 45th Street
New York, New York 10017
(212) 687-7230
(212) 490-2022 (fax)
mklein@ssbny.com

SQUITIERI & FEARON, LLP
Stephen J. Fearon, Jr.
32 East 57th Street, 12th Floor
New York, New York 10022
(212) 421-6492
(212) 421-6553 (fax)
stephen@sfclasslaw.com

Co-Lead Class Counsel

HOLZER & HOLZER, LLC
Corey D. Holzer, GA Bar No. 364698
Marshall P. Dees, GA Bar No. 105776
200 Ashford Center North, Suite 300
Atlanta, Georgia 30338
(770) 392-0090
(770) 392-0029 (fax)
cholzer@holzerlaw.com
mdees@holzerlaw.com

Liaison Class Counsel

CERTIFICATE OF COMPLIANCE

Pursuant to L.R. 7.1D, the undersigned certifies that the foregoing complies with the font and point selections permitted by L.R. 5.1C. This Motion was prepared on a computer using the Times New Roman font (14 point).

Date: May 24, 2018

/s/ Mark K. Gyandoh
Mark K. Gyandoh

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

IN RE SUNTRUST BANKS, INC. ERISA LITIGATION	)	**CIVIL ACTION FILE NO. 1:08-CV-3384-RWS**

CERTIFICATE OF SERVICE

I hereby certify that on this 24th day of May 2018, the foregoing was electronically filed with the Clerk of Court using the CM/ECF system, which serves notification of such filing to all counsel of record. I further certify that the foregoing will published on the website identified in the Class Notice as soon as practicable.

/s/ Mark K. Gyandoh
Mark K. Gyandoh

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 AND FINAL JUDGMENT

This Action having come before the Court on _____ ___, 2018, for a hearing (the "Fairness Hearing") on Named Plaintiffs' motion for an order granting final approval of the proposed Settlement (the "Settlement") of this litigation (the "Action"), as previously certified as a non-opt-out class action pursuant to Federal Rules of Civil Procedure 23(a) and 23(b)(1); the proposed Plan of Allocation in accordance with the Stipulation of Settlement dated March 9, 2018 (the "Settlement Agreement"); and Named Plaintiffs' motion for an award of attorneys' fees and for reimbursement of expenses and for Case Contribution Awards for Named Plaintiffs; and the Court having read and considered these motions, heard the arguments of counsel, granted preliminary approval of the Settlement by Order dated _____ ___, 2018 (ECF No. _____) (the "Preliminary Approval Order"), and considered all objections raised; and all Parties having consented to the entry of this Order;

IT IS HEREBY ORDERED AND ADJUDGED:

1. To the extent not otherwise defined herein, all terms shall have the same meaning as used in the Settlement Agreement.

2. 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.

3. The Court determines that Named Plaintiffs are asserting claims on behalf of the SunTrust Banks, Inc. 401(k) Savings Plan (the "Plan") pursuant to ERISA §§ 409, 502(a)(2), and 502(a)(3), 29 U.S.C. §§ 1109, 1132(a)(2) and 1132(a)(3), to recover losses alleged to have occurred as a result of Defendants' breaches of fiduciary duty and to seek other equitable relief.

4. The Court determines that the Settlement, which includes the payment of Four Million Seven Hundred Fifty Thousand U.S. Dollars ($4,750,000.00) on behalf of Defendants, has been negotiated vigorously and at arm's length by and between Class Counsel and Defendants' counsel under the supervision of Robert A. Meyer, Esq., an experienced mediator in ERISA and other complex class actions. The Court finds that, at all times, Named Plaintiffs have acted independently and that Named Plaintiffs and Class Counsel have fairly and adequately represented the Settlement Class in connection with the Action and the Settlement Agreement. The Court further finds that the Settlement arises from a genuine controversy between the Parties and is not the result of collusion, nor was the Settlement procured by fraud or misrepresentation.

5. The Court finds that the Plan's participation in the Settlement is on terms no less favorable than those of Named Plaintiffs and the Settlement Class and

that the Plan does not have any additional claims above and beyond those asserted by Named Plaintiffs that are released as a result of the Settlement. The Court also finds that the Settlement is not part of an agreement, arrangement, or understanding designed to benefit a party in interest, but rather is designed and intended to benefit the Plan, the Plan's participants, and all beneficiaries. Accordingly, the Court determines that the negotiation and consummation of the Settlement by Named Plaintiffs on behalf of the Plan and the Settlement Class does not constitute a "prohibited transaction" as defined by ERISA §§ 406(a) or (b), 29 U.S.C. §§ 1106(a) or (b). Further, in light of the analysis and report prepared by the Independent Fiduciary, the Court finds that, to the extent any of the transactions required by the Settlement constitute a transaction prohibited by ERISA § 406(a), 29 U.S.C. § 1106(a), such transactions satisfy the provisions of the Prohibited Transaction Exemption 2003-39, 68 Fed. Reg. 75632 (2003).

6. The Court hereby approves and confirms the Settlement embodied in the Settlement Agreement as constituting a fair, reasonable, and adequate settlement and compromise of this Action in accordance with all applicable laws, including Federal Rule of Civil Procedure 23, and orders that the Settlement Agreement shall be effective, binding, and enforced according to its terms and conditions.

7. The Court determines that the Class Notice transmitted to the Settlement Class, pursuant to the Preliminary Approval Order and in accordance with the

Settlement Agreement, is the best notice practicable under the circumstances and included individual notice to all members of the Settlement Class who could be identified through reasonable efforts. Such Class Notice provides valid, due and sufficient notice of the Fairness Hearing and of the other matters set forth therein, including the terms of the Settlement Agreement and the Settlement, and such Class Notice has fully satisfied the requirements of Federal Rule of Civil Procedure 23 and the requirements of due process.

8. The Court hereby approves the maintenance of the Action as a non-opt-out class action pursuant to Federal Rules of Civil Procedure 23(a) and 23(b)(1) with the class already having been certified as:

> 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").

Pursuant to Federal Rule of Civil Procedure 23(g), the Court also 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.

9. Based on the Settlement, the Court hereby dismisses the operative Complaint and the Action against Defendants with prejudice on the merits.

10. As of the date of Final Settlement Approval, the Court has approved the following releases set forth in Paragraph 6, Sections 6.1 through 6.3 (collectively the "Released Claims") of the Settlement Agreement:

a. Upon Final Settlement Approval, Named Plaintiffs, the Settlement Class, the Plan (subject to the Independent Fiduciary's review and approval), and each member of the Settlement Class on their own behalf and on behalf of their present or former agents, employees, advisors, attorneys investment bankers, trustees, parents, heirs, estates, executors, administrators, successors, and assigns shall release any and all claims of any nature whatsoever (including, but not limited to, claims for any and all losses, damages, unjust enrichment, attorneys' fees, disgorgement of fees, litigation costs, injunction, declaration, contribution, indemnification, or any other type or nature of legal or equitable relief) against Defendants and their respective current or former officers, directors, employees, insurers and their re-insurers, administrators, representatives, attorneys, affiliates, parent corporations, subsidiaries, predecessors, successors, committees, trustees, managers, fiduciaries, conservators, estates, legatees, assigns or agents, including without limitation, SunTrust, current or former members of SunTrust's board of directors; current

or former members of the SunTrust Banks, Inc. Benefits Plan Committee; and any current or former named or *de facto* fiduciaries of the Plan (collectively the "Released Parties"), whether accrued or not, whether already acquired or acquired in the future, whether known or unknown in law or equity brought by way of demand, complaint, cross-claim, counterclaim, third-party claim or otherwise, arising out of the same or substantially similar acts, omissions, facts, matters, transactions or occurrences during the Class Period, that are, were or could have been alleged, asserted, or set forth in the Complaint or the Action, or were or could have been alleged, asserted, or set forth in the Complaint or the Action under ERISA based on or relating to: (a) the offering of SunTrust Stock in the Plan; (b) the acquisition and holding of SunTrust Stock by the Plan or the Plan's participants; (c) the information provided to the Plan Participants by Plan fiduciaries related to investing in SunTrust Stock through the Plan (d) the appointing or monitoring of the Plan's fiduciaries related to SunTrust Stock; or (e) the loyalty of the Plan's fiduciaries regarding SunTrust or SunTrust Stock (collectively the "Released Claims"). The release set forth in this paragraph shall not include any claims relating to the covenants or obligations set forth in this Settlement Agreement. Further, the Released Claims do not include any claims alleged in the pending action of *In Re SunTrust Banks, Inc. 401(k) Plan Affiliated Funds ERISA Litig*., 1:11-cv-784 (N.D. Ga.).

b. Upon Final Settlement Approval, Named Plaintiffs, the Settlement Class, the Plan, and each member of the Settlement Class expressly waive and relinquish, to the fullest extent permitted by law, any and all provisions, rights and benefits conferred by (a) § 1542 of the California Civil Code, which provides that a "general release does not extend to claims which the creditor does not know or suspect to exist in his favor at the time of executing the release, which if known by him must have materially affected his settlement with debtor," and (b) any similar state, federal, or other law, rule or regulation or principle of common law of any domestic or foreign governmental entity. Named Plaintiffs, members of the Settlement Class, and the Plan may hereafter discover facts other than or different from those that they know or believe to be true with respect to the subject matter of the Released Claims with respect to any Released Parties, but Named Plaintiffs, the Settlement Class, and the Plan hereby expressly waive and fully, finally and forever settle and release any known or unknown, suspected or unsuspected, asserted or unasserted, contingent or non-contingent claim with respect to the Released Claims, without regard to the subsequent discovery or existence of such other or different facts.

c. Upon Final Settlement Approval, Defendants absolutely and unconditionally release and forever discharge Named Plaintiffs, the Settlement Class and Plaintiffs' Counsel (collectively, the "Plaintiff Released Parties")

from any and all claims relating to the institution or prosecution of the Action or the settlement of any Released Claims, except that this release shall not include any claims relating to the covenants or obligations set forth in this Settlement Agreement. The Parties intend the Settlement to be a final and complete resolution of all disputes asserted or that could have been asserted by Named Plaintiffs, the Settlement Class, and the Plan with respect to the Released Claims, and agree that, except as expressly set forth herein, each Party shall bear his, her or its own costs and expenses, including attorneys' fees.

d. Notwithstanding any other provision of the Settlement Agreement, Named Plaintiffs and members of the Settlement Class shall not be deemed to have waived or released any claim by any individual Plan participant concerning his or her right to vested benefits under the Plan or to contest the correct amount of such benefit, except to the extent that such claim may relate to the Released Claims.

11. As of the date of Final Settlement Approval, Defendants, including their present or former agents, employees, attorneys, accountants, representatives, advisers, investment bankers, trustees, parents, heirs, estates, executors, administrators, successors and assigns, shall be deemed to have absolutely and unconditionally released and forever discharged Named Plaintiffs, the Settlement Class and Plaintiffs' Counsel (collectively, the "Plaintiff Released Parties") from any and all claims,

demands, rights, liabilities, and causes of action of every nature or description relating to the institution or prosecution of the Action or the settlement of any Released Claims, except that this release shall not include any claims relating to the covenants or obligations set forth in this Settlement Agreement.

12. As of the date of Final Settlement Approval, all release provisions within the Settlement Agreement shall be given full force and effect in accordance with each and all of their express terms and provisions, including those terms and provisions relating to unknown, unsuspected, or future claims, demands, or causes of action. Further, Named Plaintiffs assume for themselves and on behalf of the Settlement Class, and Defendants assume for themselves, the risk of any subsequent discovery of any matter, fact, or law, that, if now known or understood, would in any respect have affected or could have affected any of the Parties' entry into the Settlement Agreement.

13. As of the date of Final Settlement Approval, Named Plaintiffs, the Settlement Class, the Plan, and members of the Settlement Class, and their respective heirs, executors, administrators, successors and assigns are hereby barred and enjoined from the institution and prosecution, either directly or indirectly, of any claims related to the Action and from asserting, maintaining, or enforcing any actions in any court or other tribunal alleging any and all Released Claims against any and all Released Parties.

14. Class Counsel are hereby awarded attorneys' fees in the amount of $_____ (the "Attorneys' Fees"). The Attorneys' Fees have been determined by the Court to be fair, reasonable and appropriate. No other fees may be awarded to Class Counsel in connection with the Settlement Agreement. The Attorneys' Fees shall be paid to Class Counsel in accordance with the terms of the Settlement Agreement.

15. Class Counsel are hereby awarded reimbursement of expenses in the sum of $_____ (the "Attorneys' Expenses"). The Attorneys' Expenses have been determined by the Court to be fair, reasonable, and appropriate. No other costs or expenses may be awarded to counsel in connection with the Settlement Agreement.

16. Each Named Plaintiff is hereby awarded a Case Contribution Award in the amount of $_____. The Case Contribution Awards have been determined by the Court to be fair, reasonable and appropriate. In addition to his/her Case Contribution Award, each Named Plaintiff is also eligible for a share of the payment from the Settlement Fund as a member of the Settlement Class. Other than these payments, no other award shall be awarded to Named Plaintiffs in connection with the Settlement Agreement. The Case Contribution Awards shall be paid to Named Plaintiffs in accordance with the terms of the Settlement Agreement.

17. The Court determines that Defendants have fully complied with the notice requirements of the Class Action Fairness Act of 2005, as codified at 28 U.S.C. § 1715.

18. The Plan of Allocation for the distribution of the Net Settlement Fund, as submitted by the Parties, is approved as fair, reasonable and adequate.

19. The Court finds that the payment and distribution of the Settlement Amount, as allocated in the Settlement Agreement, is a "restorative payment" as defined in IRS Revenue Ruling 2002-45.

20. Without affecting the finality of this Order and Final Judgment, the Court shall retain continuing jurisdiction over: (a) the implementation, administration, and consummation of the Settlement Agreement; (b) the Action until the Final Approval Date occurs and each and every act agreed to be performed by the Parties to the Settlement Agreement shall have been performed in accordance with the Settlement Agreement; and (c) all Parties to the Action and the Settlement Agreement for the purpose of taking such other actions as may be necessary to conclude and administer this Settlement and to implement and enforce the Settlement Agreement.

SO ORDERED this ____ day of _____, 2018

RICHARD W. STORY
United States District Judge