

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA**

**In re SunTrust Banks, Inc. 401(k) Plan
Affiliated Funds ERISA Litigation**

**CIVIL ACTION FILE NO.
1:11-CV-784-ODE**

**PLAINTIFFS' UNOPPOSED MOTION
FOR PRELIMINARY APPROVAL OF CLASS ACTION
SETTLEMENT, APPROVAL OF FORM AND MANNER OF
CLASS NOTICE AND SCHEDULING OF FAIRNESS HEARING**

Plaintiffs Barbara Fuller, Elaine Jefferson, Barbara Kennedy, Selethia Pruitt, and Mariah Williams (“Class Representatives”), who are participants in the SunTrust Banks, Inc. 401(k) Savings Plan (“Plan”), respectfully move the Court for an Order: (1) preliminarily approving the Parties’ proposed Class Action Settlement (“Settlement” or “Settlement Agreement”); (2) approving the form and method of providing notice of the Settlement (the “Notice Plan”); and (3) setting a date and time for a hearing (the “Fairness Hearing”) for consideration of final approval of the Settlement, of payment of attorneys’ fees and expenses, and of potential Incentive Awards to the Class Representatives. Plaintiffs’ memorandum of law in support of this unopposed motion is filed herewith. The Settlement Agreement is attached as Exhibit 1 to this Motion. Attached as exhibits to the Settlement Agreement are a proposed Plan of Allocation (Exhibit A), proposed Preliminary Approval Order

(Exhibit B), proposed Class Notice (Exhibit C), and a proposed Final Approval Order and Judgment (Exhibit D).

For the reasons set forth in the accompanying memorandum of law, Plaintiffs submit that the proposed Settlement is fair, reasonable and adequate. Additionally, the proposed Notice Plan satisfies the requirements of due process and is consistent with that used in analogous actions. Accordingly, Plaintiffs respectfully request that the proposed Settlement be preliminarily approved, the Notice Plan be approved, and a Fairness Hearing be scheduled.

Dated: March 11, 2020

Respectfully submitted,

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*Local & Liaison Counsel for Plaintiffs
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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: March 11, 2020

/s/ James A. Moore

Exhibit 1

***In Re SunTrust Banks, Inc. 401(k) Plan Affiliated Funds ERISA Litigation
Settlement Agreement, March 11, 2020***

CLASS ACTION SETTLEMENT AGREEMENT

This CLASS ACTION SETTLEMENT AGREEMENT (“Settlement Agreement”) is entered into between and among the *Class Representatives*, all *Class Members*, and *Defendants*, as defined in §1 below. Capitalized terms and phrases have the meanings provided in §1 below or as specified elsewhere in this *Settlement Agreement*.

1. DEFINITIONS

1.1. “*Action*” means *In re SunTrust Banks, Inc. 401(k) Plan Affiliated Funds ERISA Litigation*, No. 1:11-cv-784-ODE, an action pending in the United States District Court for the Northern District of Georgia.

1.2. “*Active Account*” means a participant account in the Plan that has not been cashed out and closed.

1.3. “*Administrative Expenses*” means fees and expenses of the *Settlement Administrator* and *Escrow Agent* incurred in administering the *Settlement Agreement*, including (a) all fees, expenses, and costs associated with providing the *Class Notice* to the *Class*, (b) maintaining the dedicated website and the toll-free telephone number; and (c) expenses associated with the distribution of funds under the *Plan of Allocation*. Excluded from *Administrative Expenses* are *Plan* expenses, and the *Parties*’ respective legal expenses. *Administrative Expenses* shall be paid from the *Gross Settlement Amount*.

1.4. “*Allocation Method*” shall mean the calculation method for allocating *Net Settlement Amount* to *Class Members* based on their holdings in *SunTrust Funds* during the *Class Period*. The *Allocation Method* is in the *Plan of Allocation*.

1.5. “*Alternate Payee*” means a person other than a participant or *Beneficiary* in the *Plan* who is entitled to a benefit under the *Plan* as a result of a Qualified Domestic Relations Order.

1.6. “*Attorneys’ Fees and Expenses*” means the amount awarded by the *Court* as compensation for the services provided by *Class Counsel* and *Liaison Counsel*. The amount of attorneys’ fees for *Class Counsel* and *Liaison Counsel* shall not exceed an amount of 33 1/3% (or \$9,666,657) of the *Gross Settlement Amount*. *Class Counsel* will also seek reimbursement for all reasonable litigation and settlement administration expenses advanced and carried by *Class Counsel* and *Liaison Counsel* for the duration of the investigation and the *Action*, which also shall be recovered exclusively from the *Gross Settlement Amount*.

1.7. “*Beneficiary*” means a person who currently is or was entitled to receive a benefit under the *Plan* as a result of the death of a *Plan* participant who would otherwise be a *Class Member*, other than an *Alternate Payee*. A *Beneficiary* includes, but is not limited to, a surviving spouse, domestic partner, or child of a *Plan* participant who currently is entitled to a benefit.

1.8. “*CAFA*” means the Class Action Fairness Act of 2005, 28 U.S.C. §§ 1711-1715.

1.9. “*Calendar days*” when used in this Agreement, shall be given the meaning defined in Federal Rule of Civil Procedure 6 and such days shall be computed as defined by that Rule.

1.10. “*Class*” means the eight certified classes defined as follows:

- (1) All participants and beneficiaries in the SunTrust Banks, Inc. 401(k) Plan, excluding *Defendants*, who had a balance through their *Plan* accounts in the STI Classic Capital Appreciation Fund at any time from March 11, 2005 to December 31, 2012 and were injured by *Defendants*’ conduct.
- (2) All participants and beneficiaries in the SunTrust Banks, Inc. 401(k) Plan, excluding *Defendants*, who had a balance through their *Plan* accounts in the STI Classic Small Cap Growth Fund at any time from March 11, 2005 to December 31, 2012 and were injured by *Defendants*’ conduct.
- (3) All participants and beneficiaries in the SunTrust Banks, Inc. 401(k) Plan, excluding *Defendants*, who had a balance through their *Plan* accounts in the STI Classic Growth and Income Fund at any time from March 11, 2005 to December 31, 2012 and were injured by *Defendants*’ conduct.
- 4) All participants and beneficiaries in the SunTrust Banks, Inc. 401(k) Plan, excluding *Defendants*, who had a balance through their *Plan* accounts in the STI Classic Mid-Cap Equity Fund at any time from March 11, 2005 to December 31, 2012 and were injured by *Defendants*’ conduct.
- 5) All participants and beneficiaries in the SunTrust Banks, Inc. 401(k) Plan, excluding *Defendants*, who had a balance through their *Plan* accounts in the STI Classic Investment Grade Bond Fund at any time from March 11, 2005 to December 31, 2012 and were injured by *Defendants*’ conduct.
- 6) All participants and beneficiaries in the SunTrust Banks, Inc. 401(k) Plan, excluding *Defendants*, who had a balance through their *Plan* accounts in the STI Classic Short-Term Bond Fund at any time from March 11, 2005 to December 31, 2012 and were injured by *Defendants*’ conduct.
- 7) All participants and beneficiaries in the SunTrust Banks, Inc. 401(k) Plan, excluding *Defendants*, who had a balance through their *Plan* accounts in the STI Classic Prime Quality Money Market Fund at any time from March 11, 2005 to December 31, 2012 and were injured by *Defendants*’ conduct.
- 8) All participants and beneficiaries in the SunTrust Banks, Inc. 401(k) Plan, excluding *Defendants*, who had a balance through their *Plan* accounts in the STI Classic International Equity Index Fund at any time from March 11, 2005 to December 31, 2012 and were injured by *Defendants*’ conduct.

1.11. “*Class Counsel*” means J. Brian McTigue and James A. Moore of McTigue Law L.L.P. and Karen L. Handorf and Scott Lempert of Cohen Milstein Sellers & Toll PLLC.

1.12. “*Class Members*” means all individuals in the *Class* and *Alternate Payees*.

1.13. “*Class Member Distribution*” means the distribution from the *Net Settlement Amount* for each individual *Class Member* as determined by *Settlement Administrator* using the *Allocation Method*.

1.14. “*Class Notice*” shall have the meaning provided in §3.

1.15. “*Class Period*” means the period from March 11, 2005 to December 31, 2012.

1.16. “*Class Representatives*” means Barbara Fuller, Elaine Jefferson, Barbara Kennedy, Selethia Pruitt, and Mariah Williams.

1.17. “*Complaint*” means ECF #194, the Second Amended Consolidated Class Action Complaint filed in the *Action* on December 19, 2017.

1.18. “*Confidentiality Order*” means ECF #25.

1.19. “*Court*” means The United States District Court for the Northern District of Georgia.

1.20. “*Court of Appeals*” means the United States Court of Appeals for the Eleventh Circuit.

1.21. “*Current Participant*” means a *Class Member* who invested in one or more of the *SunTrust Funds* through the *Plan* during the *Class Period* and who had an *Active Account* in the *Plan* as of the *Effective Settlement Date*.

1.22. “*Defendants*” means SunTrust Banks, Inc., SunTrust Benefits Plan Committee, SunTrust Benefits Finance Committee, RidgeWorth Capital Management, Inc., and the following individuals (collectively, the “*Individual Defendants*”): Jorge Arrieta, Frances (Mimi) Breeden, Paul Burdiss, Mark Chancy, Alston D. Correll, Beau Cummins, David Dierker, Aleem Gillani, Ted Hoepner, Ken Houghton, Al Kolesar, Thomas Kuntz, Donna Lange, Joseph L. Lanier, Jr., Jerome Lienhard, Rebecca Lynn-Crockford, Gregory Miller, Thomas Panther, Larry L. Prince, William H. Rogers, Jr., Christopher Shults, John Spiegel, Mary Steele, and Tim Sullivan.

1.23. “*Defense Counsel*” means King & Spalding LLP.

1.24. “*De Minimis Amounts*” are *Class Member Distributions* that the *Settlement Administrator* determines are less than \$10 using the *Allocation Method*.

1.25. “*Dismissed Funds*” shall mean any or all of the following: the STI Classic Short-Term Bond Fund, STI Classic Investment Grade Bond Fund, STI Classic Small Cap Growth Fund, STI Classic Capital Appreciation Fund, and the STI Classic Prime Quality Money Market Fund that were offered as investment options to *Class Members* through the *Plan* during the *Class Period*.

1.26. “*Effective Date*” or “*Effective Settlement Date*” means the date on which all of the conditions to settlement set forth in §4 of this *Settlement Agreement* have been fully satisfied or waived and the *Settlement* shall have become *Final*.

1.27. “*ERISA*” means the Employee Retirement Income Security Act of 1974, 29 U.S.C. § 1001 *et seq.*, as amended, including all regulations promulgated thereunder.

1.28. “*Escrow Agent*” means the custodian of the *Qualified Settlement Fund*, which shall be selected by *Class Counsel*.

1.29. “*Fairness Hearing*” shall have the meaning provided in §3.

1.30. “*Final*” means with respect to any judicial ruling or order in the *Action*, that the period for any appeals, petitions, motions for reconsideration, rehearing or certiorari or any other proceedings for review (“*Review Proceeding*”) has expired without the initiation of a *Review Proceeding*, or, if a *Review Proceeding* has been timely initiated, that there has occurred a full and completed disposition of any such *Review Proceeding*, including the exhaustion of proceedings in any remand and/or subsequent appeal on remand.

1.31. “*Final Approval Motion*” shall have the meaning provided in §4.1.

1.32. “*Final Approval Order*” shall have the meaning provided in §4.2.

1.33. “*Former Participant*” means a *Class Member* who invested in one or more of the *SunTrust Funds* through the *Plan* during the *Class Period* and who did not have an *Active Account* in the *Plan* as of the *Effective Settlement Date*.

1.34. “*Former Participant Distribution Form*” is the form sent by the *Settlement Administrator* to *Former Participants* after the *Effective Date* that offers *Former Participants* the opportunity to elect how their individual *Class Member Distribution* will be distributed.

1.35. “*Former Participant Distribution Election Period*” means 100 calendar days from the distribution date of the *Former Participant Distribution Form*.

1.36. “*Gross Settlement Amount*” means the sum of twenty-nine million dollars (\$29,000,000), contributed to the *Qualified Settlement Fund* in accordance with §5. The *Gross Settlement Amount* shall be the full and sole monetary payment to the *Class*, *Plaintiffs*, *Class Counsel* and *Liaison Counsel* made on behalf of *Defendants* in connection with the *Settlement* effectuated through this *Settlement Agreement*. After the *Effective Date* no portion of the *Gross Settlement Amount* shall be returned to *Defendants*.

1.37. “*Incentive Award*” means an amount to be determined by the *Court*, but not to exceed \$15,000 for each *Class Representative*, which shall be paid from the *Gross Settlement Amount* directly to each *Class Representative*.

1.38. “*Independent Fiduciary*” is defined as the term is described in U.S. Department of Labor Prohibited Transaction Exemption 2003-39.

1.39. “*Judgment*” shall have the meaning provided in §4.3.

1.40. “*Liaison Counsel*” means Alan R. Perry of the law firm Page Perry.

1.41. “*Mediator*” means Robert A. Meyer, Esq. of JAMS. If Mr. Meyer is not available to serve as the Mediator, the Parties shall mutually agree upon an alternative mediator. If the Parties are unable to mutually agree upon a mediator, the Parties will ask the Court to select a mediator.

1.42. “*Net Settlement Amount*” means the *Gross Settlement Amount* plus return accrued on such, minus: (a) all *Attorneys’ Fees and Expenses* paid to *Class Counsel* and *Liaison Counsel*; (b) all *Incentive Awards* as authorized by the *Court*; (c) all *Administrative Expenses*; and (d) a contingency reserve not to exceed an amount to be mutually agreed upon by the *Settling Parties* that is set aside by the *Settlement Administrator* for: (1) *Administrative Expenses* incurred before the *Effective Settlement Date* but not yet paid, (2) *Administrative Expenses* estimated to be incurred after the *Effective Settlement Date* but before the end of the *Settlement Period*, and (3) an amount estimated for adjustments of data or calculation errors.

1.43. “*Party*” or “*Parties*” means the *Plaintiffs* and *Defendants*, either individually or collectively.

1.44. “*Plaintiffs*” and “*Named Plaintiffs*” mean Mary Lee, Natalie Brown, Barbara Fuller, Elaine Jefferson, Barbara Kennedy, Selethia Pruitt, and Mariah Williams.

1.45. “*Plan*” or “*401(k) Plan*” mean the SunTrust Banks, Inc. 401(k) Plan.

1.46. “*Plan Administrator*” shall mean the current Plan Administrator.

1.47. “*Plan of Allocation*” means the methodology for allocating and distributing the *Net Settlement Amount*, attached as Exhibit A.

1.48. “*Plan Data*” means reasonably accessible data in the possession, custody and control of Defendants that is reasonably necessary to implement the *Plan of Allocation*, including but not limited to data pertaining to *Class Members’* (including *Alternate Payees’*, *Former Participants’* and *Beneficiaries’*) participation in the *Plan*, their names, most current addresses, email address if reasonably available, Social Security numbers, and *Plan* investments in the *Dismissed* and *Surviving Funds*.

1.49. “*Plan Distribution Allocation File*” shall mean an electronic file containing *Class Member Distribution* amounts determined under the *Allocation Method* with related information, as described in the *Plan of Allocation*.

1.50. “*Preliminary Approval Motion*” shall have the meaning provided in §3.2.

1.51. “*Preliminary Approval Order*” shall have the meaning provided in §3.2.

1.52. “*Proposed Final Approval Order*” means a proposed order to be submitted to the *Court* by the *Parties* for the *Court* to sign to approve the *Settlement Agreement*, *Plan of Allocation*, make related findings, and enter final judgment in the *Action*, as described in §§4.1 & 4.2.

1.53. “*Qualified Settlement Fund*” or “*Settlement Fund*” means the settlement fund escrow account to be established by *Class Counsel* and maintained by the *Escrow Agent* in accordance

with §5 herein (within the meaning of Treas. Reg. § 1.468B-1) in which the *Gross Settlement Fund* is deposited.

1.54. “*Released Claims*” means any and all actual and potential claims, actions, demands, rights, obligations, liabilities, damages, attorneys’ fees, expenses, costs, and causes of action, whether arising under federal, state or local law, whether by statute, contract or equity, whether brought in an individual or representative capacity, whether known or unknown, suspected or unsuspected, foreseen or unforeseen:

- (a) That were asserted in the *Action* or that arise out of, relate to, or are based on any of the allegations, acts, omissions, facts, matters, transactions, or occurrences that were alleged, asserted, or set forth in the *Complaint* or in any complaint previously filed in the *Action*; or
- (b) That arise out of, relate in any way to, are based on, or have any connection with: (1) the selection, retention, use, monitoring, oversight, compensation, fees or performance of the *Plan*’s investment options, (2) any fees, costs or expenses charged to, paid, or reimbursed by the *Plan* or any *Class Member*, (3) disclosures or failures to disclose information regarding the *Plan*’s investment options, or (4) the investment options offered to *Plan* participants; or
- (c) That would be barred by *res judicata* or collateral estoppel had the claims asserted in the *Action* been fully litigated and resulted in a Final judgment; or
- (d) That relate to the direction to calculate, the calculation of, and/or the method or manner of allocation of the *Qualified Settlement Fund* to the *Plan* or any *Class Member* in accordance with the *Plan of Allocation*; or
- (e) That relate to approval by any *Independent Fiduciary* retained to review the *Settlement Agreement*, unless brought against the *Independent Fiduciary* alone.

Released Claims specifically exclude:

- (1) those claims not related to the *Released Claims*;
- (2) claims of individual denial of benefits under ERISA § 502(a)(1)(B), 29 U.S.C. § 1132(a)(1)(B) that do not fall within sections (a)-(e) above;
- (3) wages, labor or employment claims unrelated to the *Plan*, including by way of example only, claims arising under Title VII of the Civil Rights Act of 1964, the Americans with Disabilities Act, the Equal Pay Act, 42 U.S.C. § 1981, the Fair Labor Standards Act, the Family and Medical Leave Act, the National Labor Relations Act, the Sarbanes Oxley Act, the Dodd-Frank Wall Street Reform and Protection Act, state anti-discrimination and wage-payment laws, claims for wrongful termination under state common law and other state law claims of a similar nature to those set forth in this subpart (3);
- (4) claims arising exclusively from conduct after the close of the *Class Period*; and

(5) claims related to the rights or duties arising out of the *Settlement Agreement*, including but not limited to enforcement of the *Settlement Agreement*.

1.55. “*Released Parties*” means *Defendants* and their respective heirs, beneficiaries, executors, administrators, estates, successors, subsidiaries, affiliates, assigns, representatives, agents, and attorneys.

1.56. “*Settlement*” or “*Settlement Agreement*” means the agreement between *Plaintiffs* and *Defendants* embodied in this document.

1.57. “*Settlement Administrator*” means, an independent contractor, to be selected and retained by *Class Counsel*, subject to *Defendants*’ approval (which shall not be unreasonably withheld) and shall operate under the supervision of *Class Counsel*.

1.58. “*Settlement Period*” means the period lasting two years after the *Effective Settlement Date*.

1.59. “*Settlement Website*” means the internet website to be established by *Class Counsel* within five business days of entry of the *Preliminary Approval Order* and in accordance with §3.2.

1.60. “*Settling Parties*” means all *Parties*.

1.61. “*SunTrust Funds*” shall mean the *Surviving Funds* and *Dismissed Funds*.

1.62. “*Surviving Funds*” shall mean any or all of the following: STI Classic Growth and Income Fund, STI Classic Mid-Cap Equity Fund, and the STI Classic International Equity Index Fund that were offered as investment options to *Class Members* through the *Plan* during the *Class Period*.

2. RECITALS

2.1. On March 11, 2011, following an April 24, 2008 administrative claim filed by Mary Lee, Barbara Fuller filed a complaint (Case No. 1:11-cv-784) on behalf of herself and all the participants in the SunTrust Banks, Inc. 401(k) Plan. This case was subsequently consolidated with two other substantially similar matters: (1) *Stargel v. SunTrust Banks, Inc.*, Case No. 1:12-cv-3822-ODE (N.D. Ga.), and (2) *Brown v. SunTrust Banks, Inc.*, Case No. 1:14-cv-1090-RMC (D.D.C.). The operative complaint is the *Complaint* defined above, filed against *Defendants*. The *Complaint* asserts various *ERISA* claims based on *Defendants*’ management, operation and administration of the *Plan*.

2.2. On June 27, 2018, the *Court* certified eight separate classes which together constitute the “*Class*.” In the class certification order, the *Court* appointed the *Class Representatives*, *Class Counsel* and *Liaison Counsel*.

2.3. On October 3, 2019, the *Court* granted in part *Defendants*’ motion for summary judgment, eliminating *Plaintiffs*’ claims for breach of fiduciary duty as to five of the eight *SunTrust Funds* in the *Plan* (“*Dismissed SunTrust Funds*”), but sustaining for trial *Plaintiffs*’ claims for breach of fiduciary duty as to the remaining three *SunTrust Funds* (“*Surviving SunTrust Funds*”).

2.4. After entry of the *Court's* order partially granting summary judgment, the *Parties* scheduled a mediation through a private mediator to be held on January 7, 2020. The *Parties* reached agreement in principle to settle this *Action* during that mediation. The terms and conditions of the *Parties'* agreement are memorialized in this *Settlement Agreement*.

2.5. The *Class Representatives* and *Class Counsel* consider it desirable and in the *Plan's* and *Class Members'* best interests that the *Action* be settled upon the terms set forth below. The *Class Representatives* and *Class Counsel* believe that such terms are fair, reasonable, and adequate and that this settlement will result in benefits to the *Plan* and the *Class*.

2.6. *Defendants* deny all allegations of wrongdoing and deny all liability for the claims in this *Action*. *Defendants* maintain that the *Plan* has been managed, operated and administered at all relevant times in compliance with *ERISA* and applicable laws and regulations. This *Settlement Agreement*, and the prior negotiations between the *Parties*, shall in no event constitute, be construed as, or be deemed evidence of, an admission or concession of any wrongdoing, fault or liability of any kind by *Defendants*.

2.7. *Plaintiffs* assert that all the claims asserted in this *Action* are meritorious. This *Settlement Agreement*, and the prior negotiations between the *Parties*, shall in no event constitute, be construed as, or be deemed evidence of, an admission or concession of any lack of merit of any kind by *Plaintiffs* with respect to the claims asserted.

2.8. The *Parties* have concluded that it is desirable that the *Action* be finally settled upon the terms and conditions set forth in this *Settlement Agreement*.

2.9. Therefore, the *Parties*, in consideration of the promises, covenants, and agreements herein described, acknowledged by each of them to be satisfactory and adequate, and intending to be legally bound, do hereby mutually agree as follows.

3. REVIEW AND APPROVAL BY AN INDEPENDENT FIDUCIARY, PRELIMINARY SETTLEMENT APPROVAL, AND NOTICE TO THE CLASS

3.1. *Defendants* may retain an *Independent Fiduciary* in connection with the *Settlement*; however, the *Settlement* itself and its enforceability is not contingent nor conditioned upon approval by the *Independent Fiduciary*. The *Independent Fiduciary*, if *Defendants* elect to retain one, shall have the following responsibilities, including whether to approve or authorize the settlement of *Released Claims* on behalf of the *Plan*.

3.1.1 The *Independent Fiduciary* shall comply with all relevant conditions set forth in Prohibited Transaction Class Exemption 2003-39, "Release of Claims and Extensions of Credit in Connection with Litigation," issued December 31, 2003, by the United States Department of Labor, 68 Fed. Reg. 75,632, as amended ("PTE 2003-39"), in making its determination, for the purpose of *Defendants'* reliance on PTE 2003-39.

3.1.2 If *Defendants* retain an *Independent Fiduciary*, that *Independent Fiduciary* shall notify *Defendants* of its determination in writing, which shall be delivered no later than 45 calendar days prior to the *Fairness Hearing*. Within five business days of the

receipt of the *Independent Fiduciary*'s written determination, *Defendants* shall provide the determination to *Class Counsel*.

3.1.3 Any and all fees and expenses associated with the *Independent Fiduciary*'s determination and performance of its other obligations in connection with the *Settlement* will not be deducted from the *Gross Settlement Amount* and will be borne by *Defendants*.

3.1.4 *Defendants*, *Defense Counsel*, and *Class Counsel* shall respond to reasonable requests by the *Independent Fiduciary* for information so that the *Independent Fiduciary* can review and evaluate the *Settlement*.

3.1.5 Within 15 calendar days of receipt of the written determination from the *Independent Fiduciary*, *Defendants* shall (a) review the determination by the *Independent Fiduciary*; and (b) and notify *Class Counsel* in writing of its conclusions in that regard.

3.2. *Class Representatives*, through *Class Counsel*, shall file with the *Court* a *Preliminary Approval Motion* seeking preliminary approval of this *Settlement* and entry of the *Preliminary Approval Order* in substantially the form attached hereto as Exhibit B. The *Preliminary Approval Order* presented to the *Court* shall, among other things:

3.2.1 Approve the *Class Notice* for delivery to *Class Members* by the *Settlement Administrator* and notify them (1) of the *Fairness Hearing* and (2) that future orders regarding the *Settlement* and changes to the *Settlement Agreement*, to the *Class Notice*, to the date or timing of the *Fairness Hearing*, or to the *Plan of Allocation* will be provided to the *Class Members* through the *Settlement Website* without additional mailed notice;

3.2.2 Determine that under Rule 23(c)(2) of the Federal Rules of Civil Procedure, the *Class Notice* constitutes the best practicable notice under the circumstances, provides due and sufficient notice of the *Fairness Hearing* and the rights of all *Class Members*, and complies fully with the requirements of Fed. R. Civ. P. 23, the Constitution of the United States, and any other applicable law;

3.2.3 Cause the *Settlement Administrator* to send the *Class Notice* by mail to each *Class Member* identified by the *Settlement Administrator* based upon the information provided by the *Plan*'s recordkeeper and/or *Defendants*;

3.2.4 Provide that, pending a final determination that the *Settlement Agreement* should be approved, every *Class Member* is prohibited and enjoined from directly, through representatives, or in any other capacity, commencing any action or proceeding in any court or tribunal asserting any of the *Released Claims* against any *Released Party* or the *Plan*;

3.2.5 Set the *Fairness Hearing* for no sooner than 100 calendar days after the date the *Motion for Preliminary Approval* is granted, in order to determine whether (i) the *Court* should approve the *Settlement* as fair, reasonable, and adequate, (ii) the *Court* should enter the final order; and (iii) the *Court* should approve the application for *Attorneys' Fees and Expenses, Incentive Awards, Administrative Expenses* incurred to date, and a reserve for future *Administrative Expenses*.

3.2.6 Provide that any objections to any aspect of the *Settlement Agreement*, the *Plan of Allocation*, the award of *Attorneys' Fees and Expenses* to *Class Counsel* and *Liaison Counsel* and *Incentive Awards* to *Class Representatives* shall be heard, and any papers submitted in support of any objections to the *Settlement* shall be considered by the *Court* at the *Fairness Hearing* if they have been filed validly with the clerk of *Court* and copies served on *Class Counsel* and *Defense Counsel*. To be filed validly, the objection and any notice of intent to appear (by the objector or retained legal counsel) or other supporting documents must be filed at least 28 calendar days prior to the scheduled *Fairness Hearing*. Any person wishing to speak at the *Fairness Hearing* shall file and serve a notice of intent to appear within the time limitation set forth above;

3.2.7 Provide that *Class Counsel* may file a response to an objection by a *Class Member* no later than seven calendar days prior to the *Fairness Hearing*;

3.2.8 Provide that the *Fairness Hearing* may, without further direct notice to the *Class Members*, other than by notice to *Class Counsel*, be adjourned or continued by order of the *Court*; and

3.3. *Defense Counsel* shall use reasonable efforts to respond timely to written requests, including by email, from the *Settlement Administrator* for readily accessible data that are reasonably necessary to determine the feasibility of administering the *Plan of Allocation* or to implement the *Plan of Allocation*.

3.4. The *Settlement Administrator* shall be bound by the *Confidentiality Order* and any further non-disclosure or security protocol required by the *Parties*.

3.5. The *Settlement Administrator* shall use the data provided by *Defendants* and the *Plan's* recordkeeper solely for the purpose of meeting its obligations as *Settlement Administrator*, and for no other purpose.

3.6. The *Parties* shall have the right to approve a written protocol to be provided by the *Settlement Administrator* concerning how the *Settlement Administrator* will maintain and store information provided to it in order to ensure that reasonable and necessary precautions are taken to safeguard the privacy and security of such information.

3.7. *Class Counsel*, through the *Settlement Administrator*, shall set up and maintain, from no later than 60 calendar days prior to the *Fairness Hearing* through the final conclusion of settlement administration, a toll-free telephone number for *Class Members* to call with questions regarding the terms of the settlement, including but not limited to, the *Settlement Notice*, *Fairness Hearing*, *Former Participant Distribution Form* and *Plan of Allocation*.

3.8. No later than 60 calendar days prior to the *Fairness Hearing*, and in the manner set by the *Court* in the *Preliminary Approval Order*, and unless otherwise set forth below, the *Settlement Administrator* shall:

3.8.1 Cause to be provided to each *Class Member* identified by the *Settlement Administrator* a *Class Notice* in the form and manner to be approved by the *Court*, which shall be in substantially the form attached hereto as Exhibit C or a form subsequently

agreed to by the *Parties* and the *Court*. The *Class Notice* shall be sent to the last known address of each *Class Member* provided by the *Plan*'s recordkeeper (or its designee) through *Defense Counsel*, unless an updated address is obtained by the *Settlement Administrator* through its efforts to verify the last known addresses provided by the *Plan*'s recordkeeper (or its designee). The *Settlement Administrator* shall use best efforts to locate any *Class Member* whose *Settlement Notice* is returned. *Class Counsel* shall also post a copy of the *Settlement Notice* on the *Settlement Website*.

4. FINAL SETTLEMENT APPROVAL

4.1. No later than 45 calendar days prior to the *Fairness Hearing*, *Class Counsel* shall file with the *Court* the *Final Approval Motion* for approval of the terms of this *Settlement Agreement* and entry of the *Final Approval Order* substantially in the form of the *Proposed Final Approval Order* (Exhibit D).

4.2. The *Final Approval Order* as proposed shall provide for the following, among other things, as is necessary to carry out the *Settlement* consistent with applicable law and governing *Plan* documents:

4.2.1 Approval of the settlement of the *Released Claims* covered by this *Settlement Agreement* adjudging the terms of the *Settlement Agreement* to be fair, reasonable, and adequate to the *Plan* and the *Class Members* and directing the *Settling Parties* to take the necessary steps to effectuate the terms of the *Settlement Agreement*;

4.2.2 A determination under Rule 23(c)(2) of the Federal Rules of Civil Procedure that the *Class Notice* constitutes the best notice practicable under the circumstances and that due and sufficient notice of the *Fairness Hearing* and the rights of all *Class Members* has been provided;

4.2.3 Dismissal with prejudice of the *Action* and all *Released Claims* asserted therein whether asserted by *Class Representatives* on their own behalf or on the behalf of the *Class Members*, or derivatively to secure relief for the *Plan*, without costs to any of the *Parties* other than as provided for in this *Settlement Agreement*;

4.2.4 That the *Plan* and each *Class Member* (and their respective heirs, beneficiaries, executors, administrators, estates, past and present partners, officers, directors, agents, attorneys, predecessors, successors, and assigns) shall be (i) conclusively deemed to have, and by operation of the *Final Approval Order* shall have, fully, finally, and forever settled, released, relinquished, waived, and discharged the *Released Parties* and the *Plan* from all *Released Claims*, and (ii) barred and enjoined from suing the *Released Parties* or the *Plan* in any action or proceeding alleging any of the *Released Claims*, even if any *Class Member* may thereafter discover facts in addition to or different from those which the *Class Members* or *Class Counsel* now know or believe to be true with respect to the *Action* and the *Released Claims*, whether or not such *Class Members* have executed and delivered a *Former Participant Distribution Form*, whether or not such *Class Members* have filed an objection to the *Settlement* or to any application by *Class*

Counsel for an award of *Attorneys' Fees and Expenses*, and whether or not the objections or claims for distribution of such *Class Members* have been approved or allowed;

4.2.5 That all applicable *CAFA* requirements have been satisfied;

4.2.6 That the *Settlement Administrator* shall have final authority to determine the share of the *Net Settlement Amount* to be allocated to each *Class Member* in accordance with the *Plan of Allocation*;

4.2.7 That, with respect to payments or distributions to *Former Participants*, all questions not resolved by the *Settlement Agreement* and *Plan of Allocation* shall be resolved by the *Settlement Administrator* in its sole and exclusive discretion, including whether a *Former Participant Distribution Form* should be accepted in the first instance;

4.2.8 That the payments made from the *Qualified Settlement Fund* to effect the distributions to *Class Members* who are eligible for a *Class Member Total Distribution* or to effect the *Plan of Allocation* constitute restorative payments in accordance with Revenue Ruling 2002-45; and

4.2.9 Within 90 calendar days after the deadline for *Former Participants* to cash any *Class Member Distribution*, the *Settlement Administrator* shall prepare and provide to *Class Counsel* and *Defense Counsel* a data file listing each *Class Member* who received a *Class Member Distribution* from the *Qualified Settlement Fund*, their *Current Participant* or *Former Participant* status, their Social Security number, their address, their email address if known, the amount and date of their *Class Member Distribution*, and any amount of tax withholding (if applicable).

4.3. The *Final Approval Order* and final *Judgment* entered by the *Court* approving the *Settlement* shall provide that upon its entry all *Parties*, the *Class*, and the *Plan* shall be bound by the *Settlement Agreement* and by the *Final Approval Order*.

5. ESTABLISHMENT OF QUALIFIED SETTLEMENT FUND

5.1. No later than five business days after entry of the *Preliminary Approval Order*, *Class Counsel* shall establish an escrow account, trustee by the *Escrow Agent*. The escrow account shall be the *Qualified Settlement Fund* within the meaning of Treas. Reg. § 1.468B-1. In addition, the *Escrow Agent* timely shall make such elections as necessary or advisable to carry out the provisions of this paragraph, including the "relation-back election" (as defined in Treas. Reg. § 1.468B-1) back to the earliest permitted date. Such elections shall be made in compliance with the procedures and requirements contained in such regulations. It shall be the responsibility of the *Escrow Agent* to prepare and deliver, in a timely and proper manner, the necessary documentation for signature by all necessary parties, and thereafter to cause the appropriate filing to occur.

5.2. For the purpose of § 468B of the Internal Revenue Code of 1986, as amended, and the regulations promulgated thereunder, the "administrator" shall be the *Escrow Agent*. The *Escrow Agent*, or the *Settlement Administrator* on its behalf, shall timely and properly cause to be filed all information and other tax returns ("Tax Filings") necessary or advisable with respect to the *Gross Settlement Amount* (including without limitation applying for a Taxpayer Identification

Number for the *Qualified Settlement Fund* and filing the *Tax Filings* described in Treas. Reg. § 1.468B-2(k)). Such *Tax Filings* as well as the election described in §5.1 shall be consistent with this §5 and, in all events, shall reflect that all taxes (as defined in §5.3 below, including any estimated taxes, interest, or penalties) on the income earned by the *Gross Settlement Amount* and shall be deducted and paid from the *Gross Settlement Amount* as provided in §5.3 hereof.

5.3. Taxes and tax expenses are *Administrative Expenses* to be deducted and paid from the *Gross Settlement Amount*, to the extent they are: (1) any taxes (including any estimated taxes, interest, or penalties) arising with respect to the income earned by the *Gross Settlement Amount*, including any taxes or tax detriments that may be imposed upon *Defendants* with respect to any income earned by the *Gross Settlement Amount* for any period during which the *Gross Settlement Amount* does not qualify as a “qualified settlement fund” for federal or state income tax purposes, and (2) any tax expenses and costs incurred in connection with the operation and implementation of this §5 (including, without limitation, expenses of tax attorneys and/or accountants and mailing and distribution costs and expenses relating to filing (or failing to file) the returns described in this §5. Such taxes and tax expenses shall be paid timely by the *Escrow Agent* from the *Gross Settlement Amount* without prior order from the *Court*. The *Escrow Agent* shall be obligated (notwithstanding anything herein to the contrary) to withhold from any distribution destined to any *Class Member* any funds necessary to pay such amounts, including the establishment of adequate reserves for any taxes and tax expenses (as well as any amounts that may be required to be withheld under Treas. Reg. § 1.468B-2(1)(2)); neither the *Released Parties*, *Defense Counsel*, nor *Class Counsel* are responsible nor shall they have any liability therefor. The *Parties* agree to cooperate with the *Escrow Agent*, each other, and their tax attorneys and accountants to the extent reasonably necessary to carry out the provisions of this §5.

5.4. Within fifteen calendar days after the later of (a) the entry of the *Preliminary Approval Order*, or (b) establishment of the *Qualified Settlement Fund* described in §5.1; and the *Escrow Agent* shall have furnished to *Defendants* in writing the *Qualified Settlement Fund* account name, IRS W-9 Form, and all necessary wiring instructions, *Defendants* shall deposit twenty-nine million dollars (\$29,000,000) into the *Qualified Settlement Fund*.

5.5. The *Escrow Agent* shall, at the written direction of *Class Counsel*, invest the *Qualified Settlement Fund* in short-term United States Agency or Treasury Securities or other instruments backed by the Full Faith and Credit of the United States Government or an Agency thereof, or fully insured by the United States Government or an Agency thereof, and shall reinvest the proceeds of these investments as they mature in similar instruments at their then-current market rates.

5.6. The *Escrow Agent* shall not disburse the *Qualified Settlement Fund* or any portion except as provided in this *Settlement Agreement*, in an order of the *Court*, or in a subsequent written stipulation between the *Parties*. Subject to the orders of the *Court*, the *Escrow Agent* is authorized to execute such transactions as are consistent with the terms of this *Settlement Agreement*.

5.7. The *Gross Settlement Amount* will be distributed from the *Qualified Settlement Fund* as follows: (a) first, all *Attorneys' Fees and Expenses* shall be paid to *Class Counsel* and *Liaison Counsel* within the time frame set forth below in §7.3; (b) second, all *Administrative Expenses* not

paid previously shall be paid within three business days after the *Effective Settlement Date*; (c) third, any *Incentive Awards* ordered by the Court shall be paid within three business days after the *Effective Settlement Date*; (d) fourth, a contingency reserve not to exceed an amount to be mutually agreed upon by the *Parties* shall be set aside by the *Settlement Administrator* for: (1) *Administrative Expenses* incurred before the *Effective Settlement Date* but not yet paid, (2) *Administrative Expenses* estimated to be incurred after the *Effective Settlement Date* but before the end of the *Settlement Period*, and (3) an amount estimated for adjustments of data or calculation errors; and (e) fifth, the *Net Settlement Amount* will be distributed in accordance with the *Plan of Allocation*. Until the final distribution of the *Net Settlement Amount* in accordance with the *Plan of Allocation*, the *Escrow Agent* will maintain the *Qualified Settlement Fund*.

5.8. The *Escrow Agent*, or the *Settlement Administrator* on its behalf, shall be responsible for making provision for the payment from the *Qualified Settlement Fund* of all taxes and tax expenses, if any, owed with respect to the *Qualified Settlement Fund* and for all tax reporting, remittance, and/or withholding obligations, if any, for amounts distributed from it. The *Released Parties*, *Defense Counsel*, *Class Counsel* and *Liaison Counsel* have no responsibility or liability for any taxes or tax expenses owed by, or any tax reporting or withholding obligations, if any, of the *Qualified Settlement Fund*.

6. PLAN OF ALLOCATION

6.1. Class Counsel shall submit and propose to the Court, in connection with the motion for entry of the *Final Approval Order*, a *Plan of Allocation* substantially in the form attached as Exhibit A to this *Settlement Agreement*.

6.1.1 The *Released Parties* and *Defense Counsel* shall not have any responsibility for or liability whatsoever with respect to the *Plan of Allocation*, including, but not limited to, the determination of the *Plan of Allocation* or the reasonableness of the *Plan of Allocation*.

6.1.2 The *Settling Parties* acknowledge that any payments to *Class Members* in accordance with the *Settlement Agreement* or the *Plan of Allocation* will be governed by applicable tax laws. The *Released Parties*, *Defense Counsel*, *Class Counsel* and *Liaison Counsel* will provide no tax advice to the *Class Members* and make no representation regarding the tax consequences of any of the settlement payments described in the *Settlement Agreement* or the *Plan of Allocation*. To the extent any portion of any settlement payment is subject to income or other tax, the recipient of the payment shall be responsible for payment of such tax. Deductions will be made, and reporting will be performed by the *Settlement Administrator*, as required by law in respect of all payments made under the *Settlement Agreement* or the *Plan of Allocation*.

6.1.3 Each *Class Member* who receives a payment under the *Settlement Agreement* or the *Plan of Allocation* shall be fully and ultimately responsible for payment of any and all federal, state, or local taxes resulting from or attributable to the payment received by such person. Each *Class Member* shall hold the *Released Parties*, *Defense Counsel*, *Liaison Counsel*, *Class Counsel*, and *Settlement Administrator* harmless from any tax liability, including penalties and interest, related in any way to payments under the *Settlement Agreement* or the *Plan of Allocation*, and shall hold the *Released Parties*, *Defense Counsel*, *Liaison Counsel*, *Class Counsel*, and *Settlement Administrator* harmless from the costs (including, for example,

attorneys' fees and disbursements) of any proceedings (including, for example, investigation and suit), related to such tax liability.

6.2. Defendants have provided *Plan Data* to *Class Counsel* to be used in implementing the *Plan of Allocation* and shall endeavor to provide additional *Plan Data* that may be reasonably necessary for *Class Counsel* to provide *Class Notice* and for the *Settlement Administrator* to carry out the *Plan of Allocation* in a timely manner.

7. ATTORNEYS' FEES AND EXPENSES AND INCENTIVE AWARDS

7.1. *Class Counsel* intend to seek an award of their attorneys' fees and those of *Liaison Counsel* in an amount not to exceed \$9,666,657, plus all reasonable litigation costs and expenses advanced and carried by *Class Counsel* and *Liaison Counsel* for the duration of this *Action*, both of which shall be recovered from the *Gross Settlement Amount* ("Attorneys' Fees and Expenses"). *Class Counsel* also intend to seek *Incentive Awards*, in an amount not to exceed \$15,000 per *Class Representative* which shall be recovered from the *Gross Settlement Amount*.

7.2. *Class Counsel* will file a motion for an award of *Attorneys' Fees and Expenses* and to seek *Incentive Awards* at least 45 days before the date of the *Fairness Hearing*, which may be supplemented thereafter.

7.3. The amount the *Court* awards to *Class Counsel* and *Liaison Counsel* for *Attorneys' Fees and Expenses* shall be transferred to *Class Counsel* within three business days of the date of such award, notwithstanding the existence of any timely-filed objections thereto, potential for appeal therefrom, or any collateral attack on the *Settlement* or any part thereof. However, *Class Counsel* and *Liaison Counsel* are obligated to refund or repay to the *Qualified Settlement Fund* any amounts owed to the *Class* if and when, as a result of any appeal and/or further proceedings on remand, or successful collateral attack, the fee or expense award is reduced or reversed. *Class Counsel* and *Liaison Counsel* are obligated to make any necessary repayment of all or a portion of the fee or expense award within 14 calendar days of when the fee or expense award is reduced or reversed.

8. RELEASES AND COVENANT NOT TO SUE

8.1. As of the *Effective Settlement Date*, the *Plan*, the *Class Representatives*, the *Named Plaintiffs*, *Sandra Stargel*, and the *Class Members* (and their respective heirs, beneficiaries, executors, administrators, estates, successors, assigns, agents, and attorneys), on their own behalves and on behalf of the *Plan*, shall be deemed to have fully, finally, and forever settled, released, relinquished, waived, and discharged all *Released Parties* and the *Plan* from the *Released Claims*, regardless of whether or not (1) *Class Members* have executed and delivered a *Former Participant Distribution Form*, (2) *Class Members* have filed an objection to the *Settlement* or to *Class Counsel*'s application for an award of *Attorneys' Fees and Expenses*, or (3) the objections or claims for distribution of such *Class Members* have been approved or allowed.

8.2. As of the *Effective Settlement Date*, the *Class Representatives*, the *Named Plaintiffs*, *Sandra Stargel*, the *Class Members* and the *Plan* expressly agree that they, acting individually or together or in combination with others, shall not sue or seek to institute, maintain, prosecute, argue, or assert in any action or proceeding (including but not limited to an IRS determination letter proceeding, a U.S. Department of Labor proceeding, an arbitration or a proceeding before any state insurance or

other department or commission), any cause of action, demand, or claim against any of the *Defendants*, and their respective subsidiaries, affiliates, heirs, beneficiaries, executors, administrators, estates, successors, assigns, representatives, agents, and attorneys, or any other entity or individual, on the basis of, connected with, or arising out of any of the *Released Claims*. Nothing herein shall preclude any action to enforce the terms of this *Settlement Agreement* in accordance with the procedures set forth in this *Settlement Agreement*.

8.3. As of the *Effective Settlement Date*, *Defendants* (and their respective heirs, beneficiaries, executors, administrators, estates, successors, assigns, representatives, agents, and attorneys), shall be deemed to have fully, finally, and forever settled, released, relinquished, waived, and discharged the *Named Plaintiffs* and Sandra Stargel, and their counsel from any and all claims, actions, causes of action, controversies, demands, disputes, duties, debts, damages, obligations, contracts, agreements, promises, issues, judgments, liabilities, liens, losses, sums of money, matters, suits, proceedings, and rights of every nature and description, whether known or unknown, suspected or unsuspected, concealed or unconcealed, foreseen or unforeseen, fixed or contingent, matured or unmatured, accrued or unaccrued, liquidated or unliquidated, whether based on federal, state, local or foreign statutory law, rule, regulation, common law or equity, that, from the beginning of time, the *Defendants* ever had, now have or hereafter can, shall or may have that (i) are related to the *Action* or (ii) the prosecution or settlement of the *Action*. Notwithstanding anything to the contrary in this *Agreement*, however, nothing herein will release the *Class Representatives* and the *Class* from their obligations under this *Settlement Agreement*.

9. REPRESENTATIONS AND WARRANTIES

9.1. The *Parties*' Representations and Warranties:

9.1.1 The *Parties* are voluntarily entering into this *Settlement Agreement* as a result of arm's length negotiations among their counsel, and that in executing this *Settlement Agreement* they are relying solely upon their own judgment, belief, and knowledge, and upon the advice and recommendations of their own independently selected counsel, concerning the nature, extent, and duration of their rights and claims hereunder and regarding all matters that relate in any way to the subject matter hereof;

9.1.2 The *Parties* assume the risk of mistake as to facts or law;

9.1.3 The *Parties* recognize that additional evidence may have come to light, but that they nevertheless desire to avoid the expense and uncertainty of litigation by entering into the *Settlement*;

9.1.4 The *Parties* have carefully read the contents of this *Settlement Agreement*, and this *Settlement Agreement* is signed freely by each individual executing this *Settlement Agreement* on behalf of each of the *Parties*; and

9.1.5 The *Parties* have made such investigation of the facts pertaining to the *Settlement* and all matters pertaining thereto, as they deem necessary.

9.2. Each individual executing this *Settlement Agreement* on behalf of any other person does hereby personally represent and warrant to the other Parties that he or she has the authority to execute this *Settlement Agreement* on behalf of, and fully bind, each principal which such individual represents or purports to represent.

10. TERMINATION, CONDITIONS OF SETTLEMENT, AND EFFECT OF DISAPPROVAL, CANCELLATION, OR TERMINATION

10.1. The *Parties* are obligated to attempt, in good faith, to cure any disagreements or issues with respect to this *Settlement Agreement* in the event of any events listed in ¶10.2 below, including but not limited to *Court* ordered modifications to the *Settlement*. The *Mediator* in the *Action* will act as arbiter between the *Parties* for any disagreements in the event any of the events listed in ¶10.2 occur.

10.2. This *Settlement Agreement* shall automatically terminate, and thereupon become null and void, in the following circumstances:

10.2.1 The *Preliminary Approval Order* or the *Final Approval Order* are not entered by the *Court* substantially in the form submitted by the *Parties* or in a form which is otherwise agreed to by the *Parties* in writing;

10.2.2 The *Settlement Agreement* is disapproved by the *Court* or fails to become effective for any reason; or

10.2.3 The *Preliminary Approval Order* or *Final Approval Order* is finally reversed on appeal, or is modified on appeal, and the *Parties* do not mutually agree to any such modifications in writing.

10.3. If the *Settlement Agreement* is terminated and rendered null and void for any reason, the *Action* shall for all purposes with respect to the *Parties* revert to its status as of January 7, 2020. All funds deposited in the *Qualified Settlement Fund*, and any return thereon, shall be returned to *Defendants* within 30 calendar days after the *Settlement Agreement* is finally terminated or deemed null and void, except as provided for in §10.5.

10.4. It shall not be deemed a failure to approve the *Settlement Agreement* if the *Court* denies, in whole or in part, *Class Counsel*'s application for *Attorneys' Fees and Expenses* and/or *Incentive Awards* and/or modifies any of the proposed orders relating to *Attorneys' Fees and Expenses* and/or *Incentive Awards* accordingly.

10.5. In the event that the *Settlement Agreement* is terminated, *Administrative Expenses* incurred prior to the termination shall be paid first from positive return thereon, if any, on the *Qualified Settlement Fund*. *Administrative Expenses* in excess of any positive return on the *Qualified Settlement Fund* shall be paid by *Defendants*.

11. GENERAL PROVISIONS

11.1. Neither the *Parties*, *Class Counsel*, *Liaison Counsel*, nor *Defense Counsel* shall have any responsibility for or liability whatsoever with respect to: (i) any act, omission, or determination of the

Settlement Administrator, or any of its respective designees or agents, in connection with the administration of the *Gross Settlement Amount* or otherwise; (ii) the determination of the *Independent Fiduciary*; (iii) the management, investment, or distribution of the *Qualified Settlement Fund*; (iv) the *Plan of Allocation* as approved by the *Court*; (v) the determination, administration, calculation, or payment of any claims asserted against the *Qualified Settlement Fund*; (vi) any losses suffered by, or fluctuations in the value of, the *Qualified Settlement Fund*; or (vii) the payment or withholding of any taxes, expenses, and/or costs incurred in connection with the taxation of the *Qualified Settlement Fund* or tax reporting, or the filing of any returns. Further, neither the *Defendants* nor *Defense Counsel* shall have any responsibility for, or liability whatsoever with respect to, any act, omission, or determination of *Class Counsel* in connection with the administration of the *Gross Settlement Amount* or otherwise.

11.2. The allocation of the *Net Settlement Proceeds* among the *Class Members* ultimately ruled upon by the *Court* shall not affect the validity or finality of the *Settlement*. *Class Representatives* may not terminate the *Settlement* based on this *Court's* or any court's ruling with respect to the *Plan of Allocation*.

11.3. The *Court* shall retain jurisdiction over all *Parties*, the *Action*, and this *Settlement Agreement* to resolve any dispute that may arise regarding this *Settlement Agreement* or the orders and notice referenced in §§3 & 4 above, including any dispute regarding validity, performance, interpretation, administration, enforcement, enforceability, or termination of the *Settlement Agreement* and no *Party* shall oppose the reopening and reinstatement of the *Action* on the *Court's* active docket for the purposes of effecting this §11.3. Any motion to enforce this *Settlement Agreement* may be filed in the U.S. District Court for the Northern District of Georgia, or asserted by way of an affirmative defense or counterclaim in response to any action asserting a violation of the *Settlement Agreement*.

11.4. This *Settlement Agreement* shall be governed by the laws of the United States, including federal common law, except to the extent that, as a matter of federal law, state law controls, in which case Georgia law will apply without regard to conflict of law principles.

11.5. In the event that the *Defendants* breach this *Settlement Agreement*, *Plaintiffs* will continue to have any and all remedies for such breach. In the event that *Plaintiffs* breach this *Settlement Agreement*, *Defendants* will continue to have any and all remedies for such breach.

11.6. The *Named Plaintiffs*, *Class Representatives*, *Class Counsel* and *Liaison Counsel* represent and warrant that they have not assigned, transferred or otherwise disposed of the *Released Claims*.

11.7. The *Named Plaintiffs*, *Class Representatives*, *Class Counsel* and *Liaison Counsel* shall make no statements to the press or other public statements describing this *Settlement* that disparage the *Defendants* or that accuse the *Defendants* of wrongdoing that relates to this *Action* or the *Released Claims*, except they may say the *Released Claims* had merit. The *Defendants* and *Defense Counsel* shall make no statements to the press or other public statements describing this *Settlement* that disparage the *Named Plaintiffs* or *Class Representatives* or that accuse the *Named Plaintiffs* or *Class Representatives* of wrongdoing that relates to this *Action* or the *Released Claims*, except they may say the *Released Claims* lacked merit.

11.8. Each *Party* to this *Settlement Agreement* hereby acknowledges that he, she or it has consulted with and obtained the advice of counsel prior to executing this *Settlement Agreement* and that this *Settlement Agreement* has been explained to the *Party* by his, her or its counsel.

11.9. The provisions of this *Settlement Agreement* are not severable.

11.10. Each of the *Parties* agrees, without further consideration, and as part of finalizing the *Settlement* hereunder, that it will in good faith execute and deliver such other documents and take such other actions as may be necessary to consummate and effectuate the subject matter of this *Settlement Agreement*.

11.11. All of the covenants, representations, and warranties, express or implied, oral or written, concerning the subject matter of this *Settlement Agreement* are contained in this *Settlement Agreement*. No *Party* is relying on any oral representations or oral agreements. All such covenants, representations, and warranties set forth in this *Settlement Agreement* shall be deemed continuing and shall survive the *Effective Settlement Date*.

11.12. The provisions of this *Settlement Agreement* may be waived only by an instrument in writing executed by the waiving *Party*. The waiver by any *Party* of any breach of this *Settlement Agreement* shall not be deemed to be or construed as a waiver of any other breach of this *Settlement Agreement*, whether prior, subsequent, or contemporaneous with this *Settlement Agreement*.

11.13. None of the *Parties* hereto shall be considered to be the drafter of this *Settlement Agreement* or any provision hereof for the purpose of any statute, case law, or rule of interpretation or construction that would or might cause any provision to be construed against a drafter.

11.14. The following principles of interpretation apply to this *Settlement Agreement*:

11.14.1 The headings of this *Settlement Agreement* are for reference purposes only and do not affect in any way the meaning or interpretation of this *Settlement Agreement*.

11.14.2 Definitions apply to the singular and plural forms of each term defined, and to the masculine, feminine, and neuter genders of each term defined.

11.14.3 Whenever the words “include,” “includes,” or “including” are used in this *Settlement Agreement*, they shall not be limiting but rather shall be deemed to be followed by the words “without limitation.”

11.15. This *Settlement Agreement* may be executed by exchange of faxed or emailed executed signature pages, and any signature transmitted by facsimile for the purpose of executing this *Settlement Agreement* shall be deemed an original signature for purposes of this *Settlement Agreement*. This *Settlement Agreement* may be executed in two or more counterparts, each of which shall be deemed to be an original, but all of which, taken together, shall constitute one and the same instrument.

11.16. This *Settlement Agreement* binds and inures to the benefit of the parties hereto, their assigns, heirs, administrators, executors and successors-in-interest.

11.17. Any notice, demand, or other communication between or to the *Parties* under this *Settlement Agreement* (other than notices to members of the *Class*) shall be in writing and shall be deemed duly given if it is addressed to each of the intended recipients as set forth below and personally delivered, sent by registered or certified mail (postage prepaid), sent by confirmed facsimile, or delivered by reputable express overnight courier. Any *Party* may change the address at which it is to receive notice by written notice delivered to the other *Parties* in the manner described in this section.

A. IF TO NAMED PLAINTIFFS:

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B. IF TO DEFENDANTS:

David Tetrick
KING & SPALDING LLP
1180 Peachtree Street, NE
Atlanta, GA 30309
Fax: (404) 572-5139

11.18. The allocation of the *Net Settlement Amount* to *Class Members* is a matter separate and apart from the proposed *Settlement* between the *Parties*. Any decision by the *Court* concerning the *Plan of Allocation* shall not affect the validity or finality of the proposed *Settlement*. It is not a condition of the *Settlement* that any particular plan of allocation be approved by the *Court*. *Named Plaintiffs* and *Class Counsel* may not cancel or terminate the *Settlement* based on the *Court*'s or any appellate court's ruling with respect to the *Plan of Allocation* or any plan of allocation in this *Action*. There shall be no distribution of any of the *Qualified Settlement Fund* to any *Class Member* until a plan of allocation is approved and, if there is an appeal involving such order, such order of approval is affirmed on appeal and/or is no longer subject to review by appeal or *certiorari*, and the time for any petition for rehearing, appeal, or review, by *certiorari* or otherwise, has expired.

IN WITNESS WHEREOF, the Parties have executed this Settlement Agreement on the dates set forth below.

FOR NAMED PLAINTIFFS AND THE CLASS

Dated this 11 day of March, 2020.

By: 

J. Brian McTigue
James A. Moore
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4530 Wisconsin Ave., NW, Suite 300
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Fax: (202) 364-9960



Karen L. Handorf
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Class Counsel

FOR ALL DEFENDANTS

Dated this 11th day of March, 2020.

By: 
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Attorneys for Defendants

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA**

**In re SunTrust Banks, Inc. 401(k)
Plan Affiliated Funds ERISA
Litigation**

**CIVIL ACTION FILE NO.
1:11-CV-784-ODE**

PLAN OF ALLOCATION

The *Parties* reached an agreement to settle the lawsuit for a cash payment by *Defendants*¹ in the amount of \$29 million (the *Settlement Fund*). The *Settlement Fund* shall remain in an escrow account within the meaning of Treas. Reg. § 1.468B-1 (the *Qualified Settlement Fund*) to be established by *Class Counsel* no later than five business days after entry of the *Preliminary Approval Order* and trustee by the *Escrow Agent*. This *Plan of Allocation* describes how the *Net Settlement Amount*, that is, the *Settlement Fund* plus any interest earned thereon, less (1) any attorneys' fees, expenses and costs (including any *Service Awards* to *Class Representatives*), (2) the expense of *Class Notice*, and (3) other *Administrative Expenses* (including taxes and tax expenses), are allocated to *Class Members*.

¹ The capitalized italicized terms in this *Plan of Allocation* have the same meaning as they appear in the [Proposed] *Settlement Agreement*, filed concurrently.

After the Court enters the *Order and Final Judgment* and after the *Effective Date*, the *Settlement Administrator* shall distribute the *Net Settlement Amount* to *Class Members* from the *Qualified Settlement Fund* as promptly as possible pursuant to this *Plan of Allocation*. The *Settlement Administrator* will instruct the *Defendants* to direct the *Plan*'s recordkeeper to credit the individual *Plan* accounts of each *Current Participant* in accordance with the *Plan of Allocation*. The *Settlement Administrator* will effect distribution to *Class Members* who are *Former Participants* pursuant to the instructions indicated in the *Former Participant Distribution Form* (Exhibit A-1 hereto), or if no acceptable, completed form is received by the deadline, in the form of a check subject to applicable tax withholdings.

1. Assumptions

The *Plan of Allocation* is based on quarterly balances during the *Class Period* in the eight *SunTrust Funds*, all of which were offered by the SunTrust Banks, Inc. 401(k) Plan (“*Plan*”) during the *Class Period*. There are 29 calendar quarters in the *Class Period*, which runs from March 11, 2005 through December 31, 2012.

For purposes of the *Plan of Allocation*, the first month of the *Class Period* is treated as a full quarter because *Class Member* balances are available for March 31, 2005 and treating the data as of March 31, 2005 as representing a full quarter in

the *Class Period* simplifies and streamlines administration and implementation of the *Plan of Allocation*. The last quarter of the *Class Period* is the fourth quarter of 2012.

The *Net Settlement Amount* is allocated in proportion to each *Class Member*'s investments during the *Class Period* as follows: *Class Members* investing in the *Surviving Funds* are allocated a total of 90 percent of the *Net Settlement Amount*, which are allocated to each such *Class Member* on a *pro rata* basis; and *Class Members* investing in the *Dismissed Funds* are allocated a total of 10 percent of the *Net Settlement Amount*, which are allocated to each such *Class Member* on a *pro rata* basis. However, if a *Class Member*'s calculated allocation is less than \$10, it will be considered a *De Minimis Amount* that will not be distributed to that *Class Member* pursuant to the allocation method described below ("Allocation Method").

Each *Class Member* shall receive his or her *Class Member Distribution* as determined by the *Settlement Administrator* under the *Allocation Method*. The *Settlement Administrator* will prepare *Allocation Method* calculations within 10 calendar days after the *Effective Date*, unless *Class Counsel* directs the *Settlement Administrator* in writing to use a later date, and provide the calculations to *Class Counsel*, who will immediately provide the *Allocation Method* calculations to *Defense Counsel*. Within 20 calendar days after sending the calculations to

Defense Counsel, the *Settlement Administrator* will create the *Plan Distribution Allocation File* and provide it to *Class Counsel*, who will immediately provide the *Plan Distribution Allocation File* to *Defense Counsel*.

To be eligible for a distribution from the *Net Settlement Amount*, a *Class Member* must be a *Current Participant*, *Beneficiary*, a *Former Participant*, or *Alternate Payee* of such a person. *Current Participants* shall receive their settlement payments as contributions to their Plan account(s), except as provided below. *Former Participants* shall receive their settlement payments as provided below.

A *Beneficiary* will receive their payment as described in this *Plan of Allocation* in an amount corresponding to their entitlement as a *Beneficiary* of a *Current Participant* or of a *Former Participant* with respect to which the payment is made. An *Alternate Payee* will receive a payment if and to the extent they are entitled to receive a portion of a *Current Participant*'s or *Former Participant*'s allocation under this *Plan of Allocation* as if they are a *Former Participant*. The *Settlement Administrator* shall have sole and final discretion and responsibility to determine the amounts of payment to *Beneficiaries* and *Alternate Payees* in accordance with the *Plan of Allocation* and as ordered by the Court.

No amount shall be distributed to a *Class Member* that is less than \$10, the *de minimis* amount. All such *de minimis* amounts shall be retained in the *Qualified*

Settlement Fund for distribution with the residual amount, as described below in Section 3.

2. Allocation Method

Each *Class Member* shall receive his or her *Class Member Distribution* as determined under the *Allocation Method* calculations described in this Plan of Allocation. The *Settlement Administrator* will complete these calculations within 30 calendar days after the *Effective Date*, unless Class Counsel in writing directs another date, and will create the final *Plan Distribution Allocation File* as described in section 3.a below.

Step One – Divide Net Settlement Amount between Surviving Funds and Dismissed Funds as follows:

- (a) *Surviving Funds Net Settlement Amount* is the *Net Settlement Amount* multiplied by 0.9.
- (b) *Dismissed Funds Net Settlement Amount* is the *Net Settlement Amount* multiplied by 0.1.

Step Two – Allocation of Surviving Funds:

- (c) Determine each *Single Surviving Fund Class Member Quarterly Balance* in each of the *Surviving Funds* at the close of each quarter of the *Class Period* from the reasonably available data provided by *Defendants*.
- (d) Determine each *Single Class Member Quarterly Balance in All Surviving Funds* at the close of each quarter of the *Class Period* for each *Class Member* by adding together balances for all *Surviving Funds* for a single quarter from (c) above.

- (e) Determine each *Single Class Member Surviving Funds Aggregate Balance* by adding together all of the quarters in the *Class Period* from (d) above.
- (f) Determine *Aggregate Surviving Funds Balance* for all *Class Members* by adding together each *Single Class Member Surviving Funds Aggregate Balance* from (e) above.
- (g) Determine each *Class Member Distribution of Surviving Funds* by dividing each *Single Class Member Surviving Funds Aggregate Balance* by the *Aggregate Surviving Funds Balance for all Class Members*, and multiply the result by the *Surviving Funds Net Settlement Amount* (((e)/(f)) x (a)).

Step Three –Allocation of Dismissed Funds:

- (h) Determine each *Single Dismissed Fund Class Member Quarterly Balance* in each of the *Dismissed Funds* at the close of each quarter of the *Class Period* from the reasonably available data provided by *Defendants*.
- (i) Determine each *Single Class Member Quarterly Balance in All Dismissed Funds* for the close of each quarter of the *Class Period* for each *Class Member* by adding together balances for all *Dismissed Funds* for a single quarter from (h) above.
- (j) Determine each *Single Class Member Dismissed Funds Aggregate Balance* by adding together all of the quarters in the *Class Period* from (i) above.
- (k) Determine *Aggregate Dismissed Funds Balance* for all *Class Members* by adding together each *Single Class Member Dismissed Funds Aggregate Balance* from (j) above.
- (l) Determine each *Class Member Distribution of Dismissed Funds* by dividing each *Single Class Member Dismissed Funds Aggregate Balance* by the *Aggregate Dismissed Funds Balance for all Class Members*, and multiply the result by the *Dismissed Funds Net Settlement Amount* (((j)/(k)) x (b)).

Step Four – Individual *Class Member Distribution*

- (m) Determine each preliminary *Class Member* distribution by adding together the *Class Member Distribution of Surviving Funds* and the *Class Member Distribution of Dismissed Funds* ((g)+(l)).
- (n) Determine each *Class Member Distribution* by adding the *De Minimis* amounts determined in (m) on a *pro-rata* basis only to the *Class Member* distributions determined in (m) for *Class Members* whose total in (m) is greater than a *De Minimis* amount.

Neither *Defendants* or *Defense Counsel* shall have any responsibility for or liability whatsoever with respect to the *Plan of Allocation*, including, but not limited to, the determination of the *Plan of Allocation* or the reasonableness of the *Plan of Allocation*.

3. *Allocation Administration*

a. Plan Distribution Allocation File

Within 10 calendar days after the *Effective Date*, unless *Class Counsel* directs a different date in writing, the *Settlement Administrator* shall provide a preliminary electronic file containing the name, most current address, most current personal email address if available, Social Security number, employee number if available and efficacious, status as *Current Participant* or *Former Participant*, and amount of the *Class Member Distribution* for each *Class Member* calculated pursuant to the *Allocation Method* (also including the identification and calculation

for *Class Members* whose preliminary distribution was a *De Minimis Amount*) to *Class Counsel* which will immediately provide the file to *Defense Counsel*.

Defendants shall have 20 calendar days to review the preliminary electronic file for accuracy. The *Parties* will work cooperatively and in good faith to resolve any inaccuracy in the electronic file. Within 20 calendar days after *Class Counsel* provides the preliminary electronic file to *Defense Counsel*, unless *Class Counsel* directs a different date in writing, the *Settlement Administrator* will provide an electronic *Plan Distribution Allocation File* containing the name, most current address, most current personal email address if available, Social Security number, employee number if available and efficacious, status as *Current Participant* or *Former Participant*, and final amount of the *Class Member Distribution* for each *Class Member* calculated pursuant to the *Allocation Method* (also including the identification and calculation for *Class Members* whose preliminary distribution was a *De Minimis Amount*) to *Class Counsel*, which will immediately provide the file to *Defense Counsel*.

b. *Current Participant Distribution*

Within three business days after the electronic *Plan Distribution Allocation File* is provided to the *Defense Counsel*, *Class Counsel* will provide written and telephone notice to the *Plan Administrator* and *Defense Counsel* that a transfer will be made from the *Qualified Settlement Fund* to the *Plan* trust. Within three

business days after the written and telephone notice is provided to the *Plan Administrator* and *Defense Counsel*, *Class Counsel* will direct the *Escrow Agent* in writing and by telephone to transfer from the *Qualified Settlement Fund* the aggregate amount of all *Class Member Distributions* for *Current Participants* identified in the *Plan Distribution Allocation File*, to be deposited to the *Plan* trust.

Within three business days after receiving notice from *Class Counsel* to transfer funds from the *Qualified Settlement Trust* to the *Plan* trust, the *Escrow Agent* shall effect a transfer from the *Qualified Settlement Fund* to the *Plan*'s trust of the aggregate amount of all *Class Member Distributions* for *Current Participants* contained in the *Plan Distribution Allocation File*. Within three business days after the *Escrow Agent* has transferred the *Class Member Distributions* for *Current Participants* from the *Qualified Settlement Trust* to the *Plan* trust, *Class Counsel* will direct the *Plan* recordkeeper to credit the individual *Plan* accounts of each *Current Participant* identified in the *Plan Distribution Allocation File* from the *Plan* trust an amount equal to that stated in the *Plan Distribution Allocation File* (no distribution should be made of *De Minimis Amounts*). The *Plan* recordkeeper shall credit these amounts to the *Plan* accounts of *Current Participants* within 20 calendar days of receiving direction from *Class Counsel* to allocate the *Class Member Distributions* to *Current Participants*' *Plan* accounts.

The *Class Member Distribution* for each *Current Participant* will be reflected in each *Current Participant's Plan* account as pre-tax dollars, and will be invested in accordance with such *Current Participant's* investment elections then on file with the *Plan's* recordkeeper. If there is no investment election on file for any *Current Participant*, then such *Current Participant* shall be deemed to have directed such payment to be invested in the *Plan's* "Qualified Default Investment Alternative," as defined in 29 C.F.R. § 2550.404c-5.

Within 30 calendar days after receiving direction from *Class Counsel* to allocate the *Current Participant Class Member Distributions*, the *Plan Administrator* will identify to *Class Counsel* and the *Settlement Administrator* the *Current Participants* who no longer have an *Active Account* and return for deposit to the *Qualified Settlement Fund* all such *Class Member Distributions*. The *Settlement Administrator* will treat any such *Current Participant* as if he or she were a *Former Participant* for purposes of that distribution only, and, for instance, mail that *Current Participant* a *Former Participant Distribution Form* (for distributions \$200 or greater), withhold applicable federal and state taxes, if any, from any check issued from the *Qualified Settlement Fund*, report necessary tax withholdings, and mail tax forms.

c. Former Participant Distribution

Within 45 calendar days after the *Effective Date*, the *Settlement Administrator* shall create and distribute a *Former Participant Distribution Form* to each *Former Participant* who has a *Class Member Distribution* of \$200 or greater at the last-known address, provided by the *Plan* recordkeeper, or in the case of ambiguity or uncertainty, to the address of such person as determined by the *Settlement Administrator* using commercially reasonable means, unless *Class Counsel* directs a different date in writing. This form will offer *Former Participants* the opportunity to elect that their *Class Member Distribution* be 1) rolled over to an individual retirement account or other eligible tax-qualified employer plan which they identify, provided that the *Former Participant* supplies adequate information to the *Settlement Administrator* to effect the rollover; or 2) distributed to the *Former Participant* subject to applicable tax withholdings.

Within 100 calendar days after the mailing/emailing date of the *Former Participant Distribution Form*, *Former Participants* may send the *Plan Administrator* their preference on the *Former Participant Distribution Form* (“*Former Participant Distribution Election Period*”). *Former Participants* who fail to timely return an acceptable *Former Participant Distribution Form* will receive their settlement payments by check subject to tax withholdings.

Within 30 calendar days after the expiration of the *Former Participant Distribution Election Period*, the *Settlement Administrator* shall provide *Class Counsel* an electronic file indicating each *Former Participant* and whether each receives their *Class Member Distribution* through a payment not subject to tax (a rollover payment), or by check after applicable tax withholdings. Within 60 calendar days after the expiration of the *Former Participant Distribution Election Period*, the *Settlement Administrator* will either 1) distribute the rollover payment elected by any such *Former Participant* (if the conditions for such rollover are satisfied), or 2) issue a payment subject to any applicable tax withholdings to any such *Former Participant* to the last known address of the *Former Participant* provided by the *Plan* recordkeeper or by the *Former Participant*, or in the case of ambiguity or uncertainty, to the address of such person as determined by the *Settlement Administrator* using commercially reasonable means, from the *Qualified Settlement Fund*.

The checks making any type of distribution to *Former Participants* will be prepared by and signed by the *Settlement Administrator* and drawn on the *Qualified Settlement Fund*. For each such check issued, the *Settlement Administrator* shall (i) calculate and withhold any applicable taxes, if any, for each such *Class Member Distribution* to a *Former Participant*; (ii) report such distributions and remit any applicable tax withholdings for each such *Class*

Member Distribution to a Former Participant to the Internal Revenue Service and applicable state revenue agents under the Employer Identification Number generally used for distributions from the *Plan*; and (iii) issue the appropriate tax forms to the *Former Participant*.

All checks issued in accordance with this *Plan of Allocation* shall expire no later than 120 calendar days after their issue date. All checks that are undelivered or are not cashed before their expiration date will be voidable at the election of the *Settlement Administrator* and shall revert to the *Qualified Settlement Fund*.

Neither *Defendants*, *Defense Counsel*, nor *Class Counsel* shall have any responsibility for or liability whatsoever with respect to any tax advice given to the *Current Participants* or the *Former Participants*.

4. *Final Settlement Administration*

Within 90 calendar days after the deadline for *Former Participants* to deposit or forward any *Class Member Distribution*, the *Settlement Administrator* shall prepare and provide to *Class Counsel* and *Defense Counsel* a data file listing each *Class Member* who received a *Class Member Distribution* from the *Qualified Settlement Fund*, any assigned identification number, their *Current Participant* or *Former Participant* status, their Social Security number, their address, their email address if available, amount and date of their *Class Member Distribution*, and the amount of tax withholdings (if applicable).

Any amount remaining in the *Qualified Settlement Fund* after the distributions pursuant to the *Allocation Method* have been fully, finally and completely implemented, including any amounts set aside but not used for *Administrative Expenses*, and within 10 calendar days after the *Settlement Administrator* having provided to *Class Counsel* and *Defense Counsel* the list of all disbursements to *Class Members* with identifying information, will be distributed as follows. *Class Counsel* will direct the *Escrow Agent* in writing and by telephone to transfer residual amounts from the *Qualified Settlement Fund* as a contribution to a non-profit, nonsectarian charitable or educational organization promoting retirement security selected by *Class Counsel* and unaffiliated with any *Class Counsel* and any *Named Plaintiff*. The selected organization is subject to *Defendants* ' approval (which will not be unreasonably withheld). Any unresolvable dispute between *Class Counsel* and *Defendants* regarding the recipient of the residual amount in the *Qualified Settlement Fund* will be presented to mediator Robert A. Meyer, or another mediator agreed-upon by *Class Counsel* and *Defendants* if Meyer is unavailable. The *Settlement Administrator* shall disburse the residual amount in the *Qualified Settlement Fund* to the non-profit, nonsectarian charitable or educational organization promoting retirement security selected by *Class Counsel* within 20 calendar days of such instruction. In no event

shall any portion of the *Net Settlement Amount* be paid to *Defendants* or be used to offset expenses otherwise paid by *Defendants*.

Within 21 calendar days after the *Settlement Administrator* disburses the residual *Net Settlement Amount* to the non-profit, nonsectarian charitable or educational organization promoting retirement security selected by *Class Counsel*, the *Settlement Administrator* shall send a written certification to *Class Counsel* stating that all *Administrative Expense* disbursements have been made.

5. Tax-Related Issues and General Responsibilities

The payments made from the *Qualified Settlement Fund* to effect settlement distributions for *Current Participants* who are eligible for a *Class Member Distribution* constitute restorative payments in accordance with Revenue Ruling 2002-45 and shall not be deemed to constitute a taxable distribution to any *Class Member*.

The *Defendants*, *Defense Counsel*, *Class Counsel*, and *Class Representatives* will provide no tax advice to the *Class Members* and make no representation regarding the tax consequences of any of the settlement payments described in the *Settlement Agreement*. To the extent that any portion of any settlement payment is subject to income or other tax, the recipient of the payment shall be responsible for payment of such tax. Deductions will be made, and reporting will be performed by the *Settlement Administrator*, as required by law in

respect of all payments made under the *Settlement Agreement*.

Each *Class Member* who receives a payment under this *Settlement Agreement* shall be fully and ultimately responsible for payment of any and all federal, state, or local taxes resulting from or attributable to the payment received by such person. Each *Class Member* shall hold the *Parties, Defense Counsel, Class Counsel*, and the *Settlement Administrator* harmless from any tax liability, including penalties and interest, related in any way to payments under the *Settlement Agreement*, and shall hold the *Parties, Defense Counsel, Class Counsel*, and the *Settlement Administrator* harmless from the costs (including, for example, attorneys' fees and disbursements) of any proceedings (including, for example, investigation and suit), related to such tax liability.

Neither the *Parties, Class Counsel, Class Representatives* nor *Defense Counsel* shall have any responsibility or liability whatsoever with respect to: (i) any act, omission, or determination of the *Settlement Administrator*, or any of their respective designees or agents, in connection with the administration of the *Gross Settlement Amount* or otherwise; (ii) the management, investment, or distribution of the *Qualified Settlement Fund*; (iii) the administration or allocation of the *Net Settlement Amount*; (iv) the determination, administration, calculation, or payment of any claims asserted against the *Qualified Settlement Fund*; (vi) any losses suffered by, or fluctuations in the value of, the *Qualified Settlement Fund*; or (vii)

the payment or withholding of any taxes and/or expenses incurred in connection with the taxation of the *Qualified Settlement Fund* or tax reporting, or the filing of any *Tax Filings*. Further, neither the *Defendants* nor *Defense Counsel* shall have any responsibility for, or liability whatsoever with respect to any act, omission, or determination of *Class Counsel* in connection with the administration of the *Gross Settlement Amount* or otherwise.

6. Modifications

The Court may approve the Plan, or modify it, without additional notice to the Settlement Class. Any order modifying the Plan will be posted on the Settlement Website, [wwwxxxxxxxxx.com] within five business days of the modification.

Exhibit A-1

THIS IS THE DISTRIBUTION FORM REFERENCED IN THE NOTICE YOU RECEIVED IN THE SPRING ABOUT THE SUNTRUST BANKS 401(K) SAVINGS PLAN SETTLEMENT. YOU MUST FILE THIS CLAIM FORM IF YOU WISH TO ROLLOVER YOUR SETTLEMENT PAYMENT INTO AN IRA OR ELIGIBLE EMPLOYEE PLAN.

INSERT LABEL

In re SunTrust Banks, Inc. 401(k) Plan Affiliated Funds ERISA Litigation

FORMER PARTICIPANT DISTRIBUTION FORM

OUR RECORDS INDICATE THAT YOU DO NOT HAVE A CURRENT ACCOUNT IN THE SUNTRUST BANKS 401(k) SAVINGS PLAN AND MUST FILE THIS DISTRIBUTION FORM IN ORDER TO ROLLOVER YOUR SETTLEMENT PAYMENT INTO AN EXISTING INDIVIDUAL RETIREMENT ACCOUNT (IRA) (EITHER A ROTH IRA OR NON-ROTH IRA) OR ELIGIBLE EMPLOYER PLAN. IF YOU DO NOT FULLY AND ACCURATELY COMPLETE THIS FORM BY THE DEADLINE, YOU WILL RECEIVE YOUR SETTLEMENT PAYMENT BY CHECK MADE OUT TO YOU, WHICH WILL BE SUBJECT TO ANY APPLICABLE TAX WITHHOLDING

INSTRUCTIONS FOR COMPLETING FORM

You must complete Sections through One through Three below, and sign and date the form on page 7. Only class members whose allocated settlement amount is \$200 or greater are eligible to rollover their settlement payment to their existing IRA or eligible employer plan. Our records indicate that your payment satisfies this requirement for rollover to an existing IRA or eligible employer plan (if you have such an account). If you do not correctly fill out and return this Form by the deadline, or you select to have your payment made out to you via check, your allocated amount will be paid by check and will be subject to any applicable tax withholding.

Your completed Form must be mailed to the following address and must **be postmarked no later than _____, _____ 2020:**

**SunTrust Banks, Inc. 401(k) Plan Affiliated Funds ERISA
Litigation
P.O. Box _____
City, State ZIP Code**

If you have any questions about this Form, please call the Settlement Administrator at xxx-xxx-xxxx or you may also want to consult with your financial or tax advisor.

THIS IS THE DISTRIBUTION FORM REFERENCED IN THE NOTICE YOU RECEIVED IN THE SPRING ABOUT THE SUNTRUST BANKS 401(K) SAVINGS PLAN SETTLEMENT. YOU MUST FILE THIS CLAIM FORM IF YOU WISH TO ROLLOVER YOUR SETTLEMENT PAYMENT INTO AN IRA OR ELIGIBLE EMPLOYEE PLAN.

CHANGE OF YOUR ADDRESS (ONLY IF DIFFERENT FROM ABOVE)

Street Address

Street Address 2

City

State/Province

Postal/ ZIP Code

SECTION ONE – INFORMATION ABOUT YOU

1. Person who worked for SunTrust Banks, Inc. as an employee and participant in the SunTrust Banks 401(k) Plan:

Full Name

Date of Birth

Social Security Number

2. Is the person identified in response to Question No. 1 still living? Yes No (if "Yes", skip to Section Two)
3. If your answer is "No" and you believe you are a surviving beneficiary or a QDRO alternate payee of the above Plan participant, and are entitled to the settlement payment, please provide documentation (i.e., death certificate, Letters Testamentary, QDRO, etc.) to demonstrate your status as a beneficial owner of the amount allocated to the participant. The Form should be completed with your information as beneficiary of the participant. Please provide the following information:

Date of Death _____

Full name of SunTrust Banks 401(k) Plan Beneficiary _____

Please check one of the following regarding the Plan Beneficiary:

- The Plan Beneficiary is the surviving spouse of the person identified in response to Question No. 1 (**“the Spouse Beneficiary”**).
- The Plan Beneficiary is not the surviving spouse of the person identified in response to Question No. 1 (**“the Non-Spouse Beneficiary”**).

THIS IS THE DISTRIBUTION FORM REFERENCED IN THE NOTICE YOU RECEIVED IN THE SPRING ABOUT THE SUNTRUST BANKS 401(K) SAVINGS PLAN SETTLEMENT. YOU MUST FILE THIS CLAIM FORM IF YOU WISH TO ROLLOVER YOUR SETTLEMENT PAYMENT INTO AN IRA OR ELIGIBLE EMPLOYEE PLAN.

If you are completing this form as an alternate payee under a Qualified Domestic Relations Order ("QDRO") applicable to the SunTrust Banks, Inc. 401(k) Plan, please indicate if you are a:

- spouse/former spouse
- child/dependent

Full name of SunTrust Banks, Inc. 401(k) Plan Alternate Payee _____

4. Your Telephone Number

Day: _____

Evening: _____

5. Your Home Address: _____

6. Your Email Address: _____

SECTION TWO – PAYMENT ELECTION/DIRECT PAYMENT TO YOU OR ROLLOVER TO IRA OR EMPLOYER PLAN

As explained more fully in ***Notice of Proposed Settlement of Class Action and Settlement Fairness Hearing*** sent to you previously, you have received this Form because our records indicate that you no longer have an active account with the SunTrust Banks, Inc. 401(k) Plan and your settlement amount is \$200 or more. Therefore, you can choose to receive your payment either (1) by check payable to you personally with applicable tax withholding or (2) as a direct "rollover" to either a traditional Individual Retirement Account/Annuity ("IRA") that you have established, or to a qualified employer plan *provided that the other employer plan will accept this rollover contribution*. Your rollover distribution to your financial institution will be deposited to your account at the institution, so long as you accurately and completely fill out the information requested below.

If you select to receive your settlement payment as a cash payment, you will be mailed a check that is subject to applicable tax withholding. The federal government requires 20% to be withheld for taxes. State tax withholding may also apply.

If you are a Class Member who is a Non-Spouse Beneficiary who is entitled to a settlement payment you can choose to receive your payment either (1) by check payable to you personally, or (2) as a direct "rollover" to a traditional Individual Retirement Account/Annuity ("IRA") that you have established.

THIS IS THE DISTRIBUTION FORM REFERENCED IN THE NOTICE YOU RECEIVED IN THE SPRING ABOUT THE SUNTRUST BANKS 401(K) SAVINGS PLAN SETTLEMENT. YOU MUST FILE THIS CLAIM FORM IF YOU WISH TO ROLLOVER YOUR SETTLEMENT PAYMENT INTO AN IRA OR ELIGIBLE EMPLOYEE PLAN.

If you are a child/dependent payee under a QDRO, you do not have a right to rollover the payment, and a check will be mailed to you at the address you included above.

IMPORTANT TAX NOTE REGARDING DIRECT SETTLEMENT PAYMENTS TO CLASS MEMBERS:

Under Internal Revenue Service rules, direct payments to Class Members (other than Non-Spouse Beneficiaries or child/dependent payees under QDROs) are taxable and 20% of the settlement payment must be withheld as an advance payment of the tax due on this payment.

Under Internal Revenue Service rules, direct payments to Class Members who are Non-Spouse Beneficiaries (or child/dependent payees under QDROs) are taxable and 10% of the settlement payment must be withheld as an advance payment of the tax due on this payment unless they elect no federal tax withholding below. (State tax withholding may also apply to direct payments to any Class Member.) In contrast, direct rollovers to an IRA or an employer plan are not immediately taxable and are not subject to federal income tax withholding. Carefully read the enclosed Special Tax Notice for an explanation of your rollover options and the current tax rules.

After reviewing the enclosed *Special Tax Notice*, please check only *one* of the following payment options:

CHECK THIS BOX IF YOU WANT TO RECEIVE YOUR SETTLEMENT PAYMENT BY CHECK PAYABLE TO YOU PERSONALLY. IF YOU CHECK THIS BOX, YOU DO NOT NEED TO COMPLETE QUESTIONS 7 OR 8.

Applicable Only To Non-Spouse Beneficiaries or Child/Dependent Payee under a QDRO: Federal Tax Withholding Election

If you are a Non-Spouse Beneficiary or a child/dependent payee under a QDRO receiving a settlement payment in the form of a check made payable to you personally, it will be subject to federal income tax withholding.

Signature

Date

THIS IS THE DISTRIBUTION FORM REFERENCED IN THE NOTICE YOU RECEIVED IN THE SPRING ABOUT THE SUNTRUST BANKS 401(K) SAVINGS PLAN SETTLEMENT. YOU MUST FILE THIS CLAIM FORM IF YOU WISH TO ROLLOVER YOUR SETTLEMENT PAYMENT INTO AN IRA OR ELIGIBLE EMPLOYEE PLAN.

CHECK THIS BOX IF YOU WANT TO ELECT A DIRECT ROLLOVER OF YOUR SETTLEMENT PAY TO EITHER:

(I) AN IRA, YOU MUST COMPLETE ALL PARTS OF QUESTION 7 BELOW; OR
 (II) ANOTHER QUALIFIED EMPLOYER PLAN, YOU MUST COMPLETE ALL PARTS OF QUESTION 8 BELOW.

7. To arrange a **rollover** of your settlement payment to **an IRA** that you have already established, provide the following information. By completing this part of the Form you are directing that your settlement payment be distributed to you in this way: the settlement payment will be sent directly to the financial institution identified in 7b below. (This option is **not** available to Class Members who are child/dependent payees under QDROs.)

a. Type of IRA Account: Non-Roth* Roth*

b. Full name of the financial institution (such as a bank or mutual fund company) that acts as the Trustee, Custodian, or Issuer of your IRA:

c. Trustee's Mailing Address:

d. The full account number for your IRA: _____

***ROTH V. NON-ROTH IRA:** Amounts rolled over to non-Roth IRAs, along with their earnings, are taxable in the year you withdraw them from the IRA. Amounts rolled over to Roth IRAs are taxable in the year you make the rollover and earnings in the Roth IRA are not ordinarily subject to income tax.

THIS IS THE DISTRIBUTION FORM REFERENCED IN THE NOTICE YOU RECEIVED IN THE SPRING ABOUT THE SUNTRUST BANKS 401(K) SAVINGS PLAN SETTLEMENT. YOU MUST FILE THIS CLAIM FORM IF YOU WISH TO ROLLOVER YOUR SETTLEMENT PAYMENT INTO AN IRA OR ELIGIBLE EMPLOYEE PLAN.

8. To arrange a **rollover** of your settlement payment to a **qualified employer-sponsored plan**, provide the following information. *(Be sure to first confirm with the administrator of that plan that the plan will accept the rollover contribution. If you elect a rollover to that plan but it turns out that it will not accept a rollover, receipt of your settlement payment will be made to you directly in the form of a check subject to tax withholding.)* By completing this part of the Form you are directing that your settlement payment be distributed to you in this way: *the settlement payment will be sent to the plan trustee of the plan identified in 8b below. This option is only available if you are a qualifying Class Member other than a Non- Spouse Beneficiary. (This option is not available to (a) Class Members who are Non-Spouse Beneficiaries and (b) Class Members who are child/dependent payees under QDROs.)*

a. Type of plan: 401(a)/401(k) 403(b) Governmental 457(b)

b. Full legal name of the qualified employer plan that will receive your rollover contribution:

c. Name of employer: _____

d. Address of the Employer Plan Trustee or Custodian:

e. Telephone Number of Employer Plan Trustee or Custodian:

f. The full account number for your plan account:

THIS IS THE DISTRIBUTION FORM REFERENCED IN THE NOTICE YOU RECEIVED IN THE SPRING ABOUT THE SUNTRUST BANKS 401(K) SAVINGS PLAN SETTLEMENT. YOU MUST FILE THIS CLAIM FORM IF YOU WISH TO ROLLOVER YOUR SETTLEMENT PAYMENT INTO AN IRA OR ELIGIBLE EMPLOYEE PLAN.

SECTION THREE – SIGNATURE AND SUBSTITUTE W-9 FORM

Request for Taxpayer Identification Number

YOU MUST ENTER YOUR TAXPAYER IDENTIFICATION NUMBER AND SIGNATURE BELOW IN THE APPROPRIATE PLACE.

Social Security Number: _____ - _____ - _____

Please enter here the name of the taxpayer whose identification number is written above as it exactly appears in the records of the Social Security Administration or the Internal Revenue Service:

(Print your FIRST NAME, MIDDLE INITIAL OR NAME, and LAST NAME)

Check here if you are a U.S. Taxpayer with a foreign mailing address.

NOTE: If you need the Instructions sheet for Completing Substitute Form W-9 please make a written request to us at the address indicated below. Your accountant should also be able to provide you with the Instructions. Or you can obtain the Instructions at the IRS website, www.irs.gov.

UNDER PENALTIES OF PERJURY UNDER THE LAWS OF THE UNITED STATES OF AMERICA, I CERTIFY THAT ALL OF THE INFORMATION PROVIDED ON THIS FORM IS TRUE, CORRECT AND COMPLETE AND THAT I SIGNED THIS

FORM IN _____

(Insert city/state/country) ON THE DATE LISTED BELOW.

(Signature of taxpayer whose tax identification number is written above)

Date

THIS IS THE DISTRIBUTION FORM REFERENCED IN THE NOTICE YOU RECEIVED IN THE SPRING ABOUT THE SUNTRUST BANKS 401(K) SAVINGS PLAN SETTLEMENT. YOU MUST FILE THIS CLAIM FORM IF YOU WISH TO ROLLOVER YOUR SETTLEMENT PAYMENT INTO AN IRA OR ELIGIBLE EMPLOYEE PLAN.

REMINDER CHECKLIST

1. Please carefully review the enclosed ***Special Tax Notice*** that explains the distribution/rollover options, and the tax consequences of each, if you are entitled to receive a settlement payment.
2. Provide all of the requested information and complete, sign and date the Form in the spaces above.
3. DO NOT SEND ANY ADDITIONAL DOCUMENTS OTHER THAN THOSE SPECIFICALLY REQUESTED IN THIS FORM. If additional information is needed to process your Form, you will be contacted.
4. If you change your address after sending in your Form, please send your new address to the address below.
5. Keep a copy of all of the pages of your Form, including page 1 with the address label, for your records.
6. **YOU MUST MAIL YOUR COMPLETED FORM BY U.S. MAIL, POSTMARKED NO LATER THAN _____, 2020 to the following address:**

SunTrust Banks, Inc. 401(k) Plan Affiliated Funds ERISA
Litigation
P.O. Box _____
City, State ZIP Code

If you do not mail your completed Form by the due date, your settlement amount will be paid by check and will be subject to any applicable tax withholding.

7. Please complete and mail back this copy of your Form. If you need another copy of your Form to complete and mail back, please call the Settlement Administrator at xxx-xxx-xxxx.
8. If you want to get confirmation that your Form has been received, send your Form by a postal method that provides a confirmation of receipt.

Exhibit B

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA**

**In re SunTrust Banks, Inc. 401(k)
Plan Affiliated Funds ERISA
Litigation**

**CIVIL ACTION FILE NO.
1:11-CV-784-ODE**

**[PROPOSED] ORDER GRANTING MOTION FOR PRELIMINARY
APPROVAL OF CLASS ACTION SETTLEMENT**

Currently before the Court for preliminary approval is a settlement (the “Settlement”) of this class action (“Action”) asserting claims for alleged breaches of fiduciary duties in violation of the Employee Retirement Income Security Act of 1974 (“ERISA”), as amended, 29 U.S.C. § 10001 *et seq.*, with respect to the SunTrust Banks, Inc. 401(k) Plan (“Plan”). The Plaintiffs/Class Representatives (hereinafter “Class Representatives”) allege that Defendants violated their ERISA duties through their management, operation and administration of the Plan. Defendants deny the allegations, claims and contentions of the Class Representatives.

The terms of the Settlement are set forth in a Class Action Settlement Agreement (“Settlement Agreement”) executed by the parties and their counsel on March 11, 2020. The Court has considered the proposed Settlement. For purposes

of this Order, if not defined herein, capitalized terms have the definitions used in the Settlement Agreement, which is incorporated herein by reference.

The Court previously certified eight separate classes on June 27, 2018. Fuller v. SunTrust Banks, Inc., No. 1:11-CV-784-ODE, 2018 WL 3949698 (N.D. Ga. June 27, 2018). Pursuant to Plaintiffs' Motion for Preliminary Approval, and having reviewed the Settlement Agreement and the accompanying and supporting papers, it is **ORDERED** 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 Class.

2. **Class Certification:** The previously certified classes ("Class") are non-opt-out classes under Federal Rules of Civil Procedure 23(a) and 23(b)(1) and defined and appointed Named Plaintiffs as Class Representatives as follows:

(1) All participants and beneficiaries in the SunTrust Banks, Inc. 401(k) Plan, excluding Defendants, who had a balance through their Plan accounts in the STI Classic Capital Appreciation Fund at any time from March 11, 2005 to December 31, 2012 and were injured by Defendants' conduct.

Class one represented by Plaintiffs Jefferson, Kennedy, and Williams

(2) All participants and beneficiaries in the SunTrust Banks, Inc. 401(k) Plan, excluding Defendants, who had a balance through their Plan accounts in the STI Classic Small Cap Growth Fund at any time from March 11, 2005 to December 31, 2012 and were injured by Defendants' conduct.

Class two represented by Plaintiffs Jefferson, Kennedy, and

Williams

(3) All participants and beneficiaries in the SunTrust Banks, Inc. 401(k) Plan, excluding Defendants, who had a balance through their Plan accounts in the STI Classic Growth and Income Fund at any time from March 11, 2005 to December 31, 2012 and were injured by Defendants' conduct.

Class three represented by Plaintiffs Kennedy, Williams, and Fuller

4) All participants and beneficiaries in the SunTrust Banks, Inc. 401(k) Plan, excluding Defendants, who had a balance through their Plan accounts in the STI Classic Mid-Cap Equity Fund at any time from March 11, 2005 to December 31, 2012 and were injured by Defendants' conduct.

Class four represented by Plaintiffs Jefferson, Kennedy, and Williams

5) All participants and beneficiaries in the SunTrust Banks, Inc. 401(k) Plan, excluding Defendants, who had a balance through their Plan accounts in the STI Classic Investment Grade Bond Fund at any time from March 11, 2005 to December 31, 2012 and were injured by Defendants' conduct.

Class five represented by Plaintiffs Pruitt, Jefferson, and Williams

6) All participants and beneficiaries in the SunTrust Banks, Inc. 401(k) Plan, excluding Defendants, who had a balance through their Plan accounts in the STI Classic Short-Term Bond Fund at any time from March 11, 2005 to December 31, 2012 and were injured by Defendants' conduct.

Class six represented by Plaintiffs Jefferson and Fuller

7) All participants and beneficiaries in the SunTrust Banks, Inc. 401(k) Plan, excluding Defendants, who had a balance through their Plan accounts in the STI Classic Prime Quality Money Market Fund at any time from March 11, 2005 to December 31, 2012 and were injured by Defendants' conduct.

Class seven represented by Plaintiffs Pruitt, Jefferson, and Fuller

8) All participants and beneficiaries in the SunTrust Banks, Inc. 401(k) Plan, excluding Defendants, who had a balance through their Plan accounts in the STI Classic International Equity Index Fund at any time from March 11, 2005 to December 31, 2012 and were injured by Defendants' conduct.

Class eight represented by Plaintiffs Jefferson, Kennedy, and Williams

3. Pursuant to Federal Rule of Civil Procedure 23(g), the Court appointed J. Brian McTigue and James Moore of McTigue Law LLP and Karen Handorf and Scott Lempert of Cohen Milstein Sellers & Toll PLLC as Class Counsel and Alan Perry of the law firm of Page Perry as local counsel and class liaison.

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 Class shall be bound by any judgment concerning the Settlement in this Action.

5. **Preliminary Findings Regarding Proposed 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., a nationally recognized private mediator experienced in ERISA and other complex class actions;

B. The Settlement Agreement was executed only after the Parties engaged in intensive litigation for over eight years, Plaintiffs took two appeals to the Eleventh Circuit, the parties engaged in extensive fact and expert discovery, and there were numerous decisions on dispositive and discovery motions;

C. Class Counsel has concluded that the Settlement Agreement is fair, reasonable and adequate; and

D. The Settlement is sufficiently fair, reasonable, and adequate to warrant sending notice of the Settlement to the Class.

6. **Fairness Hearing:** A hearing is scheduled at the United States District Court for the Northern District of Georgia, the Honorable Judge Orinda Evans presiding, at _____ a.m./p.m. on _____, 2020, **[not before 100 days after the date of this Order]** (the “Fairness Hearing”) to determine, among other issues,

A. Whether the Settlement Agreement should be approved as fair, reasonable, and adequate;

B. Whether the notice, publication notice and notice methodology were performed as directed by this Court;

C. Whether the motion for attorneys’ fees and expenses to be filed by Class Counsel should be approved;

D. Whether an amount of Incentive Awards to Class Representatives should be approved; and

E. Whether the Administrative Expenses to administer the settlement specified in the Settlement Agreement and requested by the Parties should be approved for payment from the Gross Settlement Fund.

7. Establishment of Qualified Settlement Fund: A common fund is agreed to by the Parties in the Settlement Agreement and is hereby established and shall be known as the *In re SunTrust Banks, Inc. 401(k) Plan* Litigation Settlement Fund (the “Settlement Fund” or “Gross Settlement Amount”). The Settlement Fund shall be a “qualified settlement fund” within the meaning of Treasury Regulations § 1.468-1(a) promulgated under Section 468B of the Internal Revenue Code. The Settlement Fund shall consist of \$29,000,000.00 and any return thereon. The Settlement Fund shall be administered as follows:

A. The Settlement Fund is established exclusively for the purposes of: (a) making distributions to Class Representatives and the Class specified in the Settlement Agreement; (b) making payments for all settlement administration expenses and notice expenses, including payments of all Administrative Expenses specified in the Settlement Agreement; (c) making payments of all Attorneys’ Fees and Expenses to Class Counsel as awarded by the Court in this action; and (d) payment of employment, withholding, income and other applicable taxes, all in accordance with the terms of the Settlement Agreement and this Order. Other than the payment of Administrative Expenses or as otherwise expressly provided in the

Settlement Agreement, no distribution shall be made from the Settlement Fund until after the Effective Settlement Date.

B. Within the time period set forth in the Settlement Agreement, Defendants shall cause \$29,000,000 to be deposited into the Settlement Fund.

C. Defendants shall have no withholding, reporting or tax reporting responsibilities with regard to the Settlement Fund or its distribution, except as otherwise specifically identified herein. Moreover, Defendants shall have no liability, obligation, or responsibility for administration of the Settlement Fund or the disbursement of any monies from the Settlement Fund except for: (1) its obligation to cause \$29,000,000 to be deposited into the Settlement Fund; and (2) its agreement to cooperate in providing information reasonably necessary for settlement administration as set forth in the Settlement Agreement.

D. The oversight of the Settlement Fund is the responsibility of the Settlement Administrator. The status and powers of the Settlement Administrator are as defined by this Order and in the Settlement Agreement.

E. The \$29,000,000 that will be deposited by Defendants into the Settlement Fund pursuant to the Settlement Agreement, and all income generated on the amount, shall be *in custodia legis* and immune from attachment, execution, assignment, hypothecation, transfer or similar process by any person. Except as described in the Settlement Agreement, once the Effective Settlement Date occurs

and the Settlement Fund vests, it is irrevocable during its term and Defendants have divested themselves of all right, title or interest, whether legal or equitable, in the Settlement Fund, if any; provided, however, in the event the Settlement Agreement is not approved by the Court or the Settlement Agreement is terminated or fails to become effective in accordance with its terms (or, if following approval by this Court, such approval is reversed or modified), the Parties shall be restored to their respective positions as of January 7, 2020; the terms and provisions of the Settlement Agreement and this Order shall be void and have no force and effect and shall not be used in this case or in any proceeding for any purpose; and the Settlement Fund and income earned thereon shall immediately be returned to Defendants, except that income may be applied to offset Administrative Expenses.

F. The Settlement Administrator may make disbursements out of the Settlement Fund only in accordance with this Order or any additional Orders issued by the Court.

G. The Settlement Fund shall expire after the Settlement Administrator distributes all of the assets of the Settlement Fund in accordance with § 5.7 of the Settlement Agreement, provided, however, that the Settlement Fund shall not terminate until its liability for any and all government fees, fines, taxes, charges and excises of any kind, including income taxes, and any interest, penalties

or additions to such amounts, are, in the Settlement Administrator's sole discretion, finally determined and all amounts have been paid by the Settlement Fund.

H. The Settlement Fund shall be used to make payments to Class Members under the Plan of Allocation set forth in the Settlement Agreement. Individual payments made to Current Participants and Former Participants that provide complete and accurate IRA or other pension plan rollover information are not subject to tax withholding as allowed by law and described in the Class Notice and its attachments. Individual payments to Former Participants that do not provide complete and accurate IRA or other pension plan rollover information, or will not receive a payment of \$200 or more, or Class Members who are first identified as Current Participants, but do not have an Active Account, are subject to tax withholding as required by law and as described in the Class Notice and its attachments. In addition, all Class Representatives' and Named Plaintiffs' Incentive Awards, Administrative Expenses and all Attorneys' Fees and Expenses of Class Counsel shall be paid from the Settlement Fund.

I. The Court and the Settlement Administrator recognize that there will be tax payments, withholding and reporting requirements in connection with the administration of the Settlement Fund. The Settlement Administrator shall, pursuant to the Settlement Agreement, determine, withhold, and pay over to the appropriate tax authorities any taxes due with respect to any distribution from the Settlement

Fund and shall make and file with the appropriate taxing authorities any reports or returns due with respect to any distributions from the Settlement Fund. The Settlement Administrator also shall determine and pay any income taxes owing with respect to the income earned by the Settlement Fund. Additionally, the Settlement Administrator shall file returns and reports with the appropriate taxing authorities with respect to the payment and withholding of taxes.

J. The Settlement Administrator, in its discretion, may request expedited review and decision by the Internal Revenue Service or the applicable state or local taxing authorities, with regard to the correctness of the returns filed for the Settlement Fund and shall establish reserves to assure the availability of sufficient funds to meet the obligations of the Settlement Fund itself and the Settlement Administrator as fiduciaries of the Settlement Fund. Reserves may be established for taxes on the Settlement Fund income or on distributions.

K. The Settlement Administrator shall have all the necessary powers and take all necessary ministerial steps to effectuate the terms of the Settlement Agreement, including the payment of all distributions. Such powers include investing, allocating, and distributing the Settlement Fund, and in general supervising the administration of the Settlement Agreement in accordance with its terms and this Order.

L. The Settlement Administrator shall keep detailed and accurate accounts of all investments, receipts, disbursements and other transactions of the Settlement Fund. All accounts, books and records relating to the Settlement Fund shall be open for reasonable inspection by such persons or entities as the Court orders. Included in the Settlement Administrator's records shall be complete information regarding actions taken with respect to the award of any payments to any person; the nature and status of any payment from the Settlement Fund and other information which the Settlement Administrator considers relevant to showing that the Settlement Fund is being administered, and awards are being made, in accordance with the purposes of the Settlement Agreement, this Order, and any future orders that the Court may find it necessary to issue.

M. The Settlement Administrator may establish protective conditions concerning the disclosure of information maintained by the Settlement Administrator if publication of such information would violate any law, including rights to privacy. Any person entitled to such information and who is denied access to the Settlement Fund's records may submit a request to the Court for such information. However, the Settlement Administrator shall supply such information to any claimant as may be reasonably necessary to allow him or her to accurately determine his or her federal, state and local tax liabilities. Such information shall be supplied in the form and manner prescribed by relevant law.

N. This Order will bind any successor Settlement Administrator. The successor Settlement Administrator(s) shall have, without further act on the part of anyone, all the duties, powers, functions, immunities, and discretion granted to the original Settlement Administrator. Any Settlement Administrator(s) who is replaced (by reason other than death) shall execute all instruments, and do all acts, that may be necessary or that may be ordered or requested in writing by the Court or by any successor Settlement Administrator(s), to transfer administrative powers over the Settlement Fund to the successor Settlement Administrator(s). The appointment of a successor Settlement Administrator(s), if any, shall not under any circumstances require any Defendant to make any further payment of any nature into the Settlement Fund or otherwise.

8. **Class Notice:** The Parties have presented to the Court a proposed form of Class Notice, attached as Exhibit .

A. The Court finds that the proposed form and website referenced in the Class Notice fairly and adequately:

- i. Describes the terms and effect of the Settlement Agreement and of the Settlement;
- ii. Notifies the Class concerning the proposed Plan of Allocation;

- iii. Notifies the Class that Class Counsel will seek Incentive Awards from the Settlement Fund for the Class Representatives and Named Plaintiffs, and Attorneys' Fees and Expenses;
- iv. Notifies the Class that Administrative Expenses related to the implementation of the Settlement will be paid from the Settlement Fund;
- v. Gives notice to the Class of the time and place of the Fairness Hearing; and
- vi. Describes how the recipients of the Class Notice may object to any of the relief requested and the rights of the Parties to discovery concerning such objections.

B. The Parties have proposed the following manner of communicating the notice to members of the Class, and the Court finds that such proposed manner is the best notice practicable under the circumstances, and directs that the Settlement Administrator shall by no later than sixty days before the Fairness Hearing, cause the Class Notice, with such non-substantive modifications thereto as may be agreed upon by the Settling Parties, to be mailed, by first-class mail, postage prepaid, to the last known address of each member of the Class who can be identified through the Plan's recordkeeper or by commercially reasonable means. Defendants shall cooperate with the Settlement Administrator by providing, in electronic format,

the names, last-known addresses, and social security numbers or other unique identifiers of members of the Class. The names, last-known addresses, and Social Security numbers or other unique identifiers obtained pursuant to this Order shall be used solely for the purpose of providing notice of this settlement and as required for purposes of tax withholding and reporting, and for no other purpose.

C. For any Class Notice returned as undeliverable, the Settlement Administrator shall utilize the provided Social Security number or other unique identifier to attempt to determine the current address of the Class Member and shall mail notice to that address.

D. At or before the Fairness Hearing, Class Counsel or the Settlement Administrator shall file with the Court a proof of timely compliance with the foregoing requirements.

E. The Court directs Class Counsel, no later than sixty days before the Fairness Hearing, to publish the Class Notice on the website identified in the Class Notice.

9. **Objections to Settlement:** Any member of the Class who wishes to object to the fairness, reasonableness or adequacy of the Settlement, to the Plan of Allocation, to any term of the Settlement Agreement, to the proposed award of attorneys' fees and expenses, or to any request for compensation for the Class Representatives must file an Objection in the manner set out in this Order.

A. A member of the Class wishing to raise an objection to the Plan of Allocation, to any term of the Settlement Agreement, to the proposed award of attorneys' fees and expenses, or to any request for Incentive Awards for the Class Representatives or Named Plaintiffs must do the following: (1) 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 or evidence that such objector wishes to bring to the Court's attention or introduce in support of such objection; and (2) serve copies of the objection and all supporting authorities or evidence to Class Counsel and Defense Counsel. The addresses for filing objections with the Court and for service of such objections on counsel for the parties to this matter are as follows:

Clerk of the Court
United States District Courthouse for the Northern District of Georgia
Richard B. Russell Federal Building
75 Ted Turner Drive N.W. #2211
Atlanta, GA 30303

MCTIGUE LAW LLP
Attn: J. Brian McTigue
4530 Wisconsin Avenue NW
Suite 300
Washington, DC 20016

COHEN MILSTEIN SELLERS & TOLL, PLLC
Attn: Jamie Bowers
1100 New York Avenue N.W.
Suite 500
Washington, D.C. 20005

KING & SPALDING

Attn: David Tetrick
1180 Peachtree Street, N.E.
Atlanta, Ga 30309-3531

B. The objector or his, her, or its counsel (if any) must serve copies of the objection(s) on the attorneys listed above and file it with the Court no later than twenty-eight (28) days before the date of the Fairness Hearing, or by no later than _____, ____, 2021.

C. If an objector hires an attorney to represent him, her, or it for the purposes of making such objection pursuant to this paragraph, the attorney must serve a notice of appearance on the attorneys listed above and file it with the Court by no later than twenty-eight (28) days before the date of the Fairness Hearing or by no later than _____, ____, 2021.

D. Failure to serve objection(s) on either the Court or counsel for the Parties shall constitute a waiver of the objection(s). Any member of the Class or other Person who does not timely file and serve a written objection complying with the terms of this Order shall be deemed to have waived, and shall be foreclosed from raising, any objection to the Settlement, and any untimely objection shall be barred.

E. Any Party wishing to obtain discovery from any objector may, but is not required to, serve discovery requests, including requests for documents and notice of deposition not to exceed two hours in length, on any objector within

ten days of receipt of the objection and that any responses to discovery or depositions must be completed within ten days of the request being served on the objector.

F. Class Counsel may file a response to an objection, and serve the response on all Parties, no later than seven days before the Fairness Hearing or by no later than _____, ___, 2021.

10. **Appearance at Fairness Hearing:** Any objector who files and serves a timely, written objection in accordance with the terms of this Order as set out in Paragraph 5 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 speak at the Fairness Hearing must serve a notice of intention to speak 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 Class Counsel and Defense Counsel (at the addresses set out above) and file it with the Court by no later than ten days before the date of the Fairness Hearing or by no later than _____, ___, 2021. Any objector (or objector's attorney) who does not timely file and serve a notice of intention to appear in accordance with this paragraph shall not be permitted to speak at the Fairness Hearing.

11. **Service of Papers:** Defense Counsel and Class Counsel shall promptly furnish each other with copies of all objections that come into their possession.

12. **Termination of Settlement:** This Order shall become null and void, and shall be without prejudice to the rights of the Settling Parties, all of whom shall be restored to their respective positions existing the day before the Settlement Agreement Execution Date, if the Settlement is terminated in accordance with the Settlement Agreement.

13. **Use of Order:** This Order shall not be construed or used as an admission, concession, or declaration by or against Defendants of any fault, wrongdoing, breach, or liability or a waiver of any claims or defenses, including but not limited to those as to the propriety of any amended pleadings or the propriety and scope of class certification. This Order shall not be construed or used as an admission, concession, or declaration by or against any named plaintiff, Class Representative, or the Class that their claims lack merit, or that the relief requested in the Class Action is inappropriate, improper or unavailable. This Order shall not be construed or used as a waiver by any party of any arguments, defenses, or claims he, she, or it may have.

14. **Parallel Proceedings:** Pending final determination of whether the Settlement Agreement should be approved, every Class Member is prohibited and enjoined from directly, through representatives, or in any other capacity, commencing any action or proceeding in any court or tribunal asserting any of the Released Claims against Defendants, the Released Parties, or the Plan.

15. Motion in Support of Final Settlement Approval, Application for

Fee, Expense and Incentive Awards: The 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 forty-five calendar days prior to the Fairness Hearing, or by no later than _____, ____, 2021. Further, any application by Class Counsel for attorneys' fees and reimbursement of litigation expenses and Incentive Awards for Class Representatives and Named Plaintiffs, and all papers in support thereof, shall be filed with the Court and served on all counsel of record at least forty-five calendar days prior to the Fairness Hearing, or by no later than _____, ____, 2021. Copies of such materials shall be made available on the website identified in the Class Notice.

16. Supplemental Briefs: Any supplemental brief filed by Class Counsel

regarding the Settlement shall be filed with the Court at least seven calendar days prior to the Fairness Hearing, or by no later than _____, ____, 2021.

17. Continuance of Hearing: The Court may continue the Fairness Hearing in its discretion without direct notice to the Class, other than by notice to Class Counsel and Defense Counsel, and any Class Member wishing to appear should check the Court's docket or call the Clerk's office three (3) days before the scheduled date of the Fairness Hearing.

IT IS SO ORDERED.

Dated: _____, 2020

Hon. Orinda D. Evans
United States District Judge

Exhibit C

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

**In re SunTrust Banks, Inc.
401(k) Plan Affiliated Funds
ERISA Litigation**

**CIVIL ACTION FILE NO.
1:11-CV-784-ODE**

**NOTICE OF PROPOSED SETTLEMENT
OF CLASS ACTION LAWSUIT AND SETTLEMENT FAIRNESS HEARING**

Your legal rights might be affected if you are a member of the following class of persons:

All persons who participated in the SunTrust Banks, Inc. 401(k) Plan (“Plan”), who had a balance through their Plan accounts in any of the following investment funds at any time between March 11, 2005 through December 31, 2012 (these funds changed their name from “STI Classic” to “RidgeWorth” during this time): STI Classic Capital Appreciation Fund (later renamed the “Large Cap Growth Fund”), STI Classic Small Cap Growth Fund, STI Classic Growth and Income Fund (later renamed the “Large Cap Relative Value Fund” and then renamed the “Large-Cap Core Equity Fund”), STI Classic Mid-Cap Equity Fund (later renamed “Mid-Cap Core Equity”), STI Classic Investment Grade Bond Fund, the STI Classic Short-Term Bond Fund, STI Classic Prime Quality Money Market Fund, or STI Classic International Equity Index Fund. The Class excludes Defendants in the lawsuit but includes any beneficiary of a deceased person who participated in the Plan during this time, and/or, Alternate Payee, in the case of a person subject to a Qualified Domestic Relations Order who participated in the Plan during this time.

PLEASE READ THIS ENTIRE NOTICE CAREFULLY. THE COURT PROCEEDINGS DESCRIBED IN THIS NOTICE WILL AFFECT YOUR RIGHTS IF YOU ARE A MEMBER OF THE CLASS

This Notice contains summary information with respect to the Settlement of a class action lawsuit. The terms and conditions of the Settlement are set forth in the Class Action Settlement Agreement (“Settlement Agreement”). The Settlement Agreement, and additional information with respect to the lawsuit and the Settlement, are available on the Settlement Website www._____com or from Class Counsel, who are listed on page 9 below. Any amendments to the Settlement Agreement or any other settlement documents will be posted on that website. You should visit that website if you would like more information about the Settlement or other matters described in this notice.

The United States District Court for the Northern District of Georgia (“Court”) has given its preliminary approval to a proposed settlement (“Settlement”) of a class action lawsuit brought by certain participants in the Plan against SunTrust Banks, Inc., SunTrust Benefits Plan Committee, SunTrust Benefits Finance Committee, RidgeWorth Capital Management, Inc., and the following individuals (collectively, the “*Individual Defendants*”): Jorge Arrieta, Frances (Mimi) Breeden, Paul Burdiss, Mark Chancy, Alston D. Correll, Beau Cummins, David Dierker, Aleem Gillani, Ted Hoepner, Ken Houghton, Al Kolesar, Thomas Kuntz, Donna Lange, Joseph L. Lanier, Jr., Jerome Lienhard, Rebecca Lynn-Crockford, Gregory Miller, Thomas Panther, Larry L. Prince, William H. Rogers, Jr., Christopher Shults, John Spiegel, Mary Steele, and Tim Sullivan, alleging violations of the Employee Retirement Income Security Act (“ERISA”), a federal law governing employee retirement plans such as the SunTrust Plan.

Under the proposed Settlement, Defendants will pay Twenty-Nine Million Dollars (\$29,000,000) (the “Settlement Amount”) into an Escrow Account. Then, according to a Plan of Allocation described below, and available on the Settlement website, the net amount of the Settlement Fund will be paid to the Plan’s trust for allocation to the individual accounts of the Class Members who currently have accounts in the Plan (“Current Participants”) or, for Class Members who no longer have an account in the Plan (“Former Participants”), their allocated amount will be paid to them or, if they qualify for a rollover to another ERISA plan or an Individual Retirement Account (IRA), pursuant to information the Former Participant will provide in a Former Participant Distribution Form.

Your rights and options — and the deadlines to exercise them — are explained in this Settlement Notice.

The Court has not yet given its final approval to the Settlement. Payments under the Settlement will be made only if the Court finally approves the Settlement and that final approval is upheld in the event of any appeal.

A hearing on the final approval of the Settlement and for approval of the Class Representatives’ petition for Attorneys’ Fees and Expenses and for the Class Representatives’ Compensation (“Fairness Hearing”) will take place on _____, 2020, at _____ a.m./p.m., before U.S. District Court Judge Orinda Evans in Courtroom XXXXX, 75 Ted Turner Dr., #2211, Atlanta, GA, 30303. If approved, the Settlement will legally bind you as a member of the Class.

You may appear at the Fairness Hearing and/or object to the Settlement if you wish. Any objections to the Settlement, to the petition for Attorneys’ Fees and Expenses or to Class Representatives’ Compensation, must be served in writing on the Court and on Class Counsel and on Defendants’ Counsel, as identified on pages 8-9 of this Settlement Notice. More information about the hearing and how to object is explained on pages 8-9 of this Notice.

PLEASE READ THIS NOTICE CAREFULLY AND COMPLETELY. IF YOU ARE A MEMBER OF THE CLASS TO WHOM THIS NOTICE IS ADDRESSED, THE SETTLEMENT MAY AFFECT YOUR RIGHTS. YOU ARE NOT BEING SUED IN THIS MATTER. YOU DO NOT NEED TO APPEAR IN COURT, AND YOU DO NOT NEED TO HIRE AN ATTORNEY IN THIS CASE. IF YOU ARE IN FAVOR OF THE SETTLEMENT, YOU DO NOT NEED TO DO ANYTHING. IF YOU DISAPPROVE, YOU MAY OBJECT TO THE SETTLEMENT UNDER THE PROCEDURES DESCRIBED BELOW.

YOUR LEGAL RIGHTS AND OPTIONS UNDER THE SETTLEMENT:

YOU DO NOT NEED TO DO ANYTHING TO PARTICIPATE IN THE SETTLEMENT

If the Settlement is approved by the Court and you are a member of the Class, you do not need to do anything to receive a payment. **If our records indicate that you are a Current Participant in the Plan**, you are authorized to receive a payment under the Settlement and the Plan’s record-keeper will allocate the payment into your Plan account in the manner you have already designated for Plan contributions without your taking further action. **If our records indicate that you are a Former Participant in the Plan**, you are authorized to receive a payment under the Settlement and your allocated amount will be paid directly to you, or if you qualify for a rollover, to another ERISA plan or an Individual Retirement Account (IRA) via instructions you provide in a Former Participant Distribution Form that will be sent to you.

YOU CAN OBJECT (NO LATER THAN xxxxx, 2020)	If you wish to object to any part of the Settlement, you may (as discussed below) write to the Court and counsel about why you object to the Settlement. The Court has authorized the parties to seek discovery, including the production of documents and appearance at a deposition, from any person who files an objection.
YOU CAN ATTEND A HEARING ON xxxx, 2020	If you submit a written objection to the Settlement to the Court and Plaintiffs; and Defendants' Counsel before the deadline, you may attend the hearing about the Settlement and present your objections to the Court. You may attend the hearing even if you do not file a written objection, but you will not be permitted to address the Court at the hearing if you do not notify the Court and Plaintiffs' and Defendants' Counsel of your intention to appear at the hearing or through counsel of your own choosing and expense by XXXXX, 2020 .

SUMMARY OF THE LAWSUIT

This lawsuit is called *In re SunTrust Banks, Inc. 401(k) Plan Affiliated Funds ERISA Litigation.*, Case No. 1:11-cv-784 (the "Class Action"). The Court supervising the case is the United States District Court for the Northern District of Georgia. The individuals who brought this suit and represent the interests of the Class before the Court are called Class Representatives, and the individuals and entities they sued are called Defendants. The Class Representatives are current and former participants in the Plan. This lawsuit was initiated on March 11, 2011. As described in more detail below and in the Second Amended Consolidated Class Action Complaint filed April 30, 2019 (which is the operative complaint and hereafter referred to as the "Amended Complaint"), this lawsuit alleges that Defendants breached fiduciary duties owed to participants and beneficiaries in the Plan during the **Class Period** (March 11, 2005 through December 31, 2012) by offering the eight SunTrust-affiliated investment funds listed at the beginning of this notice. Defendants deny the allegations. Copies of the Amended Complaint, relevant Court Orders and documents related to the Settlement are available at **[WEBSITE]**.

SUMMARY OF THE SETTLEMENT

The Settlement was reached on **[DATE]**. Since the filing of this Action in March 2011 and for a period of more than eight years after this Action was filed, the parties engaged in substantial litigation, including multiple appeals. The Parties participated in mediation before a nationally recognized mediator who has extensive experience in resolving similar claims involving other 401(k) plans. Following negotiation, the parties were able to agree to the terms of the Settlement.

As part of the Settlement, a Qualified Settlement Fund or Gross Settlement Amount of \$29,000,000 will be established to resolve the Class Action. The Net Settlement Amount is \$29,000,000 minus any Administrative Expenses, taxes, tax expenses, any Court-approved Attorneys' Fees and Expenses, any Court-approved Class Representatives' Compensation, and other approved expenses of the litigation. The Net Settlement Amount will be allocated to Class Members according to a Plan of Allocation to be approved by the Court.

STATEMENT OF ATTORNEYS' FEES AND EXPENSES SOUGHT IN THE CLASS ACTION

Since 2011, Class Counsel have devoted many hours investigating potential claims and litigating this case, including two appeals to a federal appeals court. Prior to 2011, Class Counsel also represented a Plan participant bringing similar claims and pursued an administrative review with SunTrust's Benefits Plan Committee, which was a necessary prerequisite for bringing the lawsuit in federal court under controlling law. This administrative process required review of thousands of pages of publicly filed and Defendant-produced documents, and the drafting of a claim letter, complaint, document requests, and an administrative appeal. Class Counsel took the risk of litigation and has not been paid for any of their time or for any of their expenses incurred in bringing and litigating this lawsuit for more than ten years.

Class Counsel will apply to the Court for payment of Attorneys' Fees and Expenses for their work in the lawsuit. The amount of fees (not including expenses) that Class Counsel will request will not exceed one-third of the Settlement Amount plus their expenses. Class Counsel will not seek to receive any interest earned by the Qualified Settlement Fund, which will be added to the amount paid to the Class. Any Attorneys' Fees and Expenses awarded by the Court to Class Counsel will be paid from the Qualified Settlement Fund.

As is customary in class action cases, in which the Class Representatives have volunteered to spend time and effort on the litigation to represent and benefit the Class, Class Counsel will also ask the Court to approve payments not to exceed \$15,000 to each of the five Class Representatives who took on the risk of litigation and committed to spend the time necessary to bring the case to conclusion. Their activities also included assisting in the factual investigation of the case by searching for and producing documents, attending the class certification hearing, providing answers to written questions, and being deposed by defense counsel. Any Class Representatives' Compensation awarded by the Court will be paid from the Qualified Settlement Fund.

A full application for Attorneys' Fees and Expenses and for Class Representatives' Compensation will be filed with the Court and made available on the Settlement Website, [WEBSITE].

1. Why Did I Receive This Settlement Notice?

The Court caused this Settlement Notice to be sent to you because the Plan's records indicate that you may be a Class Member. If you fall within the definition of the Class, you have a right to know about the Settlement and about the options available to you before the Court decides whether to give its final approval to the Settlement.

2. What Is This Class Action Lawsuit About?

This lawsuit began, after the administrative claim process concluded, in March 2011 when the first complaint was filed against Defendants. The plaintiff in that lawsuit asserted claims on behalf of participants in or beneficiaries of the Plan whose accounts included an investment in one or more of the eight SunTrust funds listed at the beginning of this notice. In this lawsuit, the Class Representatives claim that, during the Class Period (March 11, 2005 through December 31, 2012), Defendants violated the Employee Retirement Income Security Act of 1974 ("ERISA"), as amended, 29 U.S.C. 1001 *et seq.*, with respect to their management, operation and administration of the SunTrust Banks, Inc. 401(k) Plan. The Class Representatives alleged that Defendants were fiduciaries of the Plan and they breached fiduciary duties owed to the Plan's participants by, among other things, favoring SunTrust proprietary funds for the Plan, alleging that high fees from the funds enriched SunTrust. Plaintiffs alleged that Defendants did this despite knowing that there were many non-proprietary funds with lower fees and better performance.

Defendants have denied and continue to deny the allegations, claims and contentions of the Class Representatives, deny that they are liable at all to the Class, and deny that the Class or the Plan have suffered any harm or damage for which Defendants could or should be held responsible, as Defendants deny all allegations of wrongdoing and deny that the Plan suffered harm or damage from those claims.

Following dismissals of the lawsuit, two separate appeals, and a U.S. Supreme Court decision in a different case that permitted the Class Representatives to pursue their claims, the merits of the lawsuit began to be litigated in 2016. Following production and review of hundreds of thousands of pages of documents, 23 depositions of fact witnesses by the Plaintiffs, depositions of each of the Class Representatives by Defense Counsel, and submitting expert reports, Defendants filed a series of summary judgment motions asking the Court to enter judgment in their favor with respect to the claims in the lawsuit. On May 2, 2018 the Court granted Defendants' motion to reduce

the Class Period from an inception date of April 10, 2004 to March 11, 2005. That is why the Class Period for the Settlement is March 11, 2005 through December 31, 2012. On March 29, 2019, the Court found that Defendant RidgeWorth Capital Management, Inc. was not a fiduciary and dismissed the company from the lawsuit. On July 16, 2019, the Court dismissed one of the claims in the case, and on October 3, 2019, the Court dismissed the claims of Class Members who invested in five of the eight SunTrust investment funds (the so-called “dismissed funds”) at issue in the lawsuit.

The three funds that survived the Court’s decision (and would be the subject of a trial if the Parties did not settle the case) are: (1) STI Classic Growth and Income Fund (later renamed the “Large Cap Relative Value Fund” and then renamed the “Large-Cap Core Equity Fund”), (2) STI Classic Mid-Cap Equity Fund (later renamed “Mid-Cap Core Equity”), and (3) STI Classic International Equity Index Fund. (These funds were later rebranded “RidgeWorth” funds rather than “STI Classic”). These are referred to as the “Surviving Funds” for purposes of weighting under the Plan of Allocation (meaning that investments by Class Members in these funds are given greater weight in determining the total amount to be distributed to each Class Member than the “Dismissed Funds”).

The five funds that the Court rejected (the “Dismissed Funds”) are: (1) STI Classic Short-Term Bond Fund, (2) STI Classic Investment Grade Bond Fund, (3) STI Classic Small Cap Growth Fund, (4) STI Classic Capital Appreciation Fund (later renamed the “Large Cap Growth Fund”), and (5) STI Classic Prime Quality Money Market Fund. (Again, these funds were later renamed “RidgeWorth” rather than “STI Classic”).

If the Court approves the Settlement, and after any objections and appeals are resolved, the Net Settlement Amount will be allocated among Class Members according to a Court-approved Plan of Allocation.

3. Why Is There A Settlement?

The Court has not reached a final decision as to the Class Representatives’ claims. Instead, the Class Representatives and Defendants have agreed to the Settlement. The Settlement is the product of extensive negotiations between Class Counsel and Defendants’ Counsel during a day-long session with a professional mediator. The parties have taken into account the uncertainty and risks of litigation and have concluded that it is desirable to settle on the terms and conditions set forth in the Settlement Agreement. The Class Representatives and Class Counsel, who are highly experienced in this kind of matter, believe that the Settlement is best for all Class Members. Without a settlement, there would be a substantial risk that, after trial, the Class would receive less than the settlement amount, or nothing at all. Settling now also avoids the cost of trial.

4. What Does The Settlement Provide?

Defendants shall deposit Twenty-Nine Million U.S. Dollars (\$29,000,000) not later than fifteen calendar days following the Court’s preliminary approval of the Settlement or Class Counsel providing Defendants’ Counsel with wire transfer instructions, whichever is later, into an interest-bearing escrow account (the “Escrow Account”) at a financial institution (the “Escrow Agent”) identified by Class Counsel and consented to by Defendants. The Net Settlement Amount (the amount after payment of Court-approved attorneys’ fees and expenses, Class Representatives’ Compensation awarded by the Court and other administrative expenses associated with the Settlement), will be allocated to Class Members according to a Plan of Allocation to be approved by the Court if and when the Court enters an order finally approving the Settlement.

Allocations to Current Participants who are entitled to a distribution under the Plan of Allocation will be made into their existing Plan accounts. Former Participants who are entitled to a distribution of \$200 or greater will

have the opportunity to elect to either receive their distribution as a check or as a rollover to an Individual Retirement Account or a Qualified Plan.

All Class Members and anyone claiming through them will fully release what are referred to as the “Released Parties” from the “Released Claims.” The Released Parties include SunTrust Banks, Inc., SunTrust Benefits Plan Committee, SunTrust Benefits Finance Committee, RidgeWorth Capital Management, Inc., Jorge Arrieta, Mimi Breeden, Paul Burdiss, Mark Chancy, Alston D. Correll, Beau Cummins, David Dierker, Aleem Gillani, Ted Hoepner, Ken Houghton, Al Kolesar, Thomas Kuntz, Donna Lange, Jerome Lienhard, Rebecca Lynn-Crockford, Gregory Miller, Thomas Panther, Larry L. Prince, William H. Rogers, Jr., Christopher Shults, John Spiegel, Mary Steele, and Tim Sullivan.

The Released Claims include claims that were asserted in the lawsuit, or that relate to any of the allegations, facts or occurrences asserted in the lawsuit, or would be barred by the principles of res judicata or collateral estoppel had the claims asserted been fully litigated and resulted in final judgment; and all claims relating to the implementation of the Settlement. This is only a summary of the Released Claims and not a binding description of the Released Claims. The actual governing release is found within the Settlement Agreement at [WEBSITE]. **Generally, the release means that Class Members will not have the right to sue Defendants, the Plan, or the Released Parties for conduct arising out of or relating to the allegations in the lawsuit.**

This is only a summary of the Settlement. The entire Settlement Agreement is available on the Settlement Website [WEBSITE].

5. How Much Will My Distribution Be?

Under the proposed Plan of Allocation (which is subject to the Court’s approval) the amount, if any, that will be allocated to you will be based upon the Plan records, which include the amount you invested on a quarterly basis in each of the eight SunTrust funds during the Class Period (between March 11, 2005 through December 31, 2012). Calculations regarding the individual distributions will be performed by the Settlement Administrator, whose determinations will be final and binding, pursuant to the Court-approved Plan of Allocation. **Small distribution amounts (less than \$10) will not be distributed to Class Members.**

To be eligible for a distribution from the Net Settlement Amount, you must be a Class Member as defined on Page 1 (a current or former participant in the Plan who invested in one or more the eight SunTrust funds listed on Page 1 during the class period), or a beneficiary of a deceased person who participated in the Plan, alternate payee, or attorney-in-fact of a current or former participant who made such investments in the Plan at any time during the Class Period.

The Plan of Allocation will allocate the Net Settlement Amount among Class Members as follows:

1. The quarterly balances for the Class Period of Class Members invested in Affiliated Funds will be identified for each quarter from March 11, 2005 through December 31, 2012;
2. Class Members that had invested in the Surviving Funds (STI Classic Growth and Income Fund, STI Classic Mid-Cap Equity Fund, and STI Classic International Equity Index Fund) will be allocated a total of 90% of the Net Settlement Amount. Class Members that had invested in the Dismissed Funds (STI Classic Short-Term Bond Fund, STI Classic Investment Grade Bond Fund, STI Classic Small Cap Growth Fund, STI Classic Capital Appreciation Fund, and the STI Classic Prime Quality Money Market Fund) will be allocated a total of 10% of the Net Settlement Amount. (Though the Court dismissed claims relating to the Dismissed Funds, there is a small possibility that an appeal of that dismissal would be successful, and that possibility was taken into account by the Parties in agreeing

to the settlement amount. Accordingly, a portion of the Net Settlement Amount is being allocated to Class Members with claims relating to the Dismissed Funds).

3. For each Class Member, the Settlement Administrator will determine the participant's total balance in the Surviving Funds and the Dismissed Funds over all quarters of the Class Period;

4. The Settlement Administrator will add together the participants' quarterly balances in the Surviving Funds to get the "Aggregate Surviving Funds Balance" for all Class Members, and will add together the participants' quarterly balances of the Dismissed Funds to get the "Aggregate Dismissed Funds Balance" for all Class Members;

5. Each Class Member will have their total balance for the Surviving Funds divided by the Aggregate Surviving Funds Balance for all Class Members, and multiplied by 90% of the Net Settlement Amount to calculate the Class Member's award related to their investment in the Surviving Funds. Each Class Member will have their total balance for the Dismissed Funds divided by the Aggregate Dismissed Funds Balance for all Class Members, and multiplied by 10% of the Net Settlement Amount to calculate the Class Member's award related to their investments in the Dismissed Funds.

6. Each Class Member's total distribution will be determined by adding their award for the Surviving Funds and their award for the Dismissed Funds. If that total is less than \$10, the Class Member will receive no distribution.

The method of making these calculations is described more fully in the Plan of Allocation, found in Article 6 of the Settlement Agreement and available at [WEBSITE].

There are approximately [NUMBER] Class Members.

Note that if you are an alternate payee pursuant to a Qualified Domestic Relations Order, you will receive a check if and to the extent you are entitled to receive a portion of a Class Member's allocation under the Settlement Agreement in accordance with the Plan of Allocation as if you are a Class Member.

6. How Do I Receive My Distribution if I am a Current Participant?

If our records indicate that you are a Current Participant in the Plan and you are a Class member with an allocated amount of \$10 or more, your distribution will be automatically allocated to your SunTrust 401(k) Plan account in the manner you have already designated for Plan contributions without your taking further action. If your allocated amount is less than \$10 you will not receive a distribution.

7. How Do I Receive My Distribution if I am a Former Participant?

If our records indicate that you are a Former Participant in the Plan and you are a Class member with an allocated amount of **\$10 or more and less than \$200**, you will receive your allocated amount by a check sent to you. If you are a Former Participant with an allocated amount of **\$200 or greater**, the following will occur. After the final approval of the settlement you will be sent a Distribution Form offering you the option of rolling over your allocated amount to another ERISA plan or an Individual Retirement Account (IRA) via the instructions you provide in the Distribution Form. You must also qualify for a rollover under law to obtain a rollover of your allocated amount. If you do not correctly fill out and return the Former Participant Distribution Form that may be sent to you, your allocated amount subject to any applicable tax withholding will be sent to you. If your allocated amount is less than \$10 you will not receive a distribution.

8. When Will I Receive My Distribution?

The timing of the distribution of the Net Settlement Amount is conditioned on several matters, including the timing of the Court's final approval of the Settlement and that approval becoming final and no longer subject to any appeals. If there is an appeal of the final approval, it may take several years to be fully resolved. If the Settlement is approved by the Court, and there are no appeals, the Settlement distribution likely will occur near the end of 2020 for Current Participants, and during the first few months of 2021 for Former Participants.

There Will Be No Payments Under The Settlement If The Settlement Agreement Is Terminated.

9. Can I Opt Out Of The Settlement?

No. The lawsuit was certified as a class action under Federal Rule of Civil Procedure 23(b)(1). Therefore, as a Class Member, you are bound by any judgments or orders that are entered for all claims that were asserted or are otherwise included as Released Claims under the Settlement.

10. Do I Have A Lawyer In The Lawsuit?

The Court has appointed J. Brian McTigue and James Moore of the law firm McTigue Law LLP and Karen L. Handorf and Scott M. Lempert of the law firm Cohen Milstein Sellers & Toll PLLC as Class Counsel in the lawsuit. If you want to be represented by your own lawyer, you may hire one at your own expense.

11. How Will The Lawyers Be Paid?

Class Counsel have pursued this Action on a contingent basis and will file a motion for an award of attorneys' fees and expenses. This motion will be considered at the Fairness Hearing. As previously described, Class Counsel has agreed to limit their application for an award of Attorneys' Fees to no more than 33 1/3% of the Settlement Amount plus their expenses. The Court will determine what fees and expenses will be approved.

12. How Do I Tell The Court If I Don't Like The Settlement?

If you are a Class Member, you can tell the Court that you do not agree with the Settlement or some part of it. To object, you must send the Court a written statement that you object to the Settlement in *In re SunTrust Banks, Inc. 401(k) Plan Affiliated Funds ERISA Litigation*, Case No. 1:11-cv-748. Be sure to include your name, address, telephone number, signature, and a full explanation of why you object to the Settlement. Your written objection must be received by the Court no later than **XXXXXX, 2020**. The Court's address is Clerk of the Court, United States District Courthouse, 75 Ted Turner Dr., #2211, Atlanta, GA, 30303. Your written objection must also be mailed to the lawyers listed below, **no later than XXXXXX, 2020**. Please note that the Court's Order Granting Preliminary Approval of this Settlement provides that any party to the litigation may, but is not required to, serve discovery requests, including requests for documents and notice of deposition not to exceed two hours in length, on any objector. Any responses to discovery, or any depositions, must be completed within ten days of the request being served on the objector.

CLASS COUNSEL

DEFENDANTS' COUNSEL

<p>J. Brian McTigue James Moore MCTIGUE LAW LLP 4530 Wisconsin Ave., NW, Suite 300 Washington, DC 20016 Fax: (202) 364-9960</p> <p>Scott Lempert Karen L. Handorf COHEN MILSTEIN SELLERS & TOLL, PLLC 1100 New York Ave., NW, Suite 500 West Washington, DC 20005 Fax: (202) 408-4699</p>	<p>David Tetrick KING & SPALDING LLP 1180 Peachtree Street, NE Atlanta, GA 30309 Fax: (404) 572-5139</p>
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12. When And Where Will The Court Decide Whether To Approve The Settlement?

The Court will hold a Fairness Hearing at **XXX** a.m./p.m. on **XXXX**, 2020, at the United States District Courthouse for the Northern District of Georgia, 75 Ted Turner Dr., #2211, Atlanta, GA, 30303.

At the Fairness Hearing, the Court will consider whether the Settlement is fair, reasonable, and adequate. If there are objections, the Court will consider them. After the Fairness Hearing, the Court will decide whether to give its final approval to the Settlement. The Court also will consider the request for Class Counsel's Attorneys' Fees and Expenses and the Class Representatives' Compensation.

13. Do I Have To Attend The Fairness Hearing?

No, but you are welcome to come at your own expense. If you send an objection, you do not have to come to the Court to talk about it. As long as you mailed your written objection on time, the Court will consider it when the Court considers whether to approve the Settlement as fair, reasonable and adequate. You also may pay your own lawyer to attend the Fairness Hearing, but such attendance is not necessary.

14. May I Speak At The Fairness Hearing?

If you are a Class Member, you may ask the Court for permission to speak at the Fairness Hearing. To do so, you must send a letter or other paper called a "Notice of Intention to Appear at Fairness Hearing in *In re SunTrust Banks, Inc. 401(k) Plan Affiliated Funds ERISA Litigation*, Case No. 1:11-cv-748." Be sure to include your name, address, telephone number, and your signature. Your Notice of Intention to Appear must be mailed to the attorneys and filed with the Clerk of the Court, at the addresses listed in the Answer to Question No. 11, **no later than **xxxxx, 2020****.

15. What Happens If I Do Nothing At All?

If you are a Class Member as defined on page 1, and do nothing, you will participate in the Settlement of the Class Action as described above in this Settlement Notice if the Settlement is approved.

16. How Do I Get More Information?

If you have general questions regarding the Settlement, you can visit this website: **[WEBSITE]**, call **1-XXXXXXX**, or write to the Settlement Administrator at **-----**.

Exhibit D

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA**

**In re SunTrust Banks, Inc. 401(k) Plan
Affiliated Funds ERISA Litigation**

**CIVIL ACTION FILE NO.
1:11-CV-784-ODE**

[PROPOSED] FINAL ORDER AND JUDGMENT

Wherefore, this _____ day of _____, 2020, upon consideration of the Plaintiffs' motion for final approval of the 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 terms of a Class Action Settlement Agreement dated _____, (the "Settlement Agreement"); and Class Representatives' motion for an award of attorneys' fees and reimbursement of expenses, and for Incentive Awards for Class Representatives; and the Court having read and considered these motions, heard any arguments of counsel, granted preliminary approval of the Settlement by Order dated _____, 2020 (ECF No. ____) (the "Preliminary Approval Order"), and considered any objections raised; and all Parties having consented to the entry of this Order;

IT IS HEREBY ORDERED AND ADJUDGED:

1. For purposes of this Final Order and Judgment, capitalized terms used herein have the Definitions in the Settlement Agreement, which is incorporated herein by reference.

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

3. The Court determines that Class Representatives are asserting claims on behalf of the SunTrust Banks, Inc. 401(k) Savings Plan (the “Plan”) pursuant to ERISA §§ 502(a)(2) & 502(a)(3), 29 U.S.C. §§ 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 twenty-nine million dollars (\$29,000,000) by Defendants, has been negotiated vigorously and at arm’s length by and between Class Counsel and Defense 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, Class Representatives have acted independently, and that Class Representatives and Class Counsel have fairly and adequately represented the 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 hereby approves and confirms the Settlement embodied in the Settlement Agreement as constituting a fair, reasonable and adequate settlement and compromise in 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. The Settling Parties are hereby directed to take the necessary steps to effectuate the terms of the Settlement Agreement.

6. In accordance with the Court's Order, notice was timely distributed by first-class mail to all members of the Class who could be identified with reasonable effort, and notice was published on the website maintained by Class Counsel. In addition, as required by the Class Action Fairness Act, 29 U.S.C. § 1711, *et seq.*, Defendants have provided notice to the Attorneys General for each of the states in which a Class Member resides, the Attorney General of the United States, and the United States Secretary of Labor. *See* Doc. No. [].

7. The form and methods of notifying the Class of the terms and conditions of the proposed Settlement Agreement met the requirements of Fed. R. Civ. P. 23(c)(2), any other applicable law, and due process, and constituted the best notice practicable under the circumstances; and due and sufficient notices of the fairness hearing and the rights of all Class Members have been provided to all

people, powers and entities entitled thereto.

8. The Court hereby approves the maintenance of the Action as non-opt-out classes under Federal Rules of Civil Procedure 23(a) and 23(b)(1), with the classes already having been certified and Class Representatives appointed as follows:

(1) All participants and beneficiaries in the SunTrust Banks, Inc. 401(k) Plan, excluding Defendants, who had a balance through their Plan accounts in the STI Classic Capital Appreciation Fund at any time from March 11, 2005 to December 31, 2012 and were injured by Defendants' conduct.

Class one represented by Plaintiffs Jefferson, Kennedy, and Williams

(2) All participants and beneficiaries in the SunTrust Banks, Inc. 401(k) Plan, excluding Defendants, who had a balance through their Plan accounts in the STI Classic Small Cap Growth Fund at any time from March 11, 2005 to December 31, 2012 and were injured by Defendants' conduct.

Class two represented by Plaintiffs Jefferson, Kennedy, and Williams

(3) All participants and beneficiaries in the SunTrust Banks, Inc. 401(k) Plan, excluding Defendants, who had a balance through their Plan accounts in the STI Classic Growth and Income Fund at any time from March 11, 2005 to December 31, 2012 and were injured by Defendants' conduct.

Class three represented by Plaintiffs Kennedy, Williams, and Fuller

4) All participants and beneficiaries in the SunTrust Banks, Inc. 401(k) Plan, excluding Defendants, who had a balance through their Plan accounts in the STI Classic Mid-Cap Equity Fund at any time from March 11, 2005 to December 31, 2012 and were injured by

Defendants' conduct.

Class four represented by Plaintiffs Jefferson, Kennedy, and Williams

5) All participants and beneficiaries in the SunTrust Banks, Inc. 401(k) Plan, excluding Defendants, who had a balance through their Plan accounts in the STI Classic Investment Grade Bond Fund at any time from March 11, 2005 to December 31, 2012 and were injured by Defendants' conduct.

Class five represented by Plaintiffs Pruitt, Jefferson, and Williams

6) All participants and beneficiaries in the SunTrust Banks, Inc. 401(k) Plan, excluding Defendants, who had a balance through their Plan accounts in the STI Classic Short-Term Bond Fund at any time from March 11, 2005 to December 31, 2012 and were injured by Defendants' conduct.

Class six represented by Plaintiffs Jefferson and Fuller

7) All participants and beneficiaries in the SunTrust Banks, Inc. 401(k) Plan, excluding Defendants, who had a balance through their Plan accounts in the STI Classic Prime Quality Money Market Fund at any time from March 11, 2005 to December 31, 2012 and were injured by Defendants' conduct.

Class seven represented by Plaintiffs Pruitt, Jefferson, and Fuller

8) All participants and beneficiaries in the SunTrust Banks, Inc. 401(k) Plan, excluding Defendants, who had a balance through their Plan accounts in the STI Classic International Equity Index Fund at any time from March 11, 2005 to December 31, 2012 and were injured by Defendants' conduct.

Class eight will be represented by Plaintiffs Jefferson, Kennedy, and Williams

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

McTigue and James Moore of McTigue Law LLP and Karen Handorf and Scott Lempert of Cohen Milstein Sellers & Toll PLLC as Class Counsel and Alan Perry of the law firm of Page Perry as local counsel and class liaison.

9. The Court determines that Defendants have fully complied with all requirements of the Class Action Fairness Act, 29 U.S.C. § 1711, *et seq.*.

10. Members of the Class had the opportunity to be heard on all issues regarding the resolution and release of their claims by submitting objections to the Settlement Agreement to the Court.

11. Any Objection to the settlement is overruled with prejudice.

12. Based on the Settlement, the Court hereby dismisses the operative Complaint, all claims asserted at any point in the Action, and the Action with prejudice on the merits and without costs to any of the Settling Parties other than as provided for in this Settlement Agreement.

13. The Court approves the releases and covenant not to sue set forth in Paragraph 8, Section 8.1 through 8.3 of the Settlement Agreement.

14. The Plan, the Class Representatives, and the Class Members (and their respective heirs, beneficiaries, executors, administrators, estates, predecessors, successors, assigns, agents and attorneys) on their own behalves and on behalf of the Plan, hereby fully, finally, and forever settle, release, relinquish, waive and discharge the Defendants, the Plan, and all Released Parties from the

Released Claims, regardless of, *e.g.*, whether or not such Class Members have filed an objection to the Settlement or to any application by Class Counsel for an award of Attorneys' Fees and Costs, or whether or not the objections or claims for distribution of such Class Members have been approved or allowed.

15. The Class Representatives, Class Members and the Plan acting individually or together, or in combination with others, are hereby barred from suing or seeking to institute, maintain, prosecute, argue, or assert in any action or proceeding (including but not limited to an IRS determination letter proceeding, a Department of Labor proceeding, an arbitration or a proceeding before any state insurance or other department or commission), any cause of action, demand, or claim on the basis of, connected with, or arising out of any of the Released Claims. Nothing herein shall preclude any action to enforce the terms of the Settlement Agreement in accordance with the procedures set forth in the Settlement Agreement.

16. Class Counsel, the Class Representatives, the Class Members, or the Plan may hereafter discover facts in addition to or different from those that they know or believe to be true with respect to the Released Claims. Such facts, if known by them, might have affected the decision to settle with the Defendants, the Plan and the Released Parties or the decision to release, relinquish, waive, and discharge the Released Claims, or might have affected the decision of a Class

Member not to object to the Settlement. Notwithstanding the foregoing, each Class Representative, Class Member and the Plan has hereby fully, finally and forever settled, released, relinquished, waived and discharged any and all Released Claims, and each Class Representative, Class Member and the Plan has hereby acknowledged that the foregoing waiver was bargained for separately and is a key element of the Settlement embodied in the Settlement Agreement of which this release is a part.

17. The Class Representatives, Class Members and the Plan hereby settle, release, relinquish, waive and discharge any and all rights or benefits they may now have, or in the future may have, under any law relating to the releases of unknown claims, including without limitation, Section 1542 of the California Civil Code, which provides: "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 the debtor." The Class Representatives, Class Members and the Plan with respect to the Released Claims also hereby waive any and all provisions, rights and benefits conferred by any law or of any State or territory within the United States or any foreign country, or any principle of common law, which is similar, comparable or equivalent in substance to Section 1542 of the California Civil Code.

18. Defendants absolutely and unconditionally release and forever discharge Class Representatives, the 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 the Class Representatives, the 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.

19. Notwithstanding any other provision of the Settlement Agreement, the Class Representatives and members of the 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.

20. The Court expressly retains its subject matter jurisdiction over the claims herein and personal jurisdiction over Class Members for purposes of enforcing this Final Order and the Settlement Agreement. Any motion to

enforce paragraphs 12 through 18 of this Final Order or the Settlement Agreement, including by way of injunction, may be filed in this Court, and the provisions of the Settlement Agreement and/or this Final Order may also be asserted by way of an affirmative defense or counterclaim in response to any action that is asserted to violate the Settlement Agreement.

21. 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.

22. 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.

23. Each Class Representative is hereby awarded an Incentive Award in the amount of \$_____. The Incentive Awards have been determined by the Court to be fair, reasonable and appropriate. In addition to her Incentive Award, each Class Representative is also eligible for a share of the payment

from the Settlement Fund as member of the Class. Other than these payments, no other award shall be awarded to the Class Representatives in connection with the Settlement Agreement. The Incentive Awards shall be paid to the Class Representatives in accordance with the terms of the Settlement Agreement.

24. Each member of the Class shall hold harmless Defendants, defense counsel, the Released Parties, and the Plan for any claims, liabilities, attorneys' fees and expenses arising from the allocation of the Gross Settlement Amount or Net Settlement Amount and for all tax liability and associated penalties and interest as well as related attorneys' fees and expenses.

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

26. The Settlement Administrator shall have final authority to determine the share of the Net Settlement Amount to be allocated to each Current and Former Participant.

27. 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 Rule 2002-45.

28. Within twenty-one calendar days following the issuance of all settlement payments to Class Members, the Settlement Administrator shall

prepare and provide to Class Counsel and Defense Counsel a list of each person who was issued a settlement payment and the amount of such payment in accordance with the Plan of Allocation.

29. Upon entry of this Order, all Class Members and the Plan shall be bound by the Settlement Agreement (including any amendments) and by this Final Order.

SO ORDERED:

DATED: _____, 2020

Hon. Orinda D. Evans
United States District Court Judge

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

**In Re SunTrust Banks, Inc.
401(k) Plan Affiliated Funds
ERISA Litigation**

**CIVIL ACTION FILE
No. 1:11-cv-784-ODE**

**PLAINTIFFS' MEMORANDUM OF LAW IN SUPPORT OF
UNOPPOSED MOTION FOR PRELIMINARY APPROVAL OF
CLASS ACTION SETTLEMENT, APPROVAL OF FORM AND MANNER
OF CLASS NOTICE AND SCHEDULING OF FAIRNESS HEARING**

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I. INTRODUCTION¹

This ERISA class action lawsuit began in this Court when Plaintiff Barbara Fuller, a participant in the SunTrust Banks, Inc. (“SunTrust”) 401(k) Plan (the “Plan”), filed a complaint on March 11, 2011. It is an ERISA civil enforcement action brought pursuant to 29 U.S.C. §1132(a), on behalf of the Plan, to recover losses to the Plan that Plaintiffs allege resulted from Defendants’ corporate self-dealing and breaches of their fiduciary duties of loyalty and prudence related to the offering of proprietary funds in the Plan. Since in this Circuit, exhaustion of administrative remedies is required prior to filing an ERISA fiduciary breach suit, *Lanfear v. Home Depot*, 536 F.3d 1217 (11th Cir. 2008), the litigation process actually began even earlier, on April 24, 2008, when an administrative claim alleging the claims was first submitted to Plan fiduciaries. (See the operative complaint, Dkt. No. 194 (“SAC”), ¶80). The litigation has thus spanned parts of three decades. The litigation has been unusually hard-fought, involving an administrative claim and an appeal of that claim, two Eleventh Circuit appeals, a Supreme Court decision in a similar but unrelated case that resurrected many of Plaintiffs’ claims, the filing of

¹ The Settlement Agreement is being submitted as Exhibit 1 to the Preliminary Approval Motion. Exhibits to the Settlement Agreement include the proposed Plan of Allocation (Ex. A), proposed Preliminary Approval Order (Ex. B), the proposed Class Notice (Ex. C), and the proposed Final Approval Order and Judgment (Ex. D). The provisions of the Settlement Agreement, including all definitions and defined terms, are incorporated by reference herein.

three lawsuits by different groups of plaintiffs that have now been consolidated, extensive discovery, and four separate summary judgment motions.

The Parties have now agreed to a settlement, which they present to the Court for preliminary approval. The proposed settlement provides for a cash payment of \$29,000,000 (the “Settlement Amount”). The Parties agreed to the settlement only after arms-length negotiations, which included the highly experienced lead attorneys who have litigated many similar cases. The negotiations included a full day mediation session conducted by Robert A. Meyer, Esq. of JAMS, a respected, nationally recognized mediator experienced in ERISA and other complex class actions, including suits involving similar claims.

Plaintiffs believe the settlement is an excellent result, providing a substantial, immediate payment to Class Members and eliminating the risk and cost of trial. A trial could have resulted in a reduced recovery or no recovery at all. As set forth below, the settlement is fair, reasonable, and adequate under governing law, and meets all prerequisites for preliminary approval.

II. FACTUAL AND PROCEDURAL BACKGROUND

A. The Parties and the Class

The named Plaintiffs are Natalie Brown, Barbara J. Fuller, Elaine Jefferson, Barbara A. Kennedy, Selethia Pruitt, and Mariah C. Williams. (SAC ¶¶19-26). Plaintiffs are participants in the Plan. *Id.* Defendants are alleged to be Plan fiduciaries and include (i) the SunTrust Benefits Plan Committee (“BPC”), and its

individual members; (ii) the SunTrust Benefits Finance Committee (“BFC”), and its individual members (collectively the BPC, BFC, and their individual members are the “Committee Defendants”); (iii) RidgeWorth Capital Management, Inc. (“RidgeWorth”), a SunTrust subsidiary which received the investment management fees for the Affiliated Funds; (iv) Defendants Prince and Correll, who served as chairs of the SunTrust Compensation Committee during the Class Period; and (v) SunTrust itself. (SAC ¶¶28-34).

Pursuant to the Court’s June 27, 2018 class certification order the Class in this case consists of the members of the following eight classes corresponding to each of the eight Affiliated Funds² at issue (the named plaintiffs representing each class are in parentheses):

- 1) All participants and beneficiaries in the SunTrust Banks, Inc. 401(k) Plan, excluding Defendants, who had a balance through their *Plan* accounts in the STI Classic Capital Appreciation Fund at any time from March 11, 2005 to December 31, 2012 and were injured by *Defendants*’ conduct. (Jefferson, Kennedy, and Williams)
- 2) All participants and beneficiaries in the SunTrust Banks, Inc. 401(k) Plan, excluding Defendants, who had a balance through their Plan accounts in the STI Classic Small Cap Growth Fund at any time from March 11, 2005 to December 31, 2012 and were injured by Defendants’ conduct. (Jefferson, Kennedy, and Williams)

² The “Affiliated Funds” are the following eight funds offered in the Plan during the Class Period: STI Classic Capital Appreciation Fund, STI Classic Small Cap Growth Fund, STI Classic Growth and Income Fund, STI Classic Mid-Cap Equity Fund, STI Classic Investment Grade Bond Fund, the STI Classic Short-Term Bond Fund, STI Classic Prime Quality Money Market Fund, and the STI Classic International Equity Index Fund.

- 3) All participants and beneficiaries in the SunTrust Banks, Inc. 401(k) Plan, excluding Defendants, who had a balance through their Plan accounts in the STI Classic Growth and Income Fund at any time from March 11, 2005 to December 31, 2012 and were injured by Defendants' conduct. (Kennedy, Williams, and Fuller)
- 4) All participants and beneficiaries in the SunTrust Banks, Inc. 401(k) Plan, excluding Defendants, who had a balance through their *Plan* accounts in the STI Classic Mid-Cap Equity Fund at any time from March 11, 2005 to December 31, 2012 and were injured by Defendants' conduct. (Jefferson, Kennedy, and Williams)
- 5) All participants and beneficiaries in the SunTrust Banks, Inc. 401(k) Plan, excluding Defendants, who had a balance through their *Plan* accounts in the STI Classic Investment Grade Bond Fund at any time from March 11, 2005 to December 31, 2012 and were injured by Defendants' conduct. (Pruitt, Jefferson, and Williams)
- 6) All participants and beneficiaries in the SunTrust Banks, Inc. 401(k) Plan, excluding Defendants, who had a balance through their *Plan* accounts in the STI Classic Short-Term Bond Fund at any time from March 11, 2005 to December 31, 2012 and were injured by Defendants' conduct. (Jefferson and Fuller)
- 7) All participants and beneficiaries in the SunTrust Banks, Inc. 401(k) Plan, excluding Defendants, who had a balance through their *Plan* accounts in the STI Classic Prime Quality Money Market Fund at any time from March 11, 2005 to December 31, 2012 and were injured by Defendants' conduct. (Pruitt, Jefferson, and Fuller)
- 8) All participants and beneficiaries in the SunTrust Banks, Inc. 401(k) Plan, excluding Defendants, who had a balance through their *Plan* accounts in the STI Classic International Equity Index Fund at any time from March 11, 2005 to December 31, 2012 and were injured by Defendants' conduct. (Jefferson, Kennedy, and Williams)

(Dkt. No. 222 at 16-17).

The Court appointed J. Brian McTigue and James Moore of McTigue Law LLP and Karen L. Handorf and Scott M. Lempert of Cohen Milstein Sellers and Toll

PLLC as Class Counsel, and Alan Perry of Page Perry LLC as Liaison Counsel. *Id.* at 19.

B. Claims for Relief

Plaintiffs' claims concern Defendants' conduct as Plan fiduciaries in favoring SunTrust proprietary investments. The claims alleged in the operative complaint are as follows (for ease of reference the claims that remain in the case after the Court's summary judgment rulings are highlighted in bold):

COUNT I: Breach of Duties of Loyalty and Prudence for Imprudent and Disloyal Monitoring of 401(k) Plan Investments during the Class Period, by Committee Defendants

COUNT II: Breach of Duties of Loyalty and Prudence by Selecting the STI Classic International Equity Index Fund as an Investment Fund for the 401(k) Plan, by Committee Defendants

COUNT III: Defendants Prince, Correll, Chancy, and Gillani Breached Their ERISA Fiduciary Duties by Failing to Remove and Prudently and Loyally Monitor Committee Defendants

COUNT IV: Defendant SunTrust Breached its ERISA Fiduciary Duties by Failing to Remove and Prudently Monitor Defendants Prince, Correll, Chancy, and Gillani

COUNT V: Breach of Duties of Loyalty and Prudence by Defendant RidgeWorth for Providing Imprudent and Self-Interested Investment Advice to Committee Defendants

COUNT VI: Liability for Breach of Co-Fiduciary, by SunTrust and RidgeWorth

COUNT VII: Breach of Duties of Loyalty and Prudence by Failing to Remove or Replace the Affiliated Funds as 401(k) Plan Investment Vehicles during the Class Period, which Caused Losses to the 401(k) Plan, by Committee Defendants

COUNT VIII: Liability for Failing to Remedy Breach of Predecessor Fiduciaries

(SAC ¶¶86-140). After the Court’s last summary judgment ruling, (Dkt. No. 278), these claims remain with respect to the following three Affiliated Funds only: the Mid-Cap Equity Fund, the Growth and Income Fund, and International Equity Index Fund. These three Affiliated Funds are hereinafter referred to as the “Surviving Funds.” The five funds that are no longer in the case are referred to as the “Dismissed Funds.”

C. Procedural History

1. Pre-filing Investigation & Exhaustion of Administrative Remedies

This case was initiated via a class administrative claim submitted by Mary Lee to Plan fiduciaries on April 24, 2008. Prior to submission of that claim, one of the Class Counsel firms, McTigue Law LLP, investigated the basis of Ms. Lee’s claims by reviewing Plan filings with the U.S. Department of Labor, SunTrust filings with the Securities and Exchange Commission, publicly available investment performance information, and other publicly available information. After submission of that claim, those counsel sought additional documents and information, including governing Plan documents and internal documents in various categories. Defendants responded by producing over 3300 documents, including committee minutes, which Plaintiffs’ counsel reviewed. Plaintiffs’ counsel also exchanged correspondence with Defendants to further elucidate their claims and/or

request clarification on defenses. On August 29, 2008 the claim was denied. Plaintiffs appealed the denial, but the appeal was denied on March 26, 2009.

2. Filing of Lawsuits in Federal Court and Eleventh Circuit Appeals

This class action suit was then filed by Barbara Fuller in the Northern District of Georgia on March 11, 2011. (Mary Lee was unable to serve as a named plaintiff due to personal reasons). The suit was subsequently dismissed after the Court found that a three-year, rather than six-year, statute of limitations was applicable, (Dkt. No. 59), and also subsequently found that the shorter period deprived Ms. Fuller of standing since she had cashed out from the plan prior to the inception of the three-year period, (Dkt. No. 69). The suit was immediately refiled with new named plaintiffs, Pruitt and Stargel (case No. 1:12-cv-03822, “Pruitt”) represented by the same counsel while Plaintiff Fuller and counsel pursued an appeal to the Eleventh Circuit on the statute of limitations ruling. On August 7, 2013, before the Eleventh Circuit ruled, this Court dismissed the case filed by Pruitt and Stargel; however, it also reversed its holding on the statute of limitations, finding that ERISA’s six-year period was applicable, not the three-year, but that the claims were barred by the six-year period because they concerned the initial offering of the funds. (*Pruitt* Dkt. No. 33, August 7, 2013). The Eleventh Circuit largely followed this new reasoning in ruling on Fuller’s appeal. *Fuller v. SunTrust Banks, Inc.*, 744 F.3d 685 (11th Cir. 2014).

Ms. Pruitt appealed the dismissal of her case to the Eleventh Circuit, while Natalie Brown, et al., represented by the same counsel, filed a new class action making similar claims in the U.S. District Court for the District of Columbia (No. 1:14-cv-1090). Defendants successfully moved to transfer that case back to this Court in Georgia (No. 1:14-cv-02965). While Ms. Brown's case and the Pruitt appeal were pending, the U.S. Supreme Court unanimously decided *Tibble v. Edison Int'l*, 135 S. Ct. 1823 (2015). This decision effectively overruled this Court's and the Eleventh Circuit's holding in *Fuller v. SunTrust* that ERISA's six-year limitations period barred Plaintiffs' claims. Pruitt's appeal was thus successful and her case was remanded to this Court. *Stargel v. SunTrust Banks, Inc.*, 791 F.3d 1309 (11th Cir. 2015). The Fuller, Pruitt, and Brown actions were subsequently consolidated into the instant case.

3. Discovery and Summary Judgment Motions

The consolidated case then moved into a fact discovery phase that lasted from approximately May 25, 2016 through September 27, 2017, with one fact deposition also being taken in December. Defendants produced, and Plaintiffs reviewed and analyzed, over 348,000 pages of documents; Plaintiffs deposed twenty party fact witnesses, and three third-party fact witnesses. Defendants deposed all six Named Plaintiffs. The parties exchanged expert reports and engaged in expert discovery. Defendants then filed a partial motion for summary judgment; relying upon the then recent Supreme Court decision on statutes of

repose and tolling, *Cal. Ret. Sys. v. ANZ Secs.*, 137 S.Ct. 2042 (2017), which the Court granted, moving the Class Period inception date from April 10, 2004 to March 11, 2005. The Court then granted Plaintiffs' motion for class certification over Defendants' opposition; all of the putative class representatives attended the hearing. (Dkt. No. 222, June 27, 2018).

Defendants then filed three additional motions for summary judgment. First, Defendant RidgeWorth Capital Management, Inc. successfully moved for judgment in its favor on all claims, principally arguing it was not a fiduciary. (See Dkt. No. 256, Mar. 29, 2019). Second, all remaining Defendants successfully moved for summary judgment on Count VIII alleging a breach with respect to failing to remedy the breaches of predecessor fiduciaries. (See Dkt. No. 272, July 16, 2019). Third, Defendants filed a motion for summary judgment on all remaining claims, which included the principal claims of the case alleging breach of the ERISA duties of loyalty and prudence by the Committee Defendants. The Court denied Defendants' motion in all respects concerning three of the eight Affiliated Funds (the Growth and Income Fund, the International Equity Index Fund, and the Mid-Cap Equity Fund), but granted it with respect to the remaining five Affiliated Funds. (Dkt. No. 278, Oct. 3, 2019).

4. Settlement Negotiations

The Action was scheduled for trial on January 6, 2020, (Dkt. No. 279), but the Parties moved to refer the case to mediation, which the Court granted on

November 12, 2019. (Dkt. Nos. 283, 284).

The Parties participated in a January 7, 2020 full-day mediation with mediator Robert Meyer, Esq. of JAMS, ultimately reaching an agreement in principle to settle the Action and signing a term sheet reflecting their agreement. Over the course of the subsequent weeks, counsel continued to negotiate the precise terms of the Settlement and Plan of Allocation, which are incorporated into the Settlement Agreement presented to the Court today.

D. The Proposed Settlement

In exchange for releasing their claims, the Settlement provides that Defendants will pay \$29,000,000 to Class Members pursuant to the Court-approved Plan of Allocation discussed below.

1. Plan of Allocation

The Plan of Allocation³ is premised on calculating a Plan participant's *pro rata* distribution based upon the amount of each Class Member's investments in each of the Affiliated Funds from March 11, 2005, the first day of the Class Period, to December 31, 2012, the last day of the Class Period. The amount of each Class Member's investments in these funds is assessed on a quarterly basis. Class Members investing in the Surviving Funds are allocated a total of 90% of the Net Settlement Amount, which is allocated to each such Class Member on a *pro rata*

³ The Plan of Allocation is Exhibit A to the Settlement Agreement.

basis; Class Members investing in the Dismissed Funds are allocated a total of 10% of the **Net Settlement Amount**, which is allocated to each such Class Member on a *pro rata* basis. However, if a Class Member's calculated allocation is less than \$10.00 it will be considered *de minimis* and will not be distributed. Excluded from any distribution will be Defendants and their immediate family members.

A technical explanation of the specific steps of the allocation method is as follows:

- (1)Dividing the Net Settlement Proceeds between Surviving Funds and Dismissed Funds– the Net Settlement Proceeds to be allocated to Class Members invested in the three Surviving Funds during the Class Period is determined by multiplying the Net Settlement Proceeds by 0.9 (the “Surviving Funds Net Settlement Amount”), and the Net Settlement Proceeds to be allocated to Class Members invested in the five Dismissed Funds is determined by multiplying the Net Settlement Proceeds by 0.1 (the “Dismissed Funds Net Settlement Amount”);
- (2)Calculating each single Class Member’s quarterly balance in all Surviving Funds for all quarters in which he or she invested in those funds and adding these balances together (the “Single Class Member Surviving Funds Aggregate Balance”);
- (3)Adding all Single Class Member Surviving Funds Aggregate Balances together to determine the “Aggregate Surviving Funds Balance for all Class Members”;
- (4)Dividing each Single Class Member Surviving Funds Aggregate Balance by the Aggregate Surviving Funds Balance for all Class Members and then multiplying this result by the Surviving Funds Net Settlement Amount (resulting in each Class Member’s distribution from the Surviving Funds portion of the Net Settlement Proceeds, the “Class Member Distribution of Surviving Funds”);
- (5)Repeating the same process using the amounts of each Class Member’s investment in the Dismissed Funds and the Dismissed Funds Net Settlement

Amount (resulting in each Class Member’s distribution from the Dismissed Funds, i.e. the “Class Member Distribution of Dismissed Funds”);

(6) Determining each preliminary Class Member distribution by adding together each Class Member Distribution of Surviving Funds and each Class Member Distribution of Dismissed Funds;

(7) Eliminating all Class Member distributions below the *de minimis* amount of \$10 as determined in step 6, and allocating those amounts on a *pro-rata* basis only to the preliminary Class Member distributions determined in Step 6 that totaled above the *de minimis* amount (resulting in the “Class Member Distribution” showing allocations for each non-*de minimis* Class Member).

E. Proposed Date of Fairness Hearing

The Parties request the Court schedule a Fairness Hearing at least one hundred days from the filing of this motion to allow Defendants sufficient time to mail notice pursuant to the Class Action Fairness Act of 2005, 28 U.S.C. § 1715 (“CAFA Notice”), and at least sixty days from the mailing of the Class Notice. To effectuate this schedule, the Parties request the Court schedule a Fairness Hearing no earlier than June 24, 2020, which would be at least 90 days from the date the CAFA Notice is sent.

III. THE PROPOSED SETTLEMENT SATISFIES THIS CIRCUIT’S STANDARD FOR PRELIMINARY APPROVAL

A. The Settlement Meets the Standards for Preliminary Approval Under Federal Rule of Civil Procedure 23

Federal courts evince a “strong judicial policy favoring settlement.” *Nelson v. Johnson & Johnson Co.*, 484 F. App’x 429, 434 (11th Cir. 2012) (quoting *Bennett v. Behring Corp.*, 737 F.2d 982, 986 (11th Cir. 1984)). The presumption in favor of settlement is particularly strong in class actions, because settlements

“conserve judicial resources by avoiding the expense of a complicated and protracted litigation process[.]” *Hillis v. Equifax Consumer Serv., Inc.*, Nos. 104-cv-3400, 107-cv-314, 2007 WL 1953464, at *9 (N.D. Ga. June 12, 2007).

At preliminary approval, the Court must evaluate the settlement pursuant to Federal Rule of Civil Procedure 23 and determine whether it is “sufficiently fair, reasonable and adequate on its face to warrant presentation to the class members.”

Nolan v. Integrated Real Estate Processing, LP, No. 3:08-cv-642-J-34HTS, 2009 WL 10670779, at *6 (M.D. Fla. Sept. 9, 2009) (citing 4 *Newberg on Class Actions* § 11.25 (4th ed.)); *see also Bennett*, F.2d at 986 (for preliminary approval, the district court must find that the settlement is “fair, adequate and reasonable and is not the product of collusion between the parties”) (citation omitted). The Court should grant preliminary approval “where the proposed settlement is the result of the parties’ good faith negotiations, there are no obvious deficiencies and the settlement falls within the range of reason.” *Family Med. Pharmacy, LLC v. Trxade Grp., Inc.*, No. 15-cv-0590, 2016 WL 6573981, at *7 (S.D. Ala. Nov. 4, 2016). Proper settlement negotiations—which include arm’s length deliberations between experienced counsel and the oversight of a neutral party—support a preliminary finding of fairness. *Id.* (citing *Manual for Complex Litig.* (Third) § 30.42 (1995) (“A presumption of fairness, adequacy, and reasonableness may attach to a class settlement reached in arm’s-length negotiations between experienced, capable counsel after meaningful discovery”)).

B. The Settlement Satisfies the Eleventh Circuit's Test of Fairness

The Eleventh Circuit follows a six-factor test to determine whether the proposed settlement is fair, reasonable, and adequate and free from fraud or collusion:

(1) the likelihood of success at trial; (2) the range of possible recovery; (3) the point on or below the range of possible recovery at which the settlement is fair, adequate and reasonable; (4) the complexity, expense and duration of litigation; (5) the substance and amount of opposition to the settlement; and (6) the stage of the proceedings at which the settlement was achieved.

Nelson, 484 F. App'x at 434; *Bennett*, 737 F.2d at 986 (collecting cases). Analysis of the Settlement under these factors confirms the Settlement should be preliminarily approved.

1. Likelihood of Plaintiffs' Success at Trial

If this case proceeded to trial, the Parties would litigate whether failure to remove the Surviving Funds from the Plan constituted a breach of Defendants' fiduciary duties to Plan participants. While the Court's October 3 summary judgment order laid out its reasoning for denying summary judgment with respect to claims regarding the Surviving Funds, the Parties recognize that a trial ruling could be in favor of either side and each Party is at risk.

The upcoming trial brings real uncertainties for both sides—although Plaintiffs may prevail at trial, they are also very aware of the significant risk they could recover nothing. Simply because the Court found Plaintiffs have enough

evidence to defeat summary judgment is certainly no guarantee of success at trial — indeed, many Plaintiffs who go to trial and lose have first prevailed at summary judgment. And that was in fact the case for the two recent ERISA proprietary fund cases bringing similar claims that have gone to trial — and both trials resulted in judgment for defendants. See *Wildman v. Am. Century Serv.*, 362 F.Supp.3d 685 (W.D. Mo. 2019); *Brotherston v. Putnam Investments*, No. 15-13825, 2017 WL 2634361 (D. Mass. June 19, 2017).⁴ Thus, this factor is satisfied. See, e.g., *Dorado v. Bank of Am., N.A.*, No. 16-cv-21147, 2017 WL 5241042, at *4 (S.D. Fla. Mar. 24, 2017) (“The Court notes that there are risks to the Plaintiff that are inherent in continuing this litigation.”); *Burrows v. Purchasing Power, LLC*, No. 12-cv-22800, 2013 WL 10167232, at *6 (S.D. Fla. Oct. 7, 2013) (noting “because success at trial is not certain for Plaintiff, this factor weighs in favor of accepting the settlement.”).

2. Possible Range of Recovery at Trial for the Surviving and Dismissed Funds in Relation to the Settlement Amount⁵

“In considering the question of possible recovery, the focus is on the possible recovery at trial.” *Family Med. Pharmacy, LLC*, 2017 WL 1042079, at

⁴ The *Brotherston* District Court decision was reversed in part on appeal. 907 F.3d 17 (1st Cir. 2018). The litigation is still pending.

⁵ These two factors, (i) the range of possible recoveries, and (ii) the point on or below the range of possible recovery at which the settlement is fair, adequate and reasonable, are “easily combined and normally considered in concert.” *Family Med. Pharmacy, LLC*, 2017 WL 1042079, at *6.

*6. “A district court must first determine the appropriate standard of damages (in order to calculate the range of recovery), and then determine where in this range of recovery a fair, adequate and reasonable settlement amount lies.”⁶ *Perez v. Asurion Corp.*, 501 F. Supp. 2d 1360, 1380-81 (S.D. Fla. 2007) (citing *Behrens v. Wometco Ener., Inc.*, 118 F.R.D. 534, 541 (S.D. Fla. 1988)).

Plaintiffs’ potential damages at trial would be limited to the claims concerning the Surviving Funds. Although the Court has not yet ruled on the appropriate measure of damages in this case, the Court’s October 3 Summary Judgment ruling indicated that the comparison to Vanguard funds chosen by Plaintiffs’ damages expert seemed appropriate given the fact that Defendants themselves chose Vanguard funds to replace the Affiliated Funds subsequent to the Class Period. (Dkt. No. 278 at 88-89). This suggests the Court would be amenable to Plaintiffs’ damages model comparing the returns of the Affiliated Funds to similar Vanguard funds, which yielded total damages for the Surviving Funds of \$94.1 million based on the September 2018 report—assuming the funds were replaced at the inception of the Class Period. (Dkt. No. 254-10 at 12-13).

Prior to mediation, Plaintiffs updated that estimate to current value, which yielded a figure of \$109 million. But again, this assumes that the funds would

⁶ These two factors, (i) the range of possible recoveries, and (ii) the point on or below the range of possible recovery at which the settlement is fair, adequate and reasonable, are “easily combined and normally considered in concert.” *Family Med. Pharmacy, LLC*, 2017 WL 1042079, at *6.

have been replaced at the inception of the Class Period. Defendants argued that if the Court found the funds should have been replaced, a prudent fiduciary would have only replaced those funds later within the Class Period. Under one such scenario put forth by Defendants with later replacement dates, the damages would be reduced dramatically to \$11.8 million. The Court did not address the issue of replacement dates in its pre-trial decisions, so this means there remains considerable uncertainty regarding the amount of damages Plaintiffs might recover at trial even if the Court found Plaintiffs proved liability. Since 90% of the Settlement Amount of \$29 million, or \$26.1 million, is allocated to claims relating to the Surviving Funds, this means that the settlement amount is 24% of the maximum damages Plaintiffs might obtain under method 2, and 221% of what might constitute minimum damages (under Defendants' theory) if Plaintiffs successfully proved liability. Hence, this is an excellent recovery for the Class, and is on par or better than many similar ERISA class action settlements. *See, e.g., Mehling v. New York Life Ins. Co.*, 248 F.R.D. 455, 462 (E.D. Pa. 2008) (approving an ERISA settlement of 20% of the “best possible recovery”); *In re Mego Fin. Corp. Sec. Litig.*, 213 F.3d 454, 459 (9th Cir. 2000) (finding fair and adequate an ERISA settlement representing one-sixth, or 16 percent, of recovery); *Urakhchin v. Allianz Asset Mgm't of Am., L.P.*, No. 8:15-cv-01614-JLS-JCG, 2018 WL 8334858 at *5 (approving ERISA settlement that fell between 17-52% of maximum damages).

The Proposed Plan of Allocation also allocates 10% of the Settlement Fund, or \$2.9 million, to participants with claims with respect to the Dismissed Funds. Though these claims would not be tried, Plaintiffs believe they have a viable basis for appeal (as well as reconsideration pursuant to their pending motion) that might resurrect those claims. Of course, motions for reconsideration are rarely granted, and appellate reversals of fact-intensive District Court findings are also rare. Accordingly, since a rational negotiator would have paid something to release these claims, it would not be appropriate to release them without any consideration at all. The updated damages for the Dismissed Funds under method 2 would be approximately \$108 million. Given the slim chances of success on appeal or as the result of reconsideration, the value of these potential maximum damages must be heavily discounted by a rational negotiator, by something in the order of 90%, *i.e.* there would be an assumption of approximately a one in ten chance of success on appeal. This would yield an expected maximum *expected* recovery (*i.e.* discounted for the likelihood of achieving it) of \$10.8 million. Based on these rough assumptions, a \$2.9 million recovery for the Dismissed Fund claims would thus be 26.5% of that maximum expected recovery, putting it in line with the 24% recovery of the maximum amount for the Surviving Fund claims. This also represents an excellent recovery with respect to these claims to the same extent as the Surviving Fund claims.

3. The Complexity, Expense, and Likely Duration of Continued Litigation

“Particularly in class action suits, there is an overriding public interest in favor of settlement [because it] is common knowledge that class action suits have a well-deserved reputation as being most complex.” *Strube v. Am. Equity Inv. Life Ins. Co.*, 226 F.R.D. 688, 698 (M.D. Fla. 2005) (citing *Cotton v. Hinton*, 559 F.2d 1326, 1331 (5th Cir. 1977)). ERISA breach of fiduciary duty cases such as this have been recognized as being especially complex. *See, e.g., Hargrove v. Eaglepicher Corp.*, No. 10-cv-10946, 2012 WL 1668152, at *2 (E.D. Mich. May 10, 2012) (“An ERISA case involves highly-specialized and complex areas of law”); *Smith v. Krispy Kreme Doughnut Corp.*, No. 05-cv-00187, 2007 WL 119157, at *2 (M.D.N.C. Jan. 10, 2007) (recognizing that “ERISA law is a highly complex and quickly-evolving area of the law”).

This Action has been litigated in multiple fora for nearly twelve years, and trial was only a few weeks away. Trial was scheduled for January 6, 2020 until the Parties moved to stay the case in order to negotiate. Trial would have entailed complex presentations and expert testimony from both sides as to whether Defendants breached their fiduciary duties by retaining the Surviving Funds in the Plan and whether the Plan participants incurred losses by investing in those funds; and presenting evidence regarding the appropriate measure and amount of damages, if necessary, would also be time- and resource-consuming. The Parties

would have expended much time and resources to prepare and litigate the case fully through trial. This factor is thus satisfied and weighs in favor of preliminary approval. *See, e.g., Dorado*, 2017 WL 5241042, at *4 (reasoning that “class action litigation is an uncertain endeavor. The Settlement offers the class a certain and substantial recovery that will be distributed promptly. Therefore, the Settlement reasonably avoids further litigation.”).

4. Opposition to the Settlement

Although Plaintiffs, who are all Settlement Class Members, approve the Settlement, this factor cannot be fully analyzed until Class notice has been sent. Accordingly, if the Court preliminarily approves the Settlement and authorizes the Class Notice, Class Counsel will address any opposition to the Settlement in the final approval papers before the Fairness Hearing.

5. Stage of the Proceeding at which Settlement was Achieved

“The stage of proceedings at which settlement is achieved is evaluated to ensure that Plaintiffs had access to sufficient information to adequately evaluate the merits of the case and weigh the benefits of settlement against further litigation.” *Family Med. Pharmacy, LLC*, 2017 WL 1042079, at *7 (internal quotations and citations omitted). “With respect to the stage of the proceedings and the amount of discovery completed, [t]here is no precise yardstick to measure the amount of litigation that the parties should conduct before settling.”

Williams v. Nat. Sec. Ins. Co., 237 F.R.D. 685, 695 (M.D. Ala. 2006).

This case has been about as thoroughly litigated as any could be prior to trial. It has been litigated in three fora: the administrative claim's process, this Court, and twice at the Eleventh Circuit. There has been exhaustive discovery both of the facts (over 23 depositions) and experts, multiple motions to dismiss, four summary judgment motions, and a class certification hearing. At this stage, Plaintiffs have ample information to evaluate the merits of their case and assess the risk versus reward of proceeding towards trial. The case has already been trimmed following the Court's order on summary judgment, and Plaintiffs are aware of the strengths and weaknesses of the remaining claims.

This factor is thus satisfied. *See, e.g., Dorado*, 2017 WL 5241042, at *5 (finding factor satisfied where “[t]he case settled after meaningful discovery occurred, which permitted Plaintiff to evaluate the strengths and any weaknesses in her claim.”)

This Settlement was reached by experienced counsel for both Parties, through a mediation presided over by a seasoned neutral mediator, after twelve years of investigation and litigation and on the brink of trial, which all support approval of the Settlement. *See, e.g., Dorado*, 2017 WL 5241042, at *5 (“The history of negotiations, use of an independent mediator to resolve this case, the terms of the Settlement, and the absence of objections all confirm that the Settlement is the result of arms-length negotiations without any collusion.”). Moreover, Class Counsel believe the Settlement is an excellent result for the

Settlement Class, which weighs in favor of approving the Settlement. *See, e.g.*, *Family Med. Pharmacy, LLC*, 2017 WL 1042079, at *5 (“In considering the settlement, the district court may rely upon the judgment of experienced counsel for the parties. Thus, [a]bsent fraud, collusion, or the like, the district court should be hesitant to substitute its own judgment for that of counsel.”) (internal citations, quotations omitted). Preliminary approval is warranted.

IV. THE PROPOSED NOTICE PLAN SHOULD BE APPROVED

A. The Proposed Notice Plan Meets the Requirements of Due Process

Because the Action has been certified under Rule 23(b)(1), absent Class Members cannot opt out of the Settlement. *See Piazza Jr. v. EBSCO Industries, Inc.*, 273 F.3d 1341, 1353 (11th Cir. 2001); *Specialty Cabinets & Fixtures, Inc. v. Am. Equitable Life Ins. Co.*, 140 F.R.D. 474, 479 (S.D.Ga.1991). However, under Rule 23, the notice provisions are meant to protect the rights of absent class members and allow them the opportunity to object to the settlement. *See Juris v. Inamed Corp.*, 685 F.3d 1294, 1317 (11th Cir. 2012). The notice to Class Members must be “reasonably calculated under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections.” *In re CP Ships Ltd. Securities Litig.*, 578 F.3d 1306, 1317 (11th Cir. 2009) (quoting *Mullane v. Central Hanover Bank & Trust Co.*, 339 U.S. 306, 314 (1950)).

The proposed Class Notice, which is Exhibit C to the Settlement Agreement

attached to the Preliminary Approval Motion, meets this standard. Class Counsel, through the Settlement Administrator, will mail the Class Notice to Class Members along with posting it on a designated website, which should reach the vast majority of Class Members.

B. Description of the Notice Plan

The proposed Notice Plan will fully inform Settlement Class Members about the Action, the proposed Settlement, and the facts they need to make informed decisions about their rights. The Notice Plan includes multiple components designed to reach the largest number of Class Members reasonably possible.

First, the Class Notice will be sent by first-class mail to the Class Members' last known address at least 60 days prior to the Fairness Hearing. Because each Settlement Class Member currently has or had during the Class Period, a Plan account, and the Plan has a social security number and a last-known address for each such person, there is usually a relatively high rate of success in reaching class members in analogous actions. Additionally, by that same date, the Class Notice, along with other documents related to the litigation such as the Settlement Agreement with all of its exhibits and a list of frequently asked questions, will be posted on a dedicated Settlement website established by the Court-approved Settlement Administrator at Class Counsel's direction. At Class Counsel's

direction, the Settlement Administrator will also establish and monitor a dedicated, toll-free Settlement telephone number with an Interactive Voice Response (“IVR”) system which will have answers to frequently asked questions and also provide potential Class Members with contact information for Class Counsel should they have any additional questions regarding the Settlement.

The Notice Plan agreed to by the Parties satisfies all due process considerations and meets the requirements of Fed. R. Civ. P. 23(e). The proposed Class Notice describes in plain English: (i) the terms and operations of the Settlement; (ii) the nature and extent of the release of claims; (iii) the maximum attorneys’ fees and Plaintiff Incentive Awards that may be sought; (iv) the procedure and timing for objecting to the Settlement; and (v) the date and place for the Fairness Hearing. Courts within this Circuit have approved as fair similar notices and/or notice plans. *See, e.g., In re Colonial Bancorp, Inc. ERISA Litig.*, No. 09-cv-792, slip op. (M.D. Ala. June 28, 2012) (Order Granting Preliminary Approval of Class Action Settlement); *In re Beazer Homes, USA, Inc. ERISA Litig.*, No. 07-cv-952, slip op. (N.D. Ga. Aug. 11, 2010) (Story, J.) (Order Granting Preliminary Approval of Class Action Settlement); *Spivey v. S. Co.*, No. 04-cv-1912, slip op. (N.D. Ga. Aug. 14, 2007) (Story, J.) (order granting final approval for similar notice plan); *In re HealthSouth Corp. ERISA Litig.*, No. 03-cv-1700, 2006 WL 2109484, at *3 (N.D. Ala. June 28, 2006) (same); *In re Mirant Corp. ERISA Litig.*, No. 03-cv-1027, slip op. (N.D. Ga. Nov. 16, 2006) (same).

In sum, the proposed Notice Plan satisfies the requirements of due process and should be approved. *See 4 Newberg on Class Actions* § 11:53 (4th ed. 2010) (“The notice need not be unduly specific. The notice of the Proposed Settlement, to satisfy both Rule 23(e) requirements and constitutional due process protections, need only be reasonably calculated, under all of the circumstances, to apprise interested parties of the pendency of the settlement proposed and to afford them an opportunity to present their objections.”).

V. CONCLUSION

Based on the foregoing, Plaintiffs respectfully move the Court to grant their Unopposed Motion for Preliminary Approval of Class Action Settlement, Approval of Form and Manner of Class Notice, and Scheduling of Fairness Hearing.

Dated: March 11, 2020

Respectfully submitted,

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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: March 11, 2020

/s/ James A. Moore
James A. Moore