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

BARBARA J. FULLER; MARIAH C. WILLIAMS; NATALIE BROWN; ELAINE JEFFERSON; BARBARA A. KENNEDY; SELETHIA PRUITT,

Plaintiffs

v.

SUNTRUST BANKS, INC.; THE SUNTRUST BANKS, INC. BENEFITS PLAN COMMITTEE; RIDGEWORTH CAPITAL MANAGEMENT, INC.; JORGE ARRIETA; HAROLD BITLER; MIMI BREEDEN; MARK CHANCY; ALSTON D. CORRELL; DAVID DIERKER; TED HOEPNER; KEN HOUGHTON; THOMAS KUNTZ; DONNA LANGE; JOSEPH L. LANIER, JR.; JEROME LIENHARD; THOMAS PANTHER; WILLIAM O'HALLORAN; LARRY L. PRINCE; WILLIAM H. ROGERS, JR.; CHRISTOPHER SHULTS; JOHN SPIEGEL; MARY STEELE; JOHN and JANE DOES 1 to 20; GREGORY MILLER; ALEEM GILLANI; THE SUNTRUST BANKS INC. BENEFITS FINANCE COMMITTEE,

Defendants

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

ORDER

This Employee Retirement Income Security Act of 1972 ("ERISA"), 29 U.S.C. §§ 1001 et seq., putative class action is before the Court on Plaintiffs' Motion to Certify Class [Doc. 201] filed on January 16, 2018 to which Defendants responded on February 15, 2018 [Doc. 205] and Plaintiffs replied on March 9, 2018 [Doc. 211]. A hearing on the motion was held on May 3, 2018. For the reasons stated below Plaintiffs' motion is GRANTED, with some amendments to the proposed class definition as set forth below.

I. BACKGROUND

Plaintiffs are former employees of Defendant SunTrust Banks, Inc. ("SunTrust"). While at SunTrust Plaintiffs participated in the Suntrust 401(k) Plan (the "Plan").[1] They brought this action under ERISA. The Plan is a defined contribution retirement plan for the primary purpose of providing retirement income to SunTrust employees. Plaintiffs allege Defendants violated their fiduciary duties to the Plan and to participants by disloyally and imprudently monitoring the Plan investment options.

Specifically, Plaintiffs allege that Defendants breached their ERISA-mandated duties of loyalty and prudence by offering to Plan participants eight different mutual funds which Plaintiffs call the "Affiliated Funds."[2] Plaintiffs allege that the Affiliated Funds were poor investments which provided sub-par growth and returns. Plaintiffs allege that SunTrust kept the Affiliated Funds in the investment options lineup because the management of these funds by SunTrust's subsidiary produced fees which inured to SunTrust's benefit. Further, Plaintiffs assert that the fees charged were excessive. Plaintiffs contend that mutual funds, separately managed accounts and collective trusts available from The Vanguard Group, Inc. [Doc. 194 ¶ 9], should have been offered instead because these funds charge lower fees than the Affiliated Funds. Defendants' failure to offer these other low-fee investments, plus the alleged

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[1]Reference is to SunTrust's 2002 401(k) Plan. A superceding 2013 Plan does not appear to be pertinent to this litigation. It is not in the record.

[2]The most current version of the complaint is the Second Amended Complaint ("Complaint") [Doc. 194]. All of the Affiliated Funds were mutual funds which were created and managed by a SunTrust subsidiary.

overall poor performance of the Affiliated Funds are the factual bases for Plaintiffs' claim that Defendants breached their ERISA fiduciary duties.

Eight Affiliated Funds were owned by various named Plaintiffs during their employment:[3] 1) the SunTrust Banks, Inc. ("STI") Classic Capital Appreciation Fund; 2) STI Classic Small Cap Growth Fund; 3) STI Classic Growth and Income Fund; 4) STI Classic Mid-Cap Equity Fund; 5) STI Classic Investment Grade Bond Fund; 6) STI Classic Short-Term Bond Fund; 7) STI Classic Prime Quality Money Market Fund; and 8) STI Classic International Equity Index Fund.[4]

Five of the six named Plaintiffs in this action are seeking to be class representatives: Barbara J. Fuller; Mariah C. Williams, Elaine Jefferson; Barbara A. Kennedy; and Selethia Pruitt. During the Class Period they held the following mutual funds in the Affiliated Funds group:

SELETHIA PRUITT

STI Classic Investment Grade Bond Fund (from March 11, 2005-August 29, 2010)
STI Prime Quality Money Market Fund (from March 11, 2005-August 29, 2010)

MARIAH WILLIAMS

STI Classic Mid-Cap Equity Fund (from 2006-2010)
STI Classic International Equity Index Fund (from 2006-2012)
STI Classic Growth and Income Fund (from March 11, 2005-2011)
STI Classic Capital Appreciation Fund (from 2008-2012)
STI Classic Small Cap Growth Fund (at various times from March 11, 2005-2012)
STI Classic Investment Grade Bond Fund (from March 11, 2005-2012)

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[3]The 2002 Plan offered numerous investment options in addition to the Affiliated Funds.

[4]Some of these funds changed names during the Class Period. The Court will refer to the funds by the names listed above.

BARBARA KENNEDY

STI Classic Small Cap Growth Fund (from March 11, 2005-2012)
STI Classic Mid-Cap Equity Fund (from 2005-2010)
STI Classic International Equity Index Fund (from 2005-2012)
STI Classic Growth and Income Fund (at various times from 2005-2011)
STI Classic Capital Appreciation Fund (from 2005-2006)

ELAINE JEFFERSON

STI Prime Quality Money Market Fund (from 2008-2010)
STI Classic Capital Appreciation Fund (from 2008-2009)
STI Classic Small Cap Growth Fund (from 2005-2008)
STI Classic Mid-Cap Equity Fund (from 2005-2008)
STI Classic Short-Term Bond Fund (at various times from March 11, 2005-2009)
STI Classic International Equity Index Fund (from 2005-2009)
STI Classic Investment Grade Bond Fund (at various times from March 11, 2005-2012)

BARBARA FULLER

STI Classic Short-Term Bond Fund (from March 11, 2005-October 12, 2005)
STI Classic Prime Quality Money Market Fund (from March 11, 2005-October 12, 2005)
STI Classic Growth and Income Fund (from March 11, 2005-October 12, 2005)

II. MOTION FOR CLASS CERTIFICATION

Plaintiffs seek class certification under Rule 23 of the Federal Rules of Civil Procedure. Plaintiffs' proposed class is: "All participants and beneficiaries in the SunTrust Banks, Inc. 401(k) Plan, excluding the Defendants, who had a balance through their Plan accounts in any of the Affiliated Funds at any time from April 10, 2004 to December 31, 2012."[5]

A. Rule 23(a) Legal Standard

Rule 23 of the Federal Rules of Civil Procedure establishes criteria that must be satisfied for the Court to certify a case as a

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[5]As the Court recently ruled the Class Period cannot begin earlier than March 11, 2005, "March 11, 2005," will be substituted for "April 10, 2004" in Plaintiffs' proposed class definition, making the proposed Class Period March 11, 2005 to December 31, 2012.

class action. The burden of showing that the criteria are met is on Plaintiffs. Heaven v. Trust Co. Bank, 118 F.3d 735, 737 (11th Cir. 1997). Certification is a two step process: first, all components of Rule 23(a) must be satisfied and second, one option under Rule 23(b) must be satisfied. Rule 23(a) sets out that a class may only be certified if:

> 1) the class is so numerous that joinder by all members is impracticable;
> 2) there are questions of law or fact common to the class;
> 3) the claims or defenses of the representative parties are typical of the claims or defenses of the class; and
> 4) the representative parties will fairly and adequately protect the interests of the class.

Fed. R. Civ. P. 23(a).

Defendants oppose class certification only on the ground that the representative parties will not fairly and adequately protect the interests of the class. Nonetheless the Court must independently and carefully review whether all requirements have been met. See Gilchrist v. Bolger, 733 F.2d 1551, 1555 (11th Cir. 1984)(a class action may only be certified "if the court is satisfied, after a rigorous analysis, that the prerequisites of Fed. R. Civ. P. 23(a) have been satisfied").

The Rule 23(a) requirements are referred to in order as "numerosity, commonality, typicality, and adequacy of representation." In re Suntrust Banks, Inc. ERISA Litig., No. 1:08-CV-03384-RWS, 2016 WL 4377131, at *5 (N.D. Ga. Aug. 17, 2016)(Story, J.)(citing Piazza v. Ebsco Indus., Inc., 273 F.3d 1341, 1346 (11th Cir. 2001)). Here, the Court finds all four requirements are satisfied, although not in the exact ways argued by Plaintiffs.

1. Numerosity

The first Rule 23(a) requirement asks whether "the class is so numerous that joinder of all members is impracticable." Fed. R. Civ. P. 23(a)(1). Defendants do not challenge that Plaintiffs have met the numerosity requirement. At this time the exact number of class members is unknown, but Plaintiffs allege it is in the realm of 30,000 members. Even allowing for the double count inherent in counting both participants and beneficiaries, the Court agrees that joinder is impracticable. The numerosity element is satisfied.

2. Commonality

Rule 23(a)(2) asks whether the case raises "questions of law or fact common to the class." In particular, the Supreme Court has defined this to mean that the proposed class' claims must depend upon a "common contention . . . of such a nature that it is capable of classwide resolution." Wal-Mart Stores, Inc. v. Dukes, 564 U.S. 338, 350 (2011). Not every question of law or fact must be in common, but the common question or questions must lend themselves to classwide resolution. In other words, a determination of the truth or falsity of a common question must resolve an issue that is central to all Plaintiffs' claims "in one stroke." Id.

Plaintiffs assert that the questions of whether Defendants breached their fiduciary duties through the maintenance of imprudent investment options, and whether the Plan suffered losses from those breaches, are common to the claims of all proposed class members. Plaintiffs further state that because they seek recovery on behalf of the Plan, the claims of every class member are "susceptible to common proof" [Doc. 201-1 at 17].

While the Court finds the element of commonality is satisfied, it disagrees with Plaintiffs' statement that generalized proof can establish whether Defendants breached their fiduciary duties to the Plan in offering all of the Affiliated Funds. It will be necessary for Plaintiffs to address whether Defendants, in maintaining each of the eight Affiliated Funds in the Plan breached their fiduciary duties to the Plan. At this point the Court only knows Plaintiffs' allegations, not what the evidence would show at trial or at a fairness hearing on a proposed settlement. The Court understands that Plaintiffs seek quasi-equitable relief on behalf of the Plan (restoring value to the Plan which allegedly was lost by maintaining imprudent, low value investments); in order to do that Plaintiffs' evidence must address each of the eight Affiliated Funds.

The foregoing considerations are not obstacles to certification, however, as the Court has the option of certifying more than one class as discussed below. Further, as stated it is not necessary for every question of law or fact to be common to every class member to satisfy the commonality requirement. Finally, the Court has the option of changing the type of certification at a later date if necessary. Fed. R. Civ. P. 23(c)(1)(C). With these considerations in mind, the Court finds the element of commonality is satisfied.

3. Adequacy

Proceeding in order, the next element of class certification under Rule 23(a) is typicality, but for ease of organization the Court next discusses adequacy. Adequacy is the only element as to which Defendants offer objection and argument.

Rule 23(a)(4) asks whether the proposed class representatives will "fairly and adequately protect the interests of the class." It

is an important inquiry because in deciding the merits of an individual class representative's claim, the Court will in effect decide the merits of every class member's claim.

Defendants argue that none of the proposed class representatives meets the adequacy requirement. They point out correctly that the Court must consider the "forthrightness and vigor with which the representative party can be expected to assert and defend the interests of the members of the class," citing Lyons v. Georgia-Pacific Corp. Salaried Employees Retirement Plan, 221 F.3d 1235, 1253 (11th Cir. 2000). They argue that while class representatives need not be legal scholars, they "should understand the action in which [they are] involved, and [their] understanding should not be limited to derivative knowledge acquired solely from counsel" [Doc. 205 at 8] citing Ogden v. AmeriCredit Corp., 225 F.R.D. 529, 534-35 (N.D. Tex. 2005), an ERISA case.

Plaintiffs in response argue that Defendants are in essence asking the Court to require that class representatives have "independent knowledge" [Doc. 211 at 10] which is not a requirement in the Eleventh Circuit, citing In re Theragenics Corp. Securities Litigation, 205 F.R.D. 687, 696 (N.D. Ga. 2002) (Thrash, J.).

Plaintiffs also reiterate that all five of the proposed class representatives have the requisite interest, vigor, and knowledge to adequately represent the class based on their deposition testimony and their affidavits.

In Kirkpatrick v. J.C. Bradford & Co., 827 F.2d 718 (11th Cir. 1987) the Court of Appeals addressed the issue of adequacy in a securities case where class certification was sought. The Court found the proposed class representatives to be adequate even though

it was not proven they individually would vigorously pursue the legal claims of the class. The Court explained as follows:

> The inquiry into whether named plaintiffs will represent the potential class with sufficient vigor to satisfy the adequacy requirement of Rule 23(a)(4) most often has been described to "involve[] questions of whether plaintiffs' counsel are qualified, experienced, and generally able to conduct the proposed litigation and of whether plaintiffs have interests antagonistic to those of the rest of the class." Even where these two requirements are satisfied, however, named plaintiffs might not qualify as adequate class representatives because they do not possess the personal characteristics and integrity necessary to fulfill the fiduciary role of class representative. . . .
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> Contrary to the district court's approach to the issue, adequate class representation generally does not require that the named plaintiffs demonstrate to any particular degree that individually they will pursue with vigor the legal claims of the class. Although the interests of the plaintiff class certainly would be better served if the named plaintiffs fully participate in the litigation, the economics of the class action suit often are such that counsel have a greater financial incentive for obtaining a successful resolution of a class suit than do the individual class members. It is not surprising, then, that the subjective desire to vigorously prosecute a class action, which the district court here found missing in the named plaintiffs, quite often is supplied more by counsel than by the class members themselves. Obviously this creates a potential for abuse. Yet the financial incentives offered by the class suit serve both the public interests in the private enforcement of various regulatory schemes, particularly those governing the security markets, and the private interests of the class members in obtaining redress of legal grievances that might not feasibly be remedied "within the framework of a multiplicity of small individual suits for damages." . . .
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> **We conclude, however, that in securities cases such as these, where the class is represented by competent and zealous counsel, class certification should not be denied simply because of a perceived lack of subjective interest on the part of the named plaintiffs unless their participation is so minimal that they virtually have abdicated to their attorneys the conduct of the case.** To require less would permit attorneys essentially to serve as class representatives; to require more could well prevent the vindication of the legal rights of the absent class members under the guise of protecting those rights.

Kirkpatrick, 827 F.2d at 726-28 (internal citations omitted) (emphasis added).

Beginning first with the derivative knowledge issue, it is clear that Plaintiffs are right. Ogden is a nonbinding district court decision from the Fifth Circuit and is to some degree factually distinguishable. Moreover, the undersigned agrees fully with Judge Thrash's persuasive opinion in Theragenics, which states in part:

> The Defendants contend that the lead Plaintiffs have not demonstrated that they will vigorously prosecute their claims or supervise class counsel. The Defendants argue that the lead Plaintiffs are inadequate class representatives because they are unfamiliar with the allegations of the Amended Complaint and are unfamiliar with, unwilling to or unable to discharge their obligations as class representatives. No useful purpose would be served in addressing the Defendants' arguments as to each of the proposed class representatives. The basic flaw of the Defendants' analysis is that the alleged deficiencies of the proposed class representative are irrelevant in a fraud on the market case such as this which is prosecuted by able and experienced counsel.

In re Theragenics Corp. Sec. Litig., 205 F.R.D. at 696.

In the instant case, it is fair to say that the named Plaintiffs lack an understanding of the elements of an ERISA cause of action. That is irrelevant; expert witnesses and massive documentary evidence would supply virtually all of the trial evidence. If Plaintiffs were asked to identify account statements reflecting their acquisition and sale of various Affiliated Funds they could do so, as shown by their deposition testimony. [See, e.g., Doc. 213-1 at 114-16; Doc. 216-1 at 114; Doc. 216-2 at 125, 134-35; Doc. 216-3 at 137; Doc. 216-4 at 90].

The Court finds no indication that Plaintiffs have "abdicated" to their attorneys the conduct of this case. Rather, Plaintiffs' depositions and affidavits indicate that Plaintiffs understand they are obligated to discuss the case and their testimony with counsel

when requested to do so, to attend their depositions (which they already have done), to attend the trial of the case[6] and to otherwise cooperate in trial preparation.

The Court does consider whether Plaintiffs' attenuated relationship to the 2002 Plan makes them inadequate class representatives. All of them are retired; all of them cashed out their Plan investments at or before leaving SunTrust. SunTrust replaced the 2002 Plan in 2013. Thus, there could be an argument that they have insufficient incentive to seek to reform the 2002 Plan or to represent the interests of those who are still members of the Plan. Upon consideration the Court rejects that argument. First, Plaintiffs each seek individual monetary relief from Defendants based on the Plan's offering of alleged unsuitable investments; this is a strong incentive to cooperate with counsel in pursuing a favorable outcome. Second, all Plaintiffs had lengthy terms of employment with SunTrust. They undoubtedly had many peers who participated in the Plan along with them and who would stand to benefit from successful litigation. Third, all named Plaintiffs signed an affidavit detailing an understanding of their duties as a class representative.

The record shows the following regarding Plaintiffs' employment with SunTrust: Selethia Pruitt ("Pruitt") worked for SunTrust for thirty-seven years until her retirement in 2010 [Doc. 213-1 at 23]. She served as a customer service representative and as an assistant

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[6]In her deposition taken during merits discovery, Barbara Fuller testified she did not plan to attend the trial in Atlanta (she resides in Virginia). After a break, Fuller said she would attend if the judge wished for her to attend [Doc. 216-1 at 104, 204]. In an affidavit signed by Fuller filed in connection with the instant Motion for Class Certification, Fuller verified her intention to attend the trial.

bank branch manager [Docs. 211 at 15; 194 at 15; 213-1 at 23]. Mariah Williams ("Williams") worked for SunTrust for approximately fifteen years at bank branches and call centers, including as a branch manager [Doc. 216-4 at 16]. She retired in May 2013 [Id. at 18]. Barbara Kennedy ("Kennedy") worked for SunTrust for nineteen years until February 2013 in various managerial roles at bank branches, including as branch manager [Doc. 216-3 at 26, 32]. Elaine Jefferson ("Jefferson") worked for SunTrust for more than thirty years through February 2013. She worked as a call center manager, float manager (supplying staff to bank branches), and as a branch manager [Doc. 216-2 at 12-14]. Barbara Fuller ("Fuller") worked for SunTrust for thirty-eight years in various clerical positions. When her employment ended in October 2005 she was an administrative assistant in the exceptions department [Doc. 216-1 at 10; 13]. She received a lump sum distribution of the balance in her Plan account at the time of her retirement [Id. at 13].

Although the affidavits are pro forma documents prepared by counsel, each Plaintiff signed at the bottom acknowledging that the affidavit contained their true contentions. The affidavits [see, e.g., Doc. 201-48 (emphasis added)] all state that:

> As one of the named Plaintiffs in this action, I am interested in serving as a class representative. Prior to seeking to become a Plaintiff in this litigation, **I familiarized myself with the duties of a class representative. I understand that if the Court appoints me as a class representative, I will have a duty to represent the interests of all members of the class.** I understand that the duties of a class representative require me to always consider the interests of the class as I would consider my own, to participate actively in the lawsuit, and to recognize and accept that any resolution of this lawsuit must be determined to be in the best interests of the class as a whole.

The Court also finds it important to consider adequacy in light of the procedural posture of this case and the type of evidence the Court expects to be presented at trial. First, counsel have concluded extensive merits discovery. While counsel could opt to have each named Plaintiff testify at trial, it does not appear that they would be strictly required to do so. All of the investment records, disclosures, Plan committee meeting minutes and other documents can be introduced into evidence. There is no right to a jury trial in an ERISA case, so there is no need to elicit testimony specially calculated to appeal to a jury. The Court anticipates that both sides will present expert testimony on the question whether offering each of the Affiliated Funds was a breach of Defendants' fiduciary duties. Further, Plaintiffs are represented by highly qualified counsel. See Kirkpatrick, 827 F.2d at 727-28 (finding that there is no general standard for a proposed representative's interest and knowledge in a case because it depends on context, but where a class is represented by zealous counsel in a complicated and technical case, certification should not be denied due to a lack of perceived interest on the part of the named plaintiffs).[7] The Court concludes that all Plaintiffs meet the adequacy requirement.

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[7]The Court has considered whether the significant lapse of time between Plaintiff Barbara Fuller's retirement from SunTrust in 2005 and the present should disqualify her from being appointed as a class representative. Fuller is in a unique position--she has been continuously involved in this litigation and predecessor litigation since 2004 even though she left SunTrust in 2005. She has been a named Plaintiff throughout. The Court concludes she meets the adequacy requirement.

4. Typicality

Rule 23(a)(3) asks whether the "claims or defenses of the representative parties are typical of the claims or defenses of the class." This requirement is satisfied where the claims of the class representatives are the same as those of the other class members such that if one plaintiff wins, everyone she represents also wins.

Assuming the correctness of Plaintiffs' argument that only Defendants' conduct need be examined to determine liability, there still are eight funds at issue. The Court will be required to determine whether each of the eight funds was so deficient that Defendants breached their fiduciary duties in offering each fund. The Court therefore finds that separate classes for each fund are necessary. Once the group is split into separate classes, there is no issue with typicality (or commonality).[8] Each class will be represented by one or more named Plaintiffs who invested in the fund at issue. If she/they wins, that class will win; if she/they loses, that class will lose.

Thus, all four requirements of Rule 23(a) are satisfied: the proposed class is sufficiently numerous (even when divided into eight classes), there are questions of law and fact common to the claims of the named individual Plaintiffs and the members of the corresponding class, the class representatives are adequate, and the class representatives' claims are typical of each class after dividing the class and the class representatives into eight different classes

[8]Subclasses are specifically authorized by Rule 23, which says "[w]hen appropriate, a class may be divided into subclasses that are each treated as a class under this rule." Fed. R. Civ. P. 23(c)(5).

(class definitions are below). The Court must next consider what type of class to certify under Rule 23(b).

B. Legal Standard Rule 23(b) Legal Standard

A putative class also must meet at least one of the criteria in Rule 23(b), which decides what type of class will be certified. Plaintiffs moved for certification under Rule 23(b)(1) and 23(b)(3), but expressed a preference for certification under 23(b)(1). Defendants argue that if certification is proper at all it is only proper under Rule 23(b)(1).

Under Rule 23(b)(1) a class can be maintained where prosecuting separate actions would create a risk of either:

> (A) inconsistent or varying adjudications with respect to individual class members that would establish incompatible standards of conduct for the party opposing the class; or
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> (B) adjudications . . . that, as a practical matter, would be dispositive of the interests of the other members not parties to the individual adjudications or would substantially impair or impede their ability to protect their interests.

Fed. R. Civ. P. 23(b)(1).

Here, Plaintiffs argue certification is proper under both 23(b)(1)(A) and (B). Defendants do not disagree. The Court agrees.

A class may be certified under Rule 23(b)(3) when

> the court finds that the questions of law or fact common to class members predominate over any questions affecting only individual members, and that a class action is superior to other available methods for fairly and efficiently adjudicating the controversy. The matters pertinent to these findings include:
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> (A) the class members' interests in individually controlling the prosecution or defense of separate actions;
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> (B) the extent and nature of any litigation concerning the controversy already begun by or against members;
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> (C) the desirability or undesirability of concentrating the litigation of the claims in the particular forum; and

(D) the likely difficulties of managing a class action.

While this case could be certified under Rule 23(b)(3), it appears that certification under Rule 23(b)(1) is preferable. If Plaintiffs win any part of their argument on behalf of the Plan the question will then become how to distribute the Plan's added value to members of the affected class(es). The provisions of the Plan itself and the damages yardstick offered by the respective class representative's measure of success will dictate the damages outcome for members of the relevant class.

The various classes will be certified under Rule 23(b)(1).

III. CLASS CERTIFICATION

Eight classes are certified 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 will be 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 will be 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 will be 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 will be 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 will be 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 will be 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 will be 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.

IV. APPOINTMENT OF CLASS COUNSEL

Rule 23(g) of the Federal Rules of Civil Procedure requires that a court certifying a class appoint counsel for that class. In appointing counsel, the Court must consider the proposed counsel's past experience in handling class actions and the types of claims asserted, the proposed counsel's already completed work in investigating potential claims throughout the action, and the proposed counsel's willingness to commit resources to representing the class. Fed. R. Civ. P. 23(g)(1)(A).

Here, J. Brian McTigue and James Moore from the law firm McTigue Law LLP seek to be class counsel. Brian McTigue worked as counsel to committees of the United States Congress prior to founding McTigue Law LLP. He is familiar with ERISA law, as his legislative work included drafting legislation to give ERISA fiduciary breach claims greater protection when companies sponsoring plans file for bankruptcy. James Moore has two decades of class action experience with a particular focus on ERISA. He has secured multimillion dollar awards for pension plan participants.

Karen L. Handorf and Scott M. Lempert from the law firm Cohen Milstein Sellers & Toll PLLC also seek to be class counsel. Karen Handorf is chair of Cohen Milstein's ERISA practice group, and joined Cohen Milstein after working in government service as an attorney for the Department of Labor litigating ERISA cases in the federal courts. Scott Lempert is a member of Cohen Milstein's ERISA practice group and has 20 years of experience in commercial class actions on behalf of ERISA participants.

Alan R. Perry, Jr. of the law firm Page Perry seeks to serve as local counsel and class liaison. Alan Perry has 35 years of

experience in complex securities litigation including class actions that have resulted in multimillion dollar settlements.

Having reviewed the resumes of each attorney proposed to be class counsel, the Court finds them all to be qualified attorneys who have the necessary experience in both class actions and specifically ERISA litigation to properly and vigorously represent the interests of the class. Thus, J. Brian McTigue and James Moore from the law firm McTigue Law LLP are appointed to represent the class; Karen L. Handorf and Scott M. Lempert from the law firm Cohen Milstein Sellers & Toll PLLC are appointed to represent the class; and Alan R. Perry, Jr. from the law firm Page Perry is appointed to represent the class as liaison counsel.

SO ORDERED, this 27 day of June, 2018.

ORINDA D. EVANS
UNITED STATES DISTRICT JUDGE