UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

Nicholas Smith and Derik George, individually and on behalf of all others similarly situated, Plaintiffs, v. Sun Country, Inc., The Board of Trustees of the Sun Country, Inc. 401(k) Profit Sharing Plan, John Does and Jane Does 1-50, Defendants, The Sun Country, Inc. 401(k) Profit Sharing Plan, Nominal Defendant.	No. 24-cv-619-KMM-EMB Hon. Kate M. Menendez Magistrate Judge Elsa M. Bullard

ORDER & GRANTING PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT AND CERTIFICATION OF CLASS FOR PURPOSES OF SETTLEMENT

This case came before the Court on Plaintiffs' Motion for Preliminary Approval of Class Action Settlement, ECF No. 87 and Motion for Certification of the Settlement Class, ECF No. 78. Based upon the Court's review of the motions and the memoranda and exhibits, and having further considered the arguments of counsel and the pleadings and record in the case, and finding good cause for granting the motions,

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

Jurisdiction & Venue

1. The Court has jurisdiction to consider the Motion and the relief requested therein in accordance with 28 U.S.C. § 1331 and 29 U.S.C. § 1132(e)(1).

2. The Venue before the Court is proper pursuant to 29 U.S.C. § 1132(e)(2).

Preliminary Certification of the Settlement Class For Purposes of Settlement

3. For settlement purposes only, the Court preliminarily certifies Counts I-VI of the Complaint on behalf of the following Settlement Class pursuant to Federal Rule of Civil Procedure 23(b)(1):

a. All current and former pilots of Sun Country, Inc. who are or were participants in the Sun Country, Inc. 401(k) Profit Sharing Plan and:

   1. who, after becoming a Sun Country, Inc. employee, completed a period of qualified military service between July 21, 2011 and December 31, 2025; and

   2. returned from that leave to be re-employed at Sun Country; and

3. who did not receive a pension contribution to the Plan with respect to such period of military service that was either:

    A. if the employee's rate was reasonably certain, at the rate the employee would have received but for the period of military service, or

    B. if the employee's rate is not reasonably certain, at the rate determined on the basis of the employee's average rate of compensation during the 12-month period immediately preceding the qualified military leave (or, if shorter, the period of employment immediately preceding the period of qualified military service); and

b. all beneficiaries of the participants described in subsection (a) above.

Excluded Persons. The Settlement Class excludes: (i) any person who, prior to the Effective Date, has settled or otherwise obtained a final, non-appealable judgment of dismissal with prejudice on any claim that would otherwise fall within the scope of the Released Claims; and (ii) the Fiduciary Defendants, their beneficiaries, and their immediate family members, heirs, successors, and assigns.

4. For settlement purposes only, the Court preliminarily finds that:

    a. The Settlement Class is properly defined by objective criteria and ascertainable.

    b. As required by Fed. R. Civ. P. 23(a)(1), the Settlement Class is "so numerous that joinder of all class members is impracticable" because Plaintiffs' counsel have identified at least 131 members.

    c. As required by Fed. R. Civ. P. 23(a)(2), there are one or more questions of law and/or fact common to the Settlement Class.

d. As required by Fed. R. Civ. P. 23(a)(3), the claims of the Plaintiffs are typical of the claims of the Settlement Class that the Plaintiffs seek to certify;

e. As required by Fed. R. Civ. P. 23(a)(4), the Plaintiffs will fairly and adequately protect the interests of the Settlement Class in that: (i) the interests of the Plaintiffs and the nature of the alleged claims are consistent with those of the Settlement Class members; and (ii) there appear to be no conflicts between or among the Plaintiffs and the Settlement Class;

f. As required by Fed. R. Civ. P. 23(b)(1), the prosecution of separate actions by individual members of the Settlement Class would create a risk of: (i) inconsistent or varying adjudications as to individual Settlement Class members that would establish incompatible standards of conduct for the parties opposing the claims asserted in this Action; or (ii) adjudications as to individual Settlement Class members that, as a practical matter, would be dispositive of the interests of the other members not parties to the individual adjudications, or substantially impair or impede the ability of such persons to protect their interests; and

g. As required by Fed. R. Civ. P. 23(g) and Rule 23(a)(4), Class

Counsel have represented and are capable of fairly and adequately representing the interests of the Settlement Class, and: (i) have done appropriate work identifying or investigating potential claims in the Action; (ii) are experienced in handling class actions; and (iii) have committed the necessary resources to represent the Settlement Class.

5. Pursuant to Rule 23(a)(4), Nicholas Smith, Derik George and Taylor Lehr are appointed as the Class Representatives of the Settlement Class.

6. Pursuant to Rule 23(g) and Rule 23(a)(4), R. Joseph Barton and Thomas G. Jarrard are appointed Co-Lead Class Counsel and Kent M. Williams is appointed Local Class Counsel.

Preliminary Approval of the Settlement Agreement

7. Preliminary approval is the first step in the class settlement process. *Manual for Complex Litigation* § 21.632 (4th ed. 2004). Deciding whether to grant preliminary approval requires finding that "it is fair, reasonable, and adequate to warrant providing notice of the Settlement to class members. *Randall v. GreatBanc Trust Company*, 2025 WL 3513880, at *1 (D. Minn. 2025).

8. The Court preliminarily finds Rule 23(e)(2)(A) is met because the Class Representatives and Class Counsel, who have substantial experience litigating similar class actions, have adequately represented the Class.

9. The Court preliminarily finds that Rule 23(e)(2)(B) is met because the Settlement Agreement appears to be the product of arms-length negotiations by counsel experienced in USERRA and ERISA class actions, who obtained the relevant documents and data necessary to evaluate the claims and the settlement was reached after two settlement conference with Magistrate Judge Bullard..

10. The Court preliminarily finds that Rule 23(e)(2)(c) is satisfied because the amount of the Settlement – $1,550,000 – is fair, reasonable, and adequate, including when taking into account the specific factors identified in Fed. R. Civ. P. 23(e)(2)(C) and preliminarily finds as to each of those factors as follows:

a. *Costs risks, and delay of litigation, trial, and appeal*. If the Settlement had not been achieved, Plaintiffs and the Settlement Class faced the expense, risk, delay and uncertainty of protracted litigation.

b. *Effectiveness of Distributing Relief to the Class.* Distribution of the relief will be effective because each Class Member's allocation will be paid into their account in the Plan or will be paid directly to the Class Member by check or, where banking information is on file, by electronic funds transfer.

c. *Attorneys' Fees.* Rule 23(e) assesses whether attorneys' fees impact the overall fairness of the Settlement. Fed. R. Civ. P.

Rule 23(e)(2)(C)(iii). As the Settlement Agreement leaves the amount of attorneys' fees amount up to the Court, the Court preliminarily finds that the attorney's fees provision is fair and reasonable.

d. *Separate Agreements*. The Parties have identified a Supplemental Agreement that sets forth the provision that allows Defendants to terminate the Settlement only if the Court certifies the class under Rule 23(b)(3) and if enough class members opt out. Such agreements are common and appropriate.

11. Rule 23(e)(2)(D) requires that all Class Members are treated equitably, but treating class members equitably does not necessarily mean treating them all equally." *In re Blue Cross Blue Shield Antitrust Litig.,* 85 F.4th 1070, 1093 (11th Cir. 2023); *Swinton v. SquareTrade, Inc.,* 454 F.Supp.3d 848, 875 (S.D. Iowa 2020). Here, the Court preliminarily finds that Rule 23(e)(2)(D) is satisfied because the Net Settlement Fund will be allocated and distributed to Class Members based on a court-approved plan of allocation. And the Plan of Allocation proposes allocating settlement funds based on the extent of Class Members losses. The only differentiation among Class Members in the Settlement Agreement is manner of distribution (i.e. whether the Class Member has a current account

balance in the Plan), which is a legitimate consideration given the anticipated merger of the Plan.

12. Because neither party nor the Court's review raise doubts about the fairness of the Settlement Agreement and the settlement is within the range of possible reasonable outcomes, it is preliminary approved.

Plan of Allocation

13. A plan of allocation is fair, reasonable and adequate where it proposes that "class members will receive their proportional share of alleged losses arising from" plaintiffs' claims. *Randall*, 2026 WL 1068035, at *5 (approving plan of allocation in retirement plan case). The Plan of Allocation proposes to distribute the settlement proceeds among Class Members based on the contributions that should have been made as calculated by Plaintiffs' expert and any investment losses as calculated by Plaintiffs' expert compared to any contributions that were made. The Court finds and preliminarily approves this Plan of Allocation as fair, adequate and reasonable.

Class Notice

14. The Court approves the Proposed Notice of Class Action Settlement ("Class Notice") and directs its distribution to the Class because its content of the Class Notice fully complies with due process and Federal Rule of Civil Procedure 23 because it provides appropriate information to Class Members. *See Manual for*

Complex Litigation, *supra*, § 21.312.

15. Notice provided by email or by first class mail is sufficient when the names and addresses of the Class Members are known. Here, the names and addresses of the Class Members are known and notice to the Class by email or first class mail is appropriate.

16. Subject to a Confidentiality Agreement and Order, Defendants shall produce to Class Counsel and the Settlement Administrator the Class Data required pursuant to Section V.3 of the Settlement Agreement, to the extent not already produced, by August 18, 2026. The parties shall jointly file a proposed Confidentiality Agreement and Order on or before August 12, 2026.

17. The Court appoints Angeion Group as the Settlement Administrator for providing Class Notice and otherwise assisting in administration of the Settlement. The Settlement Administrator shall provide notice to the Class no later than September 8, 2026. The Settlement Administrator will file a declaration with the Court confirming that the Class Notice was sent in accordance with this Order by October 7, 2026.

Class Action Settlement Procedures

18. Any Class Member who wishes to challenge the data with respect to his or her contributions or any person who wishes to establish that he or she is a Class Member must submit such a challenge or petition to the Settlement

Administrator that has a postmark of no later than November 6, 2026. The Challenge must set forth at least the following: (a) the full name, address and contact information for the person submitting the Challenge; (b) a written statement explaining why the data is incorrect, (c) sufficient supporting documentation, and (d) the signature of the person submitting the challenge.

19. Any Class Member who wishes to object to this Settlement or otherwise to be heard concerning this Settlement shall timely inform the District Court in writing of his or her intent to object to this Settlement and/or to appear at the Fairness Hearing by following the procedures set forth in the Class Notice ("Objection"). To be considered timely, the Objection must bear a postmark that is no later than October 30, 2026. The Objection must set forth at least the following: (a) the full name, address and contact information for the Objector and the name and address of counsel (if represented by counsel); (b) a written statement of any and all objections to this Settlement and any supporting papers and arguments; and (c) the signature of the Objector (or his attorney).

20. Any Class Member or other person who fails to make his, her, or its Challenge or Objection in the manner provided shall be deemed to have waived such challenge or objection and shall forever be foreclosed from making any objection to the fairness or adequacy of the proposed settlement as incorporated in the Settlement Agreement, to the Judgment, to the Plan of Allocation, to the award

of attorneys' fees and reimbursement of expenses to Class Counsel, unless otherwise ordered by the Court. To the extent that any objections or comments are transmitted to Settlement Administrator, or the Parties' counsel, but are not filed with the Court, those persons are hereby directed to file such objections with the Court.

Settlement Fund

21. The Settlement Fund meets the requirements of a "qualified settlement fund" for federal income tax purposes under Treas. Reg. § 1.468B-1. The Settlement Fund will be deemed and considered to be *in custodia legis* of the Court and will remain subject to the jurisdiction of the Court until such time as such funds will be distributed pursuant to the Settlement Agreement and/or the order of the Court.

Class Action Fairness Act Notice

22. The Court approves the form of notice to be provided by Defendants under the Class Action Fairness Act of 2005 ("CAFA") as consistent with the requirements of 28 U.S.C. § 1715(b).

Bar on Parallel Actions

23. Pending final approval of the Settlement, Class Members are preliminarily barred and enjoined from commencing, prosecuting, or continuing any action asserting claims that are, or could be, Released Claims against the

Released Defendant-Parties in any forum other than this Action, and Defendants are preliminarily barred and enjoined from commencing, prosecuting, or continuing any action asserting claims that are, or could be, Released Claims against the Released Plaintiff-Parties in any forum other than this Action.

Effect of Settlement or Termination of Agreement

24. Neither the Settlement Agreement, nor any of its terms or provisions, nor any of the negotiations or proceedings connected with the Settlement, shall be construed as an admission or concession by Defendants as to the validity of any claims or as to the truth of any allegations in this Action, or of any liability, fault, or wrongdoing of any kind.

25. In the event that the Settlement Agreement is terminated pursuant to its terms or is not finally approved in all material respects by the Court, or such approval is reversed, vacated, or modified in any material respect by this or any other court, then the Parties and Class members will be restored to their respective positions as of June 10, 2026, the day immediately prior to the date on which the Settlement Agreement was executed, and this Action shall proceed in all respects as if the Settlement Agreement and any related orders had not been entered, and any order entered by the Court pursuant to the terms of the Settlement Agreement, including the certification of the Class for settlement purposes, shall be treated as vacated *nunc pro tunc*.

Deadlines

26. Class Counsel will file any Motion for Attorneys' Fees, Expenses and Costs from the Settlement Fund by October 20, 2026.

27. The Class Representatives will file any Motion for Service Award by October 23, 2026.

28. Class Counsel shall file a Motion for Final Approval of the Settlement by November 6, 2026.

29. The Court will hold a final Fairness Hearing on November 17, 2026 at 1:00 p.m., via Zoom. The Court may continue the date of the final fairness hearing if necessary, without further notice to the Class, but any such continuance will be posted on the settlement website.

It is so ORDERED this 11th day of August, 2026.

s/Katherine M. Menendez
Katherine M. Menendez
United States District Judge