UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

In Re SunTrust Banks, Inc. ERISA Litigation	**No. 1:08-cv-03384-BBM** **AMENDED CONSOLIDATED ERISA CLASS ACTION COMPLAINT** **JURY TRIAL DEMANDED**

Plaintiffs William B. Fisch, Sunil Kapilashrimi, Paul J. Hellman, Betty L. Pickens, Phyllis Reagan, Dennis Erwin, Danielle Clay, Chrys Trau, Donna Smothermon and Demetria Whisby (collectively "Plaintiffs") on behalf of the SunTrust Banks, Inc. 401(k) Savings Plan (the "Plan"), themselves, and a class of all other similarly situated Plan participants (the "Participants"), allege the following in the instant amended consolidated complaint ("Complaint") based upon personal information as to themselves and upon the investigation of their undersigned counsel as to other matters.[1]

---

[1] The investigation by counsel included, among other things: a review of administrative claims review files of the Plaintiffs (as discussed below); U.S. government regulations; U.S. Securities and Exchange Commission ("SEC") filings by SunTrust Banks, Inc. ("SunTrust" or the "Company"), including the Company's proxy statements (Form DEF 14A), annual reports (Form 10-K), quarterly reports (Form 10-Q), current reports (Form 8-K), registration statements (Form S-8); Forms 5500 filed by the Plan with the U.S. Department of Labor ("DOL"); annual reports filed on behalf of the Plan (Form 11-K), and; other available documents governing the management, administration and operations of the Plan. Plaintiffs believe that substantial additional evidentiary support will exist for the allegations set forth herein after a reasonable opportunity for discovery. Plaintiffs may, after discovery and/or disclosure proceedings in this case, seek leave to amend this Complaint to add new parties or claims or to identify the "John Doe Defendants."

INTRODUCTION

1. This is a class action brought pursuant to §§ 409 and 502(a)(2) of the Employee Retirement Income Security Act of 1974 ("ERISA"), 29 U.S.C. §§ 1109 and 1132(a)(2), against the fiduciaries of the Plan for breaches of the ERISA-imposed fiduciary duties of prudence and loyalty.

2. The Plan is a defined contribution retirement plan sponsored by SunTrust. It is a legal entity that can sue and be sued. ERISA § 502(d)(1), 29 U.S.C. § 1132(d)(1). However, in a breach of fiduciary duty action such as this, the Plan is not a party. Rather, pursuant to ERISA § 409, and the law interpreting it, the relief requested in this action is for the benefit of the Plan and its Participants.

3. Plaintiffs were Participants in the Plan during the Class Period (May 15, 2007 to March 30, 2011), during which time the Plan held interests in the common stock of SunTrust ("SunTrust Stock" or "Company Stock"). Plaintiffs' retirement investment portfolios in the Plan during the Class Period included SunTrust Stock.

4. Defined contribution retirement plans confer tax benefits on participating employees to incentivize saving for retirement. An employee participating in such a plan may have the option of purchasing the common stock

of his or her employer, often the sponsor of the plan, for part of his or her retirement investment portfolio. SunTrust Stock was one of the investment alternatives of the Plan throughout the Class Period.

5. Plaintiffs allege that Defendants, as "fiduciaries" of the Plan, as that term is defined under ERISA § 3(21)(A), 29 U.S.C. § 1002(21)(A), breached the duties they owed to the Plan, to Plaintiffs, and to the other Participants of the Plan by, *inter alia*, retaining SunTrust Stock as an investment option in the Plan when a reasonable fiduciary using the "care, skill, prudence, and diligence… that a prudent man acting in a like capacity and familiar with such matters would use" would have done otherwise. *See* ERISA § 404(a)(1), 29 U.S.C. § 1104(a)(1).

6. Specifically, Plaintiffs allege in Count I that the Defendants, who were responsible for the investment of the Plan's assets, breached their fiduciary duties to the Participants in violation of ERISA by failing to prudently and loyally manage the Plan's investment in Company securities by: (1) continuing to offer SunTrust Stock as a Plan investment option when it was imprudent to do so; (2) failing to provide complete and accurate information to Plan Participants regarding the Company's financial condition and the prudence of investing in SunTrust Stock; and (3) maintaining the Plan's pre-existing significant investment in SunTrust Stock when Company Stock was no longer a prudent investment for the Plan. These actions/inactions run directly counter to the express purpose of ERISA

pension plans, which are designed to help provide funds for participants' retirement. *See* ERISA § 2, 29 U.S.C. § 1001 ("CONGRESSIONAL FINDINGS AND DECLARATION OF POLICY").

7. In Count II, Plaintiffs allege that certain Defendants, who were responsible for the selection, monitoring and removal of the Plan's other fiduciaries, failed to properly inform, and monitor the performance of, their fiduciary appointees despite the fact that these Defendants knew or should have known that such other fiduciaries were imprudently allowing the Plan to continue offering SunTrust Stock as an investment option and investing Plan assets in SunTrust Stock when it was no longer prudent to do so.

8. In Count III, Plaintiffs allege that all Defendants breached their fiduciary duties and responsibilities as co-fiduciaries by failing to prevent breaches by other fiduciaries of their duties of prudent and loyal Plan management.

9. The thrust of Plaintiffs' allegations is that Defendants allowed the imprudent investment of the Plan's assets in SunTrust Stock throughout the Class Period despite the fact that they knew or should have known that such investment was imprudent as a retirement vehicle because of the corporate mismanagement and the sea-change in the central risk profile and business prospects of the Company. As explained below in detail and among other things, Defendants should have known

that such investment in SunTrust Stock was unduly risky for retirement savings accounts because:

(a) prior to and during the Class Period SunTrust originated hundreds of millions of dollars of high-risk loans secured by residential real estate, including Alt-A First and Second lien loans, low documentation and no documentation loans, interest-only loans (at one point during the Class Period, as of March 31, 2008, SunTrust owned $16.7 billion of interest-only loans, primarily with a ten year interest-only period), and so-called "piggyback" or "combo" loans, the latter of which together allowed a borrower to purchase a home and obtain a home equity line of credit with little or no money down. SunTrust's highly risky and unsustainable residential lending practices cost the Company hundreds of millions of dollars of losses during the Class Period;

(b) prior to and during the Class Period, SunTrust originated hundreds of millions of dollars of loans secured by real estate in Florida and Georgia, which, by the commencement of the Class Period, had become centers of the country's housing market deterioration and customer delinquencies; the Florida residential real estate market, in particular, had become severely overbuilt (in part because of the many loans originated by SunTrust) by the start of the Class Period and, since Florida is a judicial foreclosure state, SunTrust's remedies in case of delinquencies have been protracted, limited and in many cases virtually ineffective;

(c) prior to and during the Class Period, SunTrust purchased from others tens of millions of dollars of residential real estate-secured loans (sometimes by purchasing the mortgage loans themselves, sometimes by purchasing securities in which such loans had been pooled, with the real estate serving as the collateral backing the securities), where SunTrust's remedies in the case of customer delinquencies or origination fraud were inadequate and ineffective;

(d) prior to and during the Class Period, SunTrust sold hundreds of millions of dollars of loans backed by residential real estate (in some instances SunTrust originated the loans, in others SunTrust purchased the loans from the originators thereof or correspondents) in situations whereby SunTrust, as the seller of loans, became contingently liable for any fraud in the origination of the loans, for early borrower payment defaults, and for any breaches of its own and others' warranties and representations. SunTrust has already received repurchase and indemnity demands from purchasers of such loans. Such purchaser claims are likely to continue, fraud-in-the-origination losses to SunTrust have already totaled tens of millions of dollars, and SunTrust remains contingently liable for further losses;

(e) during the Class Period the "secondary market" for real estate-backed loans became disrupted, illiquid and extremely risky, causing losses and reputational harm to SunTrust as the holder of hundreds of millions of dollars of such virtually-impossible-to-value-or-sell mortgage-backed securities;

(f) during the Class Period, except for the first quarter of fiscal year 2009, SunTrust maintained inadequate loan loss reserves in connection with residential real estate-backed loans, failed to properly record losses for impaired assets and lacked adequate internal controls to prevent the Company from under reporting its impaired assets, all of which had the effect of artificially inflating its reported earnings and rendering published financial statements unreliable;[2]

(g) near the beginning of the Class Period, in the second quarter of fiscal year 2007, SunTrust implemented so-called "Level 3" accounting for its real estate-related loans which effectively enabled SunTrust to subjectively choose whatever level of reserve for loan losses it wanted, allowing SunTrust to under-reserve for loan losses and undermining the reliability of SunTrust's financial statements for the time periods when "Level 3" accounting was utilized;

(h) throughout the Class Period, SunTrust portrayed itself as an unusually conservative banking institution when that was not the case, and SunTrust defiantly and unjustifiably rejected and criticized analysts and others who questioned the collectability of the loans held or originated by the Company;

[2] As alleged herein, it was only in early 2009, after SunTrust received $4.9 billion from the U.S. Department of Treasury's Troubled Assets Relief Program ("TARP") and $2.7 billion from the Temporary Liquidity Guarantee Program, that SunTrust raised its provision for loan losses by a whopping *48%* to $962.5 million.

(i) during the Class Period, in the fourth quarter of fiscal year 2007, SunTrust purchased over $2 billion of securities, including so-called structured investment vehicles ("SIVs"), from fund sponsors affiliated with SunTrust where, in substance, SunTrust bailed out the fund sponsors and their customers and assumed hundreds of millions of dollars of losses which it was not required to assume;

(j) during the Class Period, by no later than the fourth quarter of fiscal year 2008, SunTrust was at risk of failure as an independent institution (as several analysts came to realize once the results of the government-run stress test on SunTrust were released in early 2009); and

(k) as a result of the foregoing SunTrust's stock price was both artificially inflated and unduly risky for retirement savings during the Class Period.

10. To the extent the above problems do not reflect violations of applicable laws, Plaintiffs do not challenge SunTrust's right or ability, as a company, to take large risks on subprime and other, similar loans. But there is a difference between SunTrust taking large risks and the Plan's fiduciaries exposing hundreds of millions of dollars worth of Participants' retirement savings to those risks, especially when the purpose of the Plan is to help Participants save for retirement. Thus, in essence, Plaintiffs allege SunTrust Stock was imprudent for Participants' retirement savings during the Class Period due, *inter alia*, to the serious mismanagement of the Company as well as the artificial inflation of the

Company Stock. Plan Participants suffered hundreds of millions of dollars of losses as the market price of SunTrust Stock fell from approximately $77.69 on May 15, 2007, the first day of the Class Period, to $27.98 (both adjusted closes) on March 30, 2011, a decline of 64%.

11. Defendants recognized or should have recognized the severity of the problems at the Company during the Class Period as a result of the above factors, yet took no steps to protect the Plan and its Participants.

12. ERISA requires fiduciaries to employ appropriate methods to investigate the merits of an investment as well as to engage in a reasoned decision-making process, consistent with that of a prudent man acting in a like capacity. The duty of prudence also requires fiduciaries to monitor the prudence of their investment decisions to ensure that the decisions remain in the best interest of plan participants.

13. Evaluating the prudence of an investment decision requires a totality-of-the-circumstances inquiry that takes into account the character and aim of the particular plan and decision at issue and the circumstances prevailing at the time. The Plan, which was meant to be a vehicle for retirement savings, required prudent investments, less risky than Company Stock, especially considering that the Plan's Investment Policy Statement stated that the "[t]he primary purpose of the Plan is to encourage eligible employees to set aside a portion of their compensation on a pre-

tax basis to provide income for their retirement." Investment Policy Statement, effective January 1, 2008 ("2008 Investment Policy") (Exhibit A) at 1. Similarly, the 2009 Summary Plan Description for the Plan ("2009 SPD") ("Exhibit B")[3] stated that the Plan "provides a way for you (the Participant) to put money aside on a pre-tax basis during your working years and save for your retirement." *Id.* at 2.

14. Trust law, from which ERISA is derived, clarifies that a "trustee has a duty to the beneficiaries to invest and manage the funds of the trust as a prudent investor would, in light of the purposes, terms, distribution requirements, and other circumstances of the trust."[4] *See* Restatement (Third) of Trusts § 90.

15. When a trustee makes investment decisions, the trustee's conduct is judged using a "prudent investor" standard. Restatement (Third) § 90, at 292. The trustee must "invest and manage the funds of the trust as a prudent investor would, in light of the purposes, terms, distribution requirements, and other circumstances of the trust." *Id.* In other words, "[p]rudence focuses on the process for making

---

3 The SPD is also referred to as the SunTrust 401(k) and Retirement Plans Handbook.

4 The Restatement (Second) of Trusts, which was effective when ERISA was enacted, states that: "Except as otherwise provided by the terms of the trust, if the trustee holds property which when acquired by him was a proper investment, but which thereafter becomes an investment which would not be a proper investment for the trustee to make, it becomes the duty of the trustee to the beneficiary to dispose of the property within a reasonable time." The Uniform Prudent Investor Act (1994), which has been adopted by almost all states, recognizes that "the duty of prudent investing applies both to "investing and managing trust assets. . . ." Nat'l Conference of Comm'rs on Uniform State Laws, Uniform Prudent Investor Act § 2(c) (1994). The official comment explains that "'[m]anaging' embraces monitoring, that is, the trustee's continuing responsibility for oversight of the suitability of investments already made as well as the trustee's decisions respecting new investments." *Id*. § 2 cmt.

fiduciary decisions. Therefore, it is wise to document decisions and the basis for those decisions."[5] Thus a trustee must "make[] an investigation as to the safety of [an] investment and the probable income to be derived therefrom" and then make a reasonable investment decision based on that investigation. Restatement (Second) § 227 cmt. b, at 530.

16. As similarly summarized in the Third Restatement: "***Changes in a company's circumstances***, ***adaptation to trust- and capital-market developments***, fine-tuning, and the like may, of course, justify the selling and buying of properties as an aspect of a prudent plan of asset allocation and diversification …. This is consistent with the trustee's ongoing duty to monitor investments and to make portfolio adjustments if and as appropriate, with attention to all relevant considerations, including tax consequences and other costs associated with such transactions." Restatement (Third) § 90 cmt. e(1) (emphasis added).

17. Trust law further cautions that "[t]he duty of care requires the trustee to exercise reasonable effort and diligence in planning the administration of the trust, in making and implementing administrative decisions, and in monitoring the trust situation, ***with due attention to the trust's objectives and the interests of the beneficiaries***." Restatement (Third) of Trusts §77, cmt. b (emphasis added).

[5] http://www.dol.gov/ebsa/publications/fiduciaryresponsibility.html

18. The Plan Participants had every right under ERISA to expect the Plan fiduciaries to act in their interest and protect them from unduly risky investments, whether in the form of Company Stock or any other asset.

19. By apparently conducting absolutely no investigation, analysis, or review with respect to whether it was prudent to continue investment in SunTrust Stock in the Plan, Defendants acted with procedural imprudence. Had Defendants conducted a prudent evaluation of whether SunTrust Stock was an appropriate investment for the Plan during the Class Period, and taken appropriate protective action based upon what they would have discovered - such as ceasing its purchase, divesting the Plan of SunTrust Stock, or any of the other actions as described below - Plan Participants would not have suffered such devastating losses to their retirement savings.

20. This action is brought on behalf of the Plan and seeks recovery of the losses to the Plan for which Defendants are liable because of their actions or inactions. *See* ERISA §§ 409 and 502, 29 U.S.C. §§ 1109 and 1132. During the Class Period, Defendants imprudently permitted the Plan to hold and acquire SunTrust Stock despite the fundamental problems that the Company faced. Given the totality of circumstances prevailing during the Class Period, no prudent fiduciary would have made the same decision to retain the clearly imprudent SunTrust Stock as a Plan investment.

21. This action is brought on behalf of the Plan to recover losses to the Plan for which Defendants are personally liable pursuant to ERISA §§ 409 and 502(a)(2), 29 U.S.C. §§ 1109 and 1132(a)(2). ERISA §§ 409(a) and 502(a)(2) authorize participants such as Plaintiffs to sue in a representative capacity for losses suffered by the Plan as a result of breaches of fiduciary duty. Pursuant to that authority, Plaintiffs bring this action as a class action under FED. R. CIV. P. 23 on behalf of all Participants and beneficiaries of the Plan whose Plan accounts were invested in SunTrust Stock during the Class Period.

JURISDICTION AND VENUE

22. ***Subject Matter Jurisdiction.*** This Court has subject matter jurisdiction over this action pursuant to 29 U.S.C. § 1331 and ERISA § 502(e)(1), 29 U.S.C. § 1132(e)(1).

23. ***Personal Jurisdiction.*** This Court has personal jurisdiction over all Defendants because they are all residents of the United States and ERISA provides for nation-wide service of process pursuant to ERISA § 502(e)(2), 29 U.S.C. § 1132(e)(2).

24. ***Venue.*** Venue is proper in this District pursuant to ERISA § 502(e)(2), 29 U.S.C. § 1132(e)(2), because an action "may be brought in the district . . . where a defendant resides or may be found." 29 U.S.C. § 1132(e)(2)).

SunTrust is incorporated under the laws of the State of Georgia and the Company's principal executive offices are located at SunTrust Plaza, Atlanta, Georgia 30308.

PARTIES

PLAINTIFFS

25. **Plaintiff William Fisch** is a resident of the state of Florida. Plaintiff Fisch was a participant in the Plan within the meaning of ERISA § 3(7), 29 U.S.C. § 1002(7), and held shares of SunTrust common stock in his Plan account during the Class Period.

26. **Plaintiff Sunil Kapilashrimi** is a resident of the state of Maryland. Plaintiff Kapilashrimi was a participant in the Plan within the meaning of ERISA §3(7), 29 U.S.C. § 1002(7), and held shares of SunTrust common stock in his Plan account during the Class Period.

27. **Plaintiff Paul Hellman** is a resident of the state of Ohio. Plaintiff Hellman was a participant in the Plan within the meaning of ERISA § 3(7), 29 U.S.C. § 1002(7), and held shares of SunTrust common stock in his Plan account during the Class Period.

28. **Plaintiff Betty L. Pickens** is a resident of the state of Ohio. Plaintiff Pickens was a participant in the Plan within the meaning of ERISA § 3(7), 29 U.S.C. § 1002(7), and held shares of SunTrust common stock in her Plan account during the Class Period.

29. **Plaintiff Phyllis Reagan** is a resident of the state of Ohio. Plaintiff Reagan was a participant in the Plan within the meaning of ERISA § 3(7), 29 U.S.C. § 1002(7), and held shares of SunTrust common stock in her Plan account during the Class Period.

30. **Plaintiff Dennis Erwin** is a resident of the state of Georgia. Plaintiff Erwin was a participant in the Plan within the meaning of ERISA § 3(7), 29 U.S.C. § 1002(7), and held shares of SunTrust common stock in his Plan account during the Class Period.

31. **Plaintiff Danielle Clay** is a resident of the state of Georgia. Plaintiff Clay was a participant in the Plan within the meaning of ERISA § 3(7), 29 U.S.C. § 1002(7), and held shares of SunTrust common stock in her Plan account during the Class Period.

32. **Plaintiff Chrys Trau** is a resident of the state of Virginia. Plaintiff Trau was a participant in the Plan within the meaning of ERISA § 3(7), 29 U.S.C. § 1002(7), and held shares of SunTrust common stock in her Plan account during the Class Period.

33. **Plaintiff Donna Smothermon** is a resident of the state of Florida. Plaintiff Smothermon was a participant in the Plan within the meaning of ERISA § 3(7), 29 U.S.C. § 1002(7), and held shares of SunTrust common stock in her Plan account during the Class Period.

34. **Plaintiff Demetria Whisby** is a resident of the state of Florida. Plaintiff Whisby was a participant in the Plan within the meaning of ERISA § 3(7), 29 U.S.C. § 1002(7), and held shares of SunTrust common stock in her Plan account during the Class Period.

DEFENDANTS

SUNTRUST

35. During the Class Period SunTrust was the Sponsor of the Plan. The 2008 Investment Policy, at Article IV, states that SunTrust is the Plan's sponsor, that SunTrust, "as represented by the Compensation Committee of the Board," is responsible (by the Chair of the Compensation Committee of the Board) for appointing the Benefits Plan Committee to oversee and manage the Plan, and that the Benefits Plan Committee thereupon "monitors the Plan's investment program to promote compliance with applicable provisions of ERISA, other relevant legislation, the Plan's document, and this Investment Policy Statement." During the Class Period SunTrust was also an Administrator of the Plan. *See* 2007 Form 5500 at 1 (naming SunTrust as administrator of the Plan).

36. SunTrust is liable herein by virtue of its own actions and failures to act as a Plan fiduciary of the Plan. SunTrust is also liable under the doctrine of *respondeat superior* in that the members of its Board of Directors and the Compensation Committee of the Board of Directors acted on behalf of the

Company with regard to Plan management and administration, including the appointment of members of the Benefits Plan Committee. *See* 2008 Investment Policy at Article IV (SunTrust, "as represented by the Compensation Committee of the Board, is responsible … appointing the Benefits Plan Committee by the Chair of the Compensation Committee of the Board to oversee and manage the Plan."). The members of the Benefits Plan Committee were at all times employees and agents of SunTrust and SunTrust is liable for their actions and failures to act under the doctrine of *respondeat superior*. SunTrust is also liable for the actions and failures to act of members of the Benefits Plan Committee as a result of indemnification, that is, SunTrust has agreed to indemnify the members of the Benefits Plan Committee to the greatest extent allowed by law against any costs, expense and liability, including legal fees and expenses, and including the claims made in this Complaint against the members of the Benefits Plan Committee.

EXECUTIVE OFFICER DEFENDANT

37. **Defendant James M. Wells, III** ("Wells"), appointed to SunTrust's Board of Directors in 2006, was Chairman of the Board and Chief Executive Officer of SunTrust until June 1, 2011 and accordingly was an "insider" Director. Defendant Wells succeeded L. Phillip Humann as Chairman of the Board in 2008. Defendant Wells is a fiduciary by virtue of having oversight responsibility over, and discretionary authority or control with respect to, the Plan.

SUNTRUST COMPENSATION COMMITTEE DEFENDANTS

38. **The Compensation Committee of the Board of Directors** (the "Compensation Committee") had and exercised responsibilities with respect to the Plan, including oversight of the administration and operation of the Plan. As alleged above, the Compensation Committee of the Board "represented" SunTrust, the Plan Sponsor, and so was responsible for management and administration of the Plan, including especially the responsibility and power to appoint the members of the Benefits Plan Committee. The Chair of the Compensation Committee of the Board during the Class Period was Defendant Correll and thus Correll decided who would comprise the Benefits Plan Committee. The Compensation Committee and its members were therefore fiduciaries of the Plan. Members of the Compensation Committee during the Class Period included Defendants Alston Correll (Chair), David H. Hughes**,** G. Gilmer Minor, III, Larry L. Prince Frank S. Royal, M.D., Patricia C. Frist, Jeffrey C. Crowe, Blake P. Garret, Jr., William A. Linnenbringer, Dr. Phail Wynn, Jr., and David M. Ratcliffe. The Compensation Committee and these Defendants are collectively referred to herein as the "Compensation Committee Defendants."

39. The Compensation Committee Defendants failed to properly appoint, monitor and inform members of the SunTrust Benefits Plan Committee (as defined below) in that the Compensation Committee Defendants failed to adequately

inform the members of the SunTrust Benefits Plan Committee about the true financial and operating condition of the Company. Alternatively, the Compensation Committee and the Compensation Committee Defendants did adequately inform the member of the SunTrust Benefits Plan Committee and others who had day-to-day responsibility for the administration of the Plan of the true financial and operating condition of the Company, but nonetheless continued to allow such persons to offer SunTrust Stock as an investment option under the Plan when the market price of SunTrust Stock was artificially inflated and when SunTrust Stock was not a prudent investment for Participants' retirement accounts under the Plan.

40. **Defendant Alston Correll** ("Correll") served as a member of the Compensation Committee from 2007 to 2011. Defendant Correll was Chair of the Compensation Committee from 2008 to 2011. He is a fiduciary by virtue of having oversight responsibility over, and discretionary authority or control with respect to, the Plan.

41. **Defendant David H. Hughes** ("Hughes") served as a member of the Compensation Committee from 2007 to 2011 and is a fiduciary by virtue of having oversight responsibility over, and discretionary authority or control with respect to, the Plan.

42. **Defendant G. Gilmer Minor, III** ("Minor") served as a member of the Compensation Committee from 2007 to 2009 and is a fiduciary by virtue of having oversight responsibility over, and discretionary authority or control with respect to, the Plan.

43. **Defendant Larry L. Prince** ("Prince") served as a member of the Compensation Committee in 2007 and 2008. Defendant Prince was Chair of the Compensation Committee in 2007. He is a fiduciary by virtue of having oversight responsibility over, and discretionary authority or control with respect to, the Plan.

44. **Defendant Dr. Frank S. Royal** ("Royal") served as a member of the Compensation Committee in 2008 and 2009 and is a fiduciary by virtue of having oversight responsibility over, and discretionary authority or control with respect to, the Plan.

45. **Defendant Patricia C. Frist** ("Frist") served as a member of the Compensation Committee in 2009 and is a fiduciary by virtue of having oversight responsibility over, and discretionary authority or control with respect to, the Plan.

46. **Defendant Jeffrey C. Crowe** ("Crowe") served as a member of the Compensation Committee from 2010 to 2011 and is a fiduciary by virtue of having oversight responsibility over, and discretionary authority or control with respect to, the Plan.

47. **Defendant Blake P. Garret, Jr** ("Garret") served as a member of the Compensation Committee from 2010 to 2011 and is a fiduciary by virtue of having oversight responsibility over, and discretionary authority or control with respect to, the Plan.

48. **Defendant William A. Linnenbringer** ("Linnenbringer") served as a member of the Compensation Committee in 2010 and is a fiduciary by virtue of having oversight responsibility over, and discretionary authority or control with respect to, the Plan.

49. **Defendant Dr. Phail Wynn, Jr.** ("Wynn") served as a member of the Compensation Committee in 2010 and 2011 and is a fiduciary by virtue of having oversight responsibility over, and discretionary authority or control with respect to, the Plan.

50. **Defendant David M. Ratcliffe** ("Ratcliffe") served as a member of the Compensation Committee in 2011 and is a fiduciary by virtue of having oversight responsibility over, and discretionary authority or control with respect to, the Plan.

SUNTRUST BENEFITS PLAN COMMITTEE DEFENDANTS

51. Defendant SunTrust Benefits Plan Committee (the "Benefits Plan Committee")[6] is charged with administering the Plan. SunTrust Banks, Inc. 401(K) Plan, effective April 22, 2009 ("2009 Plan Document.") (Exhibit C), at § 9.1(c)(4). The Benefits Plan Committee is also a named fiduciary of the Plan. As stated in the 2009 SPD (at 4):

> The [Benefits] Plan Committee, which we refer to as the Committee, *serves as the plan administrator and named fiduciary of the 401(k) Plan* and the Retirement Plan. The Chief Financial Officer ("CFO") of SunTrust is the Chairman of the Committee and appoints other members. (Emphasis added)

52. In addition to being named fiduciaries of the Plan, the Benefits Plan Committee and its members were fiduciaries of the Plan, within the meaning of ERISA § 3(21)(A), 29 U.S.C. § 1002(21)(A), because they had and/or exercised discretionary authority with respect to the management and administration of the Plan and/or management and disposition of the Plan's assets.

53. The Benefits Plan Committee was responsible for the day-to-day management and administration of the Plan throughout the Class Period. This responsibility included the responsibility to select and monitor investment funds to be made available to the Participants, deciding whether and to what extent to allow

---

6 In certain Plan related documents the Benefits Plan Committee is referred to as the "Plan Committee" or just the "Committee."

Participant investment in the Employer Stock Fund[7] (that is, a unitized fund consisting of SunTrust Stock and cash, as described below) and communicating with the Participants about matters relevant to the Plan. The 2008 Investment Policy states, among other things, under the heading "Benefits Plan Committee":

> The Committee monitors the Plan's investment program to promote compliance with applicable provisions of ERISA, other relevant legislation, the Plan document, and this Investment Policy Statement.
>
> The Committee is also responsible for:
>
> - Taking any other actions required of it by the Plan.
> - Establishing and maintaining the Investment Policy Statement.
> - Appointing members of the Committee's investment Sub-Committee.
> - Selecting investment options made available to Plan participants.
> - Periodically review[ing] the Plan's investment performance and approving investment option changes. In reviewing the Plan's investment performance, the Committee should adhere to the Plan's Investment Monitoring Guidelines (as adopted by the Committee and implemented by the Investment Sub-Committee).
> - Provid[ing] Plan participant investment education and communication.

Id. at 2.

---

[7] Also referred to as the "Fund" or "SunTrust Stock Fund."

54. The 2008 Investment Policy further states that "[t]he selection of investment options offered under the Plan is a responsibility of the [Benefits Plan Committee]" and that "[i]nvestment options may be replaced or eliminated whenever the Committee determines that it is appropriate to do so for any reason or combination of reasons deemed appropriate by the Committee." Accordingly, as explained further below, the Benefits Plan Committee had complete discretion and authority to offer or not offer Company Stock as a Plan investment option, to cease offering Company Stock if it has once been offered, and/or to limit or cap the amount of Participant or Plan investment in Company Stock.

55. **Defendant Mark Chancy** ("Chancy"), served as a member of and, at times, as Chair of the Benefits Plan Committee during the Class Period. Defendant Chancy was a fiduciary of the Plan within the meaning of ERISA § 3(21)(A), 29 U.S.C. § 1002(21)(A), in that he had and/or exercised discretionary authority with respect to the management and administration of the Plan and/or management and disposition of the Plan's assets. Defendant Chancy was appointed Chief Financial Officer of SunTrust in August 10, 2004 and served in that position during the Class Period. As CFO, Defendant Chancy appointed the other members of the Benefits

Plan Committee, and the other members of the Benefits Plan Committee served at his pleasure.[8]

56. Defendant Chancy, as part of Company senior management, also had the responsibility to select and monitor what investment options would be made available to Plan Participants for their retirement savings.

57. Defendant Chancy has admitted that as SunTrust CFO he continuously monitored SunTrust's stock price, and so he became aware on a timely basis of declines in the market price of SunTrust Stock, and of the fact that SunTrust Stock consistently underperformed compared to its benchmark (the S&P 500 Index) at least through March 31, 2008. *See* discussion below. Further, Defendant Chancy has acknowledged that he shared with other members of the Benefits Plan Committee his knowledge concerning SunTrust's stock price performance.[redacted]

---

8 The 2009 SPD (at page 4 of 11) states:

> The Chief Financial Officer ("CFO") of SunTrust is the Chairman of the Committee and appoints other members. The Committee must have at least three members, who may also be employees. The Committee members serve at the pleasure of the Chairman and they may resign or be discharged at any time. Employees receive no additional compensation for serving as Committee members.

[redacted]

58. **Defendant Donna D. Lange** ("Lange") served as the Company's Senior Vice President – Corporate Benefits Director during the Class Period. On October 27, 2008, Defendant Lange signed the Plan's 2007 Form 5500, filed with the DOL, which she signed as the "Plan Administrator." Defendant Lange also served as a member of the Benefits Plan Committee during the Class Period. Defendant Lange was a fiduciary of the Plan within the meaning of ERISA § 3(21)(A), 29 U.S.C. § 1002(21)(A), in that she had and/or exercised discretionary authority with respect to the management and administration of the Plan and/or management and disposition of the Plan's assets.

59. **Defendant Frances L. "Mimi" Breeden** ("Breeden") served as a member of the Benefits Plan Committee during the Class Period. Defendant Breeden was a fiduciary of the Plan within the meaning of ERISA § 3(21)(A), 29 U.S.C. § 1002(21)(A), in that she had and/or exercised discretionary authority with respect to the management and administration of the Plan and/or management and disposition of the Plan's assets.

60. **Defendant Thomas Panther** ("Panther") served as a member of the Benefits Plan Committee during the Class Period. Defendant Panther was a fiduciary of the Plan within the meaning of ERISA § 3(21)(A), 29 U.S.C. § 1002(21)(A), in that he had and/or exercised discretionary authority with respect

to the management and administration of the Plan and/or management and disposition of the Plan's assets.

61. **Defendant David F. Dierker** ("Dierker") served as a member of the Benefits Plan Committee during the Class Period. Defendant Dierker was a fiduciary of the Plan within the meaning of ERISA § 3(21)(A), 29 U.S.C. § 1002(21)(A), in that he had and/or exercised discretionary authority with respect to the management and administration of the Plan and/or management and disposition of the Plan's assets.

62. **Defendant Thomas G. Kuntz** ("Kuntz") served as a member of the Benefits Plan Committee during the Class Period. Defendant Kuntz was a fiduciary of the Plan within the meaning of ERISA § 3(21)(A), 29 U.S.C. § 1002(21)(A), in that he had and/or exercised discretionary authority with respect to the management and administration of the Plan and/or management and disposition of the Plan's assets.

63. **Defendant Gregory L. Miller** ("Miller") served as a member of the Benefits Plan Committee during the Class Period. Defendant Miller was a fiduciary of the Plan within the meaning of ERISA § 3(21)(A), 29 U.S.C. § 1002(21)(A), in that he had and/or exercised discretionary authority with respect to the management and administration of the Plan and/or management and disposition of the Plan's assets.

64. **Defendant William H. Rogers, Jr.** ("Rogers") served as a member of the Benefits Plan Committee during the Class Period. Defendant Rogers was a fiduciary of the Plan within the meaning of ERISA § 3(21)(A), 29 U.S.C. § 1002(21)(A), in that he had and/or exercised discretionary authority with respect to the management and administration of the Plan and/or management and disposition of the Plan's assets.

65. **Defendant Christopher J. Shults** ("Shults") served as a member of the Benefits Plan Committee during the Class Period. Defendant Shults was a fiduciary of the Plan within the meaning of ERISA § 3(21)(A), 29 U.S.C. § 1002(21)(A), in that he had and/or exercised discretionary authority with respect to the management and administration of the Plan and/or management and disposition of the Plan's assets.

66. **Defendant Jerome T. Lienhard, II** ("Lienhard") served as a member of the Benefits Plan Committee during the Class Period. Defendant Lienhard was a fiduciary of the Plan within the meaning of ERISA § 3(21)(A), 29 U.S.C. § 1002(21)(A), in that he had and/or exercised discretionary authority with respect to the management and administration of the Plan and/or management and disposition of the Plan's assets.

67. **Defendant Kenneth Houghton** ("Houghton") served as a member of the Benefits Plan Committee during the Class Period. Defendant Houghton was a

fiduciary of the Plan within the meaning of ERISA § 3(21)(A), 29 U.S.C. § 1002(21)(A), in that he had and/or exercised discretionary authority with respect to the management and administration of the Plan and/or management and disposition of the Plan's assets.

SUNTRUST INVESTMENT SUB-COMMITTEE DEFENDANTS

68. **The Investment Sub-Committee of the Benefits Plan Committee** (the "Investment Sub-Committee") had and exercised responsibilities for reviewing and assessing performance of investment choices offered in the Plan.

69. **Defendant Steve Castle ("Castle"**), upon information and belief, served as a member of the Investment Sub-Committee during the Class Period. Defendant Castle was a fiduciary of the Plan within the meaning of ERISA § 3(21)(A), 29 U.S.C. § 1002(21)(A), in that he had and/or exercised discretionary authority with respect to the management and administration of the Plan and/or management and disposition of the Plan's assets.

70. Without limitation, unknown **"John Doe" Defendants 1-10** (collectively "John Doe Defendants") include other individuals, including members of the Investment Sub-Committee and other individuals charged with fiduciary responsibility for the Plan, including corporate officers, directors, and employees who are or were fiduciaries of the Plan within the meaning of ERISA § 3(21)(A), 29 U.S.C. § 1002(21)(A) during the Class Period. The identities of the

John Doe Defendants are currently unknown to Plaintiffs. Once their identities are ascertained, Plaintiffs will seek leave to join them to the instant action under their true names.

THE PLAN

Purpose of the Plan

71. SunTrust was formed as of July 1, 1985, after the merger of Trust Company of Georgia and SunBanks, Inc. of Florida. The qualified defined contribution plans maintained by each of the two companies were merged to form the SunTrust Banks, Inc. Employee Stock Ownership Plan, effective as of January 1, 1989. *See* 2009 Plan Document at Introduction. The Plan was renamed the "SunTrust Banks, Inc. 401(k) Plan" effective January 1, 1993. *Id.*

72. The primary purpose of the Plan is to enable Participants to save for retirement. According to the 2009 SPD, "SunTrust offers [the Participant] the opportunity to save for [the Participant's] retirement through the following Plans: a Retirement Plan which is fully paid by the company, and a 401(k) Plan to which you can contribute a percentage of your eligible pay and the company matches a portion of your contribution." *Id.* at 1.

73. Effective January 1, 2007, the Plan was converted from an employee stock ownership plan ("ESOP") with 401(k) features to a 401(k) plan with ESOP features. *Id.* An ESOP is an ERISA plan that is designed to invest primarily in

"qualifying employer securities." 29 U.S.C. § 1107(d)(6)(A). As with a 401(k) plan without an ESOP component, fiduciaries of a 401(k) plan with an ESOP component remain bound by core ERISA fiduciary duties, including the duties to act loyally, prudently, and for the exclusive purpose of providing benefits to plan participants.

74. Although the 2009 Plan Document states that the Plan *has always* been in practice an ESOP designed to invest primarily in employer stock, this is inaccurate. [redacted] As noted, above, the 2009 Policy Investment Policy states similar language.

Eligibility to Participate

75. During the Class Period, each employee of the Company who was classified as full-time, part-time, or on-call was eligible to participate in the Plan. 2009 SPD at 3 of 50. [redacted]

Contributions

76. Throughout the Class Period, Participants in the Plan were permitted to defer a percentage of their base compensation for investment in the Plan. Participant deferrals were permitted on 1% to 20% of eligible compensation. 2009 SPD at 5. Participants had the option to contribute additional amounts if they were age 50 or older.

77. Prior to January 1, 2008, the Company matched 100% of the first 3% and 50% of the next 2% of eligible compensation contributed by each participant. *See* SunTrust Banks, Inc. 2007 Form 10-K, filed with the SEC on February 20, 2008 ("2007 Form 10-K"). [redacted] *see also* 2007 Form 11-K.

78. During the Class Period, until December 31, 2008, all matching contributions were initially automatically invested in SunTrust Stock in the form of the Employer Stock Fund. 2009 SPD at 9 of 50. Beginning January 1, 2009, all matching contributions were invested automatically in the same investment options chosen by the Participant for current contributions, unless the Participants elected a different investment fund for matching contributions. *Id.*

Investments Under the Plan

79. Throughout the Class Period, Participants were allowed to direct the investment of contributions among a variety of investment options selected by the Plan's fiduciaries. Effective April 1, 2007, the Plan offered 19 investment options. 2009 SPD at 15.

80. The SunTrust Common Stock Fund was one of the investment options selected by the Plan fiduciaries during the Class Period. *Id.* "The Trustee manages the SunTrust Common Stock Fund solely for the Plan. This fund contains shares of SunTrust Common Stock and a small portion of cash (approximately 1% or less)." *Id*. at 18. Other investment options offered by the Plan included STI Classic mutual funds. Effective March 31, 2008, SunTrust subsidiary Trusco Capital Management, Inc. changed its name to Ridgeworth Capital Management, Inc. and the STI Classic Funds became Ridgeworth Funds. *Id.* at 16.

81. The Plan's 2007 Form 11-K represents that approximately $1,158,966,549 of the Plan's total investments of $2,366,845,430, or approximately 49% of the assets of the Plan, were invested in SunTrust Stock as of December 31, 2006. As of December 31, 2013, the value of Company Stock in the Plan was only $316,459,730 while the value of the Plan's total investments was $2,471,406,885.

82. During the Class Period SunTrust Stock was an imprudent investment option for the Plan and the Participants' individual retirement savings accounts due to the inherent change in the risk characteristics of the Company Stock given, *inter alia*, the purpose of the Plan. If Defendants had made full disclosure to the Participants and/or the market of SunTrust's true financial and operating condition, as described herein, the Participants would not have chosen SunTrust Stock as an investment option under the Plan to the extent that they did (about 49% of Plan assets). Indeed, had the truth been disclosed to the Participants, SunTrust Stock would not have been chosen by many Participants at all.

83. Moreover, if the fiduciaries of the Plan knew, or if an adequate investigation would have revealed, that Company Stock was no longer a prudent investment for the Plan, then the fiduciaries had to disregard any perceived Plan direction to maintain investments in Company Stock and protect the Plan and its Participants by investing Plan assets in other suitable investments.

84. Here, Minutes of Committee meetings show that Defendants conducted ***no*** investigation, analysis, or review of SunTrust's changed and changing circumstances. [redacted]

[redacted]

85. What Defendants did with respect to the Company Stock Fund was minimal, if anything. [redacted]

[redacted]

[redacted]

ADMINISTRATION OF THE PLAN

86. Defendants, as fiduciaries of the Plan, were required by ERISA to furnish certain information to Participants. For example, ERISA § 101, 29 U.S.C. § 1021, requires a plan's administrator to furnish a SPD to participants. ERISA § 102, 29 U.S.C. § 1022, provides that a SPD must apprise participants of their rights and obligations under a plan. In addition, every person who held SunTrust Stock in a Plan account received annually a Proxy Statement which purported to describe (including through the incorporation of other SEC filing) the business and operations of SunTrust.

87. The responsibility for communicating with Participants about Plan-related matters, including the providing of information concerning the investment option offered to Participants, lay primarily with the Benefits Plan Committee Defendants. As stated in the 2008 Investment Policy Statement, the Benefits Plan Committee is "responsible for providing Plan participant investment education and communication."

88. At all times relevant to this Complaint, Defendants had a duty to obtain from the Company information necessary for the proper administration of the Plan.

DEFENDANTS' FIDUCIARY STATUS

THE NATURE OF FIDUCIARY STATUS

89. ***Named Fiduciaries***. ERISA requires every plan to provide for one or more named fiduciaries who will have "authority to control and manage the operation and administration of the plan." ERISA § 402(a)(1), 29 U.S.C. § 1002(21)(A).

90. ***De Facto Fiduciaries***. ERISA treats as fiduciaries not only persons explicitly named as fiduciaries under § 402(a)(1), 29 U.S.C. § 1102(a)(1), such as the Benefits Plan Committee, but also any other persons who in fact perform fiduciary functions ("*de facto fiduciary*"). Thus, a person is a fiduciary to the extent "(i) he exercises any discretionary authority or discretionary control respecting management of such plan or exercises any authority or control respecting management or disposition of its assets, (ii) [] renders investment advice for a fee or other compensation, direct or indirect, with respect to any moneys or other property of such plan, or has any authority or responsibility to do so, or (iii) he has any discretionary authority or discretionary responsibility in the administration of such plan." ERISA § 3(21)(A)(i), 29 U.S.C. § 1002(21)(A)(i). During the Class Period, Defendants performed fiduciary functions under this standard and thereby also acted as fiduciaries under ERISA.

91. Each of the Defendants was a fiduciary with respect to the Plan and owed fiduciary duties to the Plan and the participants and beneficiaries under ERISA in the manner and to the extent set forth in the Plan's documents, through their conduct, and under ERISA.

92. As fiduciaries, Defendants were required by ERISA § 404(a)(1), 29 U.S.C. § 1104(a)(1), to manage and administer the Plan and the Plan's investments solely in the interest of the Plan's participants and beneficiaries and with the care, skill, prudence, and diligence under the circumstances then prevailing that a prudent man acting in a like capacity and familiar with such matters would use in the conduct of an enterprise of a like character and with like aims. ERISA § 404(a)(1)(B), 29 U.S.C. § 1104(a)(1)(B).

93. Plaintiffs do not allege that each Defendant was a fiduciary with respect to all aspects of Plan management and administration. Rather, as set forth below, Defendants were fiduciaries to the extent of the specific fiduciary discretion and authority assigned to or exercised by each of them, and, as further set forth below, the claims against each Defendant are based on such specific discretion and authority.

SUNTRUST'S FIDUCIARY STATUS

94. The Company appointed the members of the Compensation Committee, and the Compensation Committee, in a capacity representing SunTrust

(2008 Investment Policy at Article IV, quoted above), was responsible for appointing at least one member of the Benefits Plan Committee, Defendant Chancy, the CFO. 2009 Plan Document, § 9.1(a).

95. During the Class Period SunTrust, exercised control over the activities of its employees that performed fiduciary functions with respect to the Plan, including the Benefits Plan Committee Defendants, and, could hire, appoint, terminate, and replace such employees at will. Thus, SunTrust was responsible for the activities of its employees through traditional principles of agency and *respondeat superior* liability.

96. Under basic tenets of corporate law, SunTrust is imputed with the knowledge that the Defendants had regarding the misconduct alleged herein, and, hence, like the fiduciaries who acted on SunTrust's behalf, had knowledge of the imprudent actions alleged herein.

97. In light of the foregoing duties, responsibilities, and actions, SunTrust was a fiduciary of the Plan within the meaning of ERISA § 3(21), 29 U.S.C. § 1002(21), during the Class Period in that it exercised discretionary authority or discretionary control respecting management of the Plan, exercised authority or control respecting management or disposition of the Plan's assets, and/or had discretionary authority or discretionary responsibility in the administration of the Plan.

EXECUTIVE OFFICER DEFENDANT'S FIDUCIARY STATUS

98. SunTrust, as a corporate entity, cannot act on its own without any human agent, representative or actor. In this regard, during the Class Period, SunTrust relied upon Defendant Wells and the Compensation Committee Defendants to carry out its fiduciary responsibilities under the Plan and ERISA.

99. Defendant Wells, as a member of the Board, was a fiduciary of the Plan. 2009 Plan Document, § 9.1(a). The Board, including Defendant Wells, was responsible for appointing and removing Compensation Committee Members. Further, through the Compensation Committee, the Board and Defendant Wells bore responsibility for overseeing the administration of the Plan.

100. Because of his position as CEO of the Company and Chairman of the Board, Defendant Wells had access to non-public information concerning SunTrust, including the Company's true financial condition.

101. Defendant Wells failed to properly appoint, monitor and inform Defendant Chancy, the Chair of Benefits Plan Committee and/or others who exercised day-to-day responsibility for the management and administration of the Plan and its assets. Defendant Wells failed to adequately inform Chancy and the other Benefits Plan Committee Defendants about the true financial and operating condition of the Company or, alternatively, Defendant Wells did adequately inform Chancy of the true financial and operating condition of the Company, but

nonetheless continued to allow Chancy and the other Benefits Plan Committee Defendants to offer SunTrust Stock as an investment option under the Plan when SunTrust Stock was not a prudent investment for Participant's retirement accounts under the Plan.

COMPENSATION COMMITTEE DEFENDANTS' FIDUCIARY STATUS

102. According to the charter of the Compensation Committee of the Board of Directors Charter, the Compensation Committee Defendants had various responsibilities, including overseeing the administration and operation of 401(k) Plan. *See* Compensation Committee of the Board of Directors Charter, April 17, 2007 (Exhibit J).

103. The Compensation Committee was required to report to the Board periodically or as required by the nature of its duties on its activities and makes recommendations to the Board as the Committee deems appropriate.

104. The Chairman of the Compensation Committee was responsible for appointing at least one member of the Benefits Plan Committee, Defendant Chancy. Such duty included the responsibility for monitoring and removing such members, if necessary, in order to protect the interests of the Plan and its participants. For example, the 2009 Plan Document, at § 9.1(c)(1) states that the Benefits Plan committee members "serve at the pleasure of the Chairman of the Compensation Committee of the Board." [redacted]

[redacted]

105. In light of the foregoing duties, responsibilities and actions, the Compensation Committee Defendants were *de facto* fiduciaries of the Plan within the meaning of ERISA § 3(21), 29 U.S.C. § 1002(21), in that they exercised discretionary authority or discretionary control respecting management of the Plan, exercised authority or control respecting management or disposition of the Plan's assets, and/or had discretionary authority or discretionary responsibility in the administration of the Plan.

BENEFITS PLAN COMMITTEE DEFENDANT'S FIDUCIARY STATUS

106. The Benefits Plan Committee was assigned primary and day-to-day responsibility for administering the Plan and was endowed with "all powers necessary to enable it to properly perform its duties." 2009 Plan Document, § 9.1(c)(4). Such powers included the power to:

- adopt rules and regulations necessary for the performance of its duties under the Plan;
- prepare and distribute to the employees plan summaries, notices and other information about the Plan in such manner as it deems proper and in compliance with applicable law;
- delegate any of its administrative duties to Company employees and other agents;
- Subject to the Board's approval, appoint, approve the appointment of, remove, and/or replace, one or more

investment managers.

Id.

107. Further, the Benefits Plan Committee was responsible for "[s]electing investment options made available to Plan participants" and "[p]eriodically review[ing] [the] Plan's investment performance and approving investment option changes." *See* 2008 Investment Policy.

108. The Investment Policy makes clear that the "selection of investment options offered under the Plan is a responsibility of the [Benefits] Committee." Investment Policy at 4. Further, "[i]nvestment options may be replaced or eliminated whenever the Committee determines that it is appropriate to do so for any reason or combination of reasons deemed appropriate by the Committee." 2008 Investment Policy at 6.

109. There was no requirement, in the Plan or otherwise, that any fiduciary of the Plan, including the Benefits Plan Committee and its members, offer SunTrust Stock as an investment option for the Participants. The Plan's 2008 Investment Policy specifically states the Benefits Plan Committee is "responsible for. . . [s]electing investment options made available to Plan participants [and] [p]eriodically [reviewing] plan's investment performance and approving investment options changes." *Id.* The 2008 Investment Policy provided the Benefits Plan Committee with complete discretion as to what investment options to

offer to the Participants. While there is certain language in the Investment Policy Statement and in the Plan itself (such as at § 9.19(b)(4)) indicating that there would ordinarily be an Employer Stock Fund (that is, SunTrust Stock) Plan investment option, the 2008 Investment Policy (at Article VII) is also clear that:

> Investment options may be replaced or eliminated whenever the Committee determines that it is appropriate to do so for any reason or combination of reasons deemed appropriate by the Committee.

110. Further, while nothing in the 2008 Investment Policy prevented the Benefits Plan Committee from removing SunTrust Stock as a Plan investment option, Article IX of the 2008 Investment Policy, under the heading "Further Guideline," states that:

> If the Committee becomes aware of extraordinary circumstances that indicate that continuing to provide and Employer Stock as an Investment alternative would be an abuse of discretion (*e.g.*, if the Committee were to become aware that the Company's dire financial situation would likely cause it to cease being a viable going concern), then the Committee should seek outside counsel's assistance and advice as to carrying out its fiduciary duties with respect to Plan participants and beneficiaries.

111. So it is clear that the Benefits Plan Committee and its members had discretion as to whether to offer SunTrust Stock as a Plan investment option. [redacted]

[redacted]

112. Indeed, it is clear that Defendants abdicated their ERISA-mandated duty to continually monitor the prudence of the Plan's large SunTrust Stock investment. [redacted]

113. The Benefits Plan Committee and its members were fiduciaries of the Plan, within the meaning of ERISA § 3(21)(A), 29 U.S.C. § 1002(21)(A), in that they were: (a) named fiduciaries of the Plan (*See* 2009 Plan Document § 1.9); and (b) exercised discretionary authority with respect to the management and administration of the Plan and/or management and disposition of the Plan's assets.

INVESTMENT SUB-COMMITTEE OF THE BENEFITS PLAN COMMITTEE DEFENDANT'S FIDUCIARY STATUS

114. [redacted]

115. The Investment Sub-Committee and its members were fiduciaries of the Plan, within the meaning of ERISA § 3(21)(A), 29 U.S.C. § 1002(21)(A).

ADDITIONAL FIDUCIARY ASPECTS OF DEFENDANTS' ACTIONS/INACTIONS

116. ERISA mandates that pension plan fiduciaries have a duty of loyalty to the plan and its participants which includes the duty to speak truthfully to the Plans and its participants when communicating with them. A fiduciary's duty of loyalty to plan participants under ERISA includes an obligation not to materially mislead, or knowingly allow others to materially mislead, plan participants and beneficiaries. "[L]ying is inconsistent with the duty of loyalty owed by all fiduciaries and codified in section 404(a)(1) of ERISA." *Varity Corp. v. Howe*, 516 U.S. 489, 506 (1996); *see, also, Griggs v. E.I. Dupont de Nemours & Co.,* 237 F.3d 371, 381 (4th Cir. 2001) ("[An] ERISA fiduciary that knows or should have known that a beneficiary labors under a material misunderstanding of plan benefits that

will inure to his detriment cannot remain silent - especially when that misunderstanding was fostered by fiduciary's own material representations or omissions."); *Jones v. Am. Gen. Life & Accident Ins. Co.,* 370 F.3d 1065, 1072 (11th Cir. 2004).

117. During the Class Period, upon information and belief, certain Defendants made direct and indirect communications with the Plan's Participants including statements regarding investments in Company Stock. These communications included, but were not limited to, SEC filings, annual reports, press releases, and Plan documents (including Summary Plan Descriptions SPDs and Prospectuses regarding Plan/participant holdings of Company Stock), which included and/or reiterated these statements. At all times during the Class Period, SunTrust's SEC filings were incorporated into and part of the SPDs, the Prospectus and/or the Form S-8 registration statements. According to Plan documents, "The Employee Benefits Handbook serves as the Plan's SPD and the prospectus for the Company Stock Fund." Employee Benefits Handbook at page 115. "The Employee Benefits Handbook expressly incorporates by reference all subsequent documents filed by SunTrust or the Plan pursuant to Sections 13(a), 13(c), 14 and 15(d) of the Exchange Act." *id.* at 155-56. Defendants also acted as fiduciaries to the extent of this communication activity.

118. Further, Defendants, as the Plan's fiduciaries, knew or should have known certain basic facts about the characteristics and behavior of the Plan's participants, well-recognized in the 401(k) literature and the trade press,[11] concerning investment in company stock, including that:

(a) Employees tend to interpret a match in company stock as an endorsement of the company and its stock;

(b) Out of loyalty, employees tend to invest in company stock;

(c) Employees tend to over-extrapolate from recent returns,

(d) expecting high returns to continue or increase going forward;

(e) Employees tend not to change their investment option allocations in the plan once made;

(f) No qualified retirement professional would advise rank and file employees to invest more than a modest amount of retirement savings in company

---

[11] Joanne Sammer, *Managed Accounts: A new direction for 401(k) plans*, Journal of Accountancy, Vol. 204, No. 2 (August 2007) (available at: http://www.aicpa.org/pubs/jofa/aug2007/sammer.htm); Roland Jones, *How Americans Mess Up Their 401(k)*s, MSNBC.com (June 20, 2006) (available at: http://www.msnbc.msn.com/id/12976549/); Bridgitte C. Mandrian and Dennis F. Shea, *The Power of Suggestion: Inertia in 401(k) Participation and Savings Behavior*, 116 Q. J. Econ. 4, 1149 (2001) (available at: http://mitpress.mit.edu/journals/pdf/qjec_116_04_1149_0.pdf); Nellie Liang & Scott Weisbenner, 2002, *Investor behavior and the purchase of company stock in 401(k) plan - the importance of plan design*, Finance and Economics Discussion Series 2002-36, Board of Governors of the Federal Reserve System (U.S.) (available at: http://www.federalreserve.gov/pubs/feds/2002/200236/200236pap.pdf).

stock, and many retirement professionals would advise employees to avoid investment in company stock entirely;

(g) Lower income employees tend to invest more heavily in company stock than more affluent workers, though they are at greater risk; and

(h) Even for risk-tolerant investors, the risks inherent to company stock are not commensurate with it rewards.

119. Even though Defendants knew or should have known these facts, and even though Defendants knew of the substantial investment of the Plan's assets in Company Stock, they still took no action to protect the Plan's assets from their imprudent investment in Company Stock.

CLASS ACTION ALLEGATIONS

120. Plaintiffs bring this action derivatively on the Plan's behalf pursuant to ERISA §§ 409 and 502, 29 U.S.C. §§ 1109 and 1132, and as a class action pursuant to Rules 23(a), (b)(1) and/or (b)(2) of the Federal Rules of Civil Procedure on behalf of Plaintiffs and the following class of persons similarly situated (the "Class"):

> All persons, other than Defendants, who were participants in or beneficiaries of the Plan at any time between May 15, 2007 and March 30, 2011, inclusive (the "Class Period")[12] and whose accounts included

[12] Plaintiffs reserve their right to modify the Class Period definition in the event that further investigation/discovery reveals a more appropriate and/or broader time period during which

investments in SunTrust Stock.

121. During the Class Period, the fiduciaries of the Plan knew or should have known that the Company's material weaknesses were so pervasive that SunTrust Stock could no longer be offered as a prudent investment option for the Plan.

122. The members of the Class are so numerous that joinder of all members is impracticable. While the exact number of Class members is unknown to Plaintiffs at this time, and can only be ascertained through appropriate discovery, Plaintiffs believe that there are a substantial number of class members in the thousands.[13]

123. Common questions of law and fact exist as to all members of the Class and predominate over any questions affecting solely individual members of the Class. Among the questions of law and fact common to the Class are:

(a) Whether Defendants each owed a fiduciary duty to Plaintiffs and members of the Class;

SunTrust Stock was an imprudent investment option for the Plan.

[13] According to the 2007 Form 5500 submission for the Plan, as of December 31, 2006, over 34,000 persons were participants in or beneficiaries of the Plan. Additionally, the Plan's Form 11-K Annual Report indicates that there were 37,955 Participants and beneficiaries of the Plan as of December 31, 2007.

(b) Whether Defendants breached their fiduciary duties to Plaintiffs and members of the Class by failing to act prudently and solely in the interests of the Plan's participants and beneficiaries;

(c) Whether Defendants violated ERISA; and

(d) Whether the Plan has suffered losses and, if so, the appropriate measure of damages.

124. Plaintiffs' claims are typical of the claims of the members of the Class because to the extent Plaintiffs seek relief on behalf of the Plan pursuant to ERISA § 502(a)(2), their claims on behalf of the Plan are not only typical to, but identical to a claim under this section brought by any Class member.

125. Plaintiffs will fairly and adequately protect the interests of the members of the Class and have retained counsel competent and experienced in class action, complex, and ERISA litigation. Plaintiffs have no interests antagonistic to or in conflict with those of the Class.

126. **Rule 23(b)(1)(B) Requirements**. Class action status in this ERISA action is warranted under Rule 23(b)(1)(B) because prosecution of separate actions by the members of the Class would create a risk of inconsistent adjudications with respect to individual members of the Class which would, as a practical matter, be dispositive of the interests of the other members not parties to the actions, or substantially impair or impede their ability to protect their interests.

127. Class action status is also warranted under the other subsections of Rule 23(b) because: (i) prosecution of separate actions by the members of the Class would create a risk of establishing incompatible standards of conduct for Defendants; and (ii) Defendants have acted or refused to act on grounds generally applicable to the Class, thereby making appropriate final injunctive, declaratory, or other appropriate equitable relief with respect to the Class as a whole.

FACTS BEARING UPON DEFENDANTS' FIDUCIARY BREACHES

SUMMARY

128. During the Class Period, SunTrust Stock was an imprudent investment for Participants' retirement savings because of, *inter alia,* SunTrust's extremely risky credit exposure with respect to residential and commercial lending and related mismanagement, as well as the illiquidity of certain of SunTrust's assets, including mortgage-backed securities, which exposed the Plan to huge losses.

129. Throughout the Class Period, the Company suffered from grave mismanagement and the corresponding deterioration of its financial condition. Since the beginning of the Class Period, SunTrust's share price has lost a substantial percentage of its value. Under these circumstances, investment of Plan assets in SunTrust Stock was imprudent.

130. SunTrust's problems included: (a) substantial exposure to mortgage loan losses; (b) failure to properly account for and to disclose its exposure to losses

tied to the illiquidity of mortgage-backed securities and its business operations in the declining real estate market; (c) a $1.4 billion exposure to securities issued by Structure Investment Vehicles from the STI Classic Prime Quality Money Market Fund and the STI Classic Institutional Cash Management Money Market Fund; and (d) problems with valuation of certain of its financial assets, due to illiquidity in the market for mortgage-backed securities.

131. Despite their fiduciary status and Company Director/Officer status and despite the fact that they knew or should have known that SunTrust Stock was an imprudent Plan investment, Defendants failed to protect the Plan's assets. As a direct consequence, the Plan has incurred substantial losses as a result of the Plan's investment in SunTrust common stock during the Class Period. As of December 31, 2006, the Plan held approximately 13,723,701 shares of SunTrust Stock with a value of $1,158,966,549. *See* Form 11-K. As of December 31, 2011, the Plan held approximately 13,165,343 shares of SunTrust Stock with a value of $233,026,571. Accordingly, the Fund has lost well over half its value during the Class Period and the retirement savings of the Plan's participants have been decimated.

THE HOUSING BUBBLE

132. Industry experts have attributed the proliferation of subprime loans to a confluence of factors in 2004 and 2005, including rising home prices, declining affordability, historically low interest rates, intense lender competition, innovations

in the structure and marketing of mortgages, and an abundance of capital from lenders and mortgage securities investors. *See* Sandra L. Thompson, Dir., Div. of Supervision and Consumer Prot., *Testimony Before the Committee on Banking, Housing and Urban Affairs, U.S. Senate: Federal Deposit Insurance Corporation on Mortgage Market Turmoil: Causes and Consequences*, Mar. 22, 2007, *available at* http://www.fdic.gov/news/news/speeches/chairman/ spmar22071.html.

133. On information and belief, in 2004, as interest rates began to climb, the pool of potential prime borrowers looking to refinance began to dry up and lenders began extending loans to subprime borrowers with troubled credit histories to maintain or grow market share in a declining origination environment.

134. As early as 2004, industry watchdogs began expressing growing fears that relaxed lending practices were increasing risks for borrowers and lenders in overheated housing markets. *See* Simon, *Mortgage Lenders, supra*. As lenders made it easier for borrowers to qualify for a loan by such practices as described above, they were also greatly increasing the likelihood that borrowers would be unable to make payments, and that defaults would rise. Of particular concern was the prevalence of adjustable-rate mortgage ("ARMs"), which, in combination with the lowered lending standards, were more likely to result in borrowers' early payment defaults.

135. To take advantage of this new market, lenders weakened their underwriting standards, including:

(a) Reducing the minimum credit score borrowers need to qualify for certain loans;

(b) Allowing borrowers to finance a greater percentage of a home's value or to carry a higher debt load;

(c) Introducing new products designed to lower borrowers' monthly payments for an initial period; and

(d) Allowing borrowers to take out loans with little, if any, documentation of income and assets.

See Ruth Simon, Mortgage Lenders Loosen Standards – Despite Growing Concerns, Banks Keep Relaxing Credit-Score, Income and Debt-Load Rules, Wall St. J., July 26, 2005, at D1.

136. In addition to lowering underwriting standards, lenders aggressively marketed alternative loan products that enticed borrowers, but also put them at greater risk of default. These included:

(a) No-documentation and low-documentation loans: Known in the industry as "liar loans," the practice of requiring little or no documentation from borrowers constituted as much as 40 percent of subprime mortgages issued in 2006, up from 25 percent in 2001. *See* Gretchen Morgenson, *Crisis Looms In Mortgages*, N.Y. Times, Mar. 11, 2007.

(b) Piggy-back loans: These combine a mortgage with a home-equity loan or line of credit, allowing borrowers to finance more than 80 percent of the home's value without paying for private mortgage insurance. As of 2006, about half of all subprime loans included "piggyback" loans, and on average all borrowers financed 82 percent of the underlying value of their property, markedly up from 48 percent in 2000. *See Id.*; James R. Hagerty & Ruth Simon, *Home Lenders Pare Risky Loans – More Defaults Prompt Cut in 'Piggyback' Mortgages; Housing Market May Suffer*, Wall St. J., Feb. 14, 2007, at A3.

(c) Interest-only mortgages: These allow borrowers to pay interest and no principal in the loan's early years, which keep payments low for a time, but require that the deferred payment of principal be made in the future through increased monthly or balloon payments.

(d) Hybrid ARMs: The most prevalent of which are hybrid ARMs, these loans are marketed with promotional or "teaser" rates during a loan's introductory period that later balloon to much higher rates once the introductory period has ended. ARMs currently account for between one-half and one-third of subprime mortgages. *See* Testimony of Roger T. Cole, Director, Division of Banking Supervision and Regulation, The Federal Reserve Board, *Mortgage*

Markets, Before the Committee on Banking, Housing and Urban Affairs, U.S. Senate, Mar. 22, 2007, *available at* http://www.federalreserve.gov/boarddocs/testimony/2007/20070322/default.htm.

137. On May 16, 2005, the Office of the Comptroller of the Currency ("OCC"), Board of Governors of the Federal Reserve System, Federal Deposit Insurance Corporation ("FDIC"), Office of Thrift Supervision ("OTS"), and the National Credit Union Administration issued "Credit Risk Management Guidance for Home Equity Lending" (the "2005 Guidance").

138. The 2005 Guidance was issued "to promote sound risk management practices at financial institutions with home equity lending programs" because the agencies "found that, in many cases, institutions' credit risk management practices for home equity lending have not kept pace with the product's rapid growth and easily of underwriting standards." 2005 Guidance at 1.

139. The 2005 Guidance warned that "specific product, risk management, and underwriting risk factors and trends," combined with an inherent vulnerability to rising interest rates, suggest that financial institutions "may not be fully recognizing the risk embedded in these portfolios." *Id.*

140. The 2005 Guidance elaborated, noting that the agencies had "found that, in many cases, institutions' credit risk management practices for home equity lending have not kept pace with the product's rapid growth and easing of

underwriting standards." The 2005 Guidance further stated that financial institutions "may not be fully recognizing the risk embedded in these portfolios." The 2005 Guidance also specified that management needed to "actively assess a portfolio's vulnerability to changes in consumers' ability to pay and the potential for declines in home values."

141. The 2005 Guidance also found that:

> prudently underwritten home equity loans should include an evaluation of a borrower's capacity to adequately service the debt. Given the home equity products' long-term nature and the large credit amount typically extended to a consumer and evaluation of repayment capacity should consider a borrower's income and debt levels and not just a credit score.

2005 Guidance at 3.

142. The 2005 Guidance stated that "underwriting standards for interest-only and variable rate Home Equity Lines of Credit ("HELOCs") should include an assessment of the borrower's ability to amortize the fully drawn line over the long term and to absorb potential increases in interest rates." The 2005 Guidance also recommended that financial institutions with home equity concentrations as well as higher risk portfolios perform sensitivity analyses on key portfolio segments. "Sound practices call for fully articulated policies that address marketing, underwriting standards, collateral valuation management, individual account and portfolio management, and servicing.

143. SunTrust failed to adhere to the 2005 Guidance in continuing to engage in its highly risky and imprudent residential lending practices which cost it hundreds of millions of dollars.

144. In September 2006, the OCC, Board of Governors of the Federal Reserve System, FDIC, OTS, and the National Credit Union Administration issued further joint guidance, this time titled "Interagency Guidance on Nontraditional Mortgage Product Risks" (the "2006 Guidance").

145. The 2006 Guidance directed financial institutions to address and mitigate the risks inherent in nontraditional or "subprime" mortgage products by ensuring that loan terms and underwriting standards were consistent with prudent lending practices, which require a credible analysis of a borrower's repayment capacity. The 2006 Guidance provided that such loans should be underwritten based on a borrower's ability to make fully-amortized payments at the fully-indexed interest rate. For products like payment option ARMs that permit negative amortization, the 2006 Guidance provided that a lender should base its underwriting analysis on the initial loan amount plus any balance increase that could accrue given the maximum potential amount of negative amortization permitted by the loan.

146. After the 2006 Guidance was issued, SunTrust continued to initiate interest-only mortgages, ARMs, and generally continue its highly risky and

imprudent residential lending practices which were far more risky and did not take into account the 2006 Guidance.

147. In 2006, lenders made $640 billion in subprime loans, which was nearly twice the value of subprime loans made in 2003, according to *Inside B&C Lending*. *See New Century Files for Chapter 11 Bankruptcy*, CNNMoney.com, April 3, 2007 *available at* http://money.cnn.com/2007/04/02/news/companies/new_century_bankruptcy/

148. In 2006, subprime lending amounted to approximately 20 percent of the nation's mortgage lending and approximately 17 percent of home purchases. *Id*.

149. In 2005 and 2006, the Federal Reserve instituted a series of interest rate hikes and the interest rates on variable rate loans, including mortgage loans, rose. Subprime borrowers who were able to afford the initially low "teaser rate" loan payments could not meet their monthly payment obligations. At the same time, home values began to decline sharply, leading some borrowers to walk away from loans when they could not afford the increased monthly mortgage and could not readily re-sell the property for a profit. As a result, many borrowers no longer paid their mortgages, causing defaults to increase significantly.

150. As of mid-2005, delinquency rates for subprime loans (60-days or more past due) rose for the first time since 2002. By the fourth quarter of 2005,

delinquencies and foreclosures began to rise even more sharply — as of October 2005 the delinquency rate was twice that recorded on new subprime loans a year earlier. *See* Simon & Hagerty, *More Borrowers*, *supra*.

151. According to the FDIC, total subprime delinquencies rose from 10.33 percent in the fourth quarter of 2004 to 13.33 percent in the fourth quarter of 2006 and foreclosures rose from 1.47 percent to 2.0 percent over the same period. Testimony of Sandra L. Thompson, *supra*.

152. Subprime ARM loans accounted for the largest rise in delinquency rates, an increase from 9.83 percent to 14.44 percent between the fourth quarter of 2004 and the fourth quarter of 2006; whereas foreclosures rose from 1.5 percent to 2.7 percent during the same period. *Id*.

153. In 2006 alone, roughly 80,000 subprime borrowers fell into delinquency, many shortly after origination. *See* Simon & Hagerty, *More Borrowers*, *supra*.

<u>THE HOUSING BUBBLE BURSTS</u>

154. Throughout the housing boom, lenders made increasingly risky loans because they could (and did) collect exorbitant commissions and other fees by originating or buying and subsequently selling the loans to other entities. Essentially, lenders were able to make large fees and commissions and then make the loans "someone else's problem." This led to a pervasive practice of making as

many loans as possible as quickly as possible to reap the maximum amount of fees and commissions with little regard for credit risk.

155. The imminent collapse of the subprime lending industry was widely documented. In December 2006, the Center for Responsible Lending issued a report predicting the worst foreclosure crisis in the modern mortgage market. Ron Nixon, *Study Predicts Foreclosure For 1 In 5 Subprime Loans*, N.Y. Times, Dec. 20, 2006. Shortly after, several major mortgage lenders disclosed extraordinary rates of loan defaults, triggering inquiries from the SEC and FDIC.

156. An April 2006 report by the Mortgage Asset Research Institute analyzed one hundred loans in which the borrowers merely stated their incomes. The Mortgage Asset Research Institute then compared that data with the documents those borrowers had filed with the Internal Revenue Service. In 90 percent of loans, borrowers had overstated their incomes 5 percent or more. In almost 60 percent of loans, borrowers overstated their incomes by more than 50 percent. *See* Gretchen Morgenson, *Crisis Looms in Market for Mortgages*, New York Times, March 11, 2007.

157. In March, 2007, regulators, including the Federal Reserve Board, requested that lenders tighten their lending policies to borrowers with questionable credit. *Id.*

158. Between December, 2006 and August, 2007, numerous lending companies filed for bankruptcy, including:

- Ownit Mortgage Solutions (December, 2006);
- Mortgage Lenders Network (February, 2007);
- ResMAE Mortgage Corporation (February, 2007);
- People's Choice Home Loan, Inc. March 20, 2007);
- New Century Financial Corporation ("New Century") (April, 2007);
- SouthStar Funding (April, 2007);
- Copperfield Investments (April, 2007);
- Mortgage Investment Lending Associates (April, 2007);
- Oak Street Mortgage LLC (June, 2007);
- Alliance Bancorp on (July, 2007);
- American Home Mortgage Investment Corporation (August, 2007);
- HomeBanc Corporation (August, 2007);
- Quality Home Loans (August, 2007);
- Spectrum Financial Group, Inc. (August, 2007).

See Rick Green, *HomeBanc, Aegis Curtail New Mortgage Loans: Subprime Scorecard*, Bloomberg.com, Aug. 7, 2007; Kenneth Gosselin, *Behind Bravado: Certain Doom,* Hartford Courant, September 16, 2007.

159. New Century was the nation's second largest subprime lender. In 2006, it made $51.6 billion in subprime loans. Its bankruptcy on April 2, 2007 should have served as a clear warning to the mortgage lending industry that it was in danger of imminent collapse.

160. Soon after New Century announced that it would file for bankruptcy, the market for mortgage-backed securities froze, making trading mortgage-backed securities virtually impossible. *See* Rachel Konrad, *Real Estate Expected to Flounder*, December 14, 2006 (http://www.washingtonpost.com/wp-dyn/content/article/2006/12/14/AR2006121400846.html); Bill Fleckenstein, *Next: The real estate market freeze*, March 12, 2007 (http://articles.moneycentral.msn.com/Investing/ContrarianChronicles/NextTheRealEstateMarketFreeze.aspx); Marc Gongloff, *Rules, Rates Keep Housing in Deep Freeze*, February 26, 2008 (http://64.233.167.104/search?q=cache:4LKpzA8pewJ:homes.wsj.com/buysell/markettrends/20080226-gongloff.html+real+estate+market+freeze&hl=en&ct=clnk&cd=7&gl=us).

SUNTRUST'S EXPOSURE TO SUBSTANTIAL LOSSES AS THE MORTGAGE AND CREDIT MARKETS SUFFERED

161. Leading up to the start of the Class Period SunTrust changed the essential nature of their banking approach from conservative to risky lending,

relying heavily on subprime and other ill-advised risky lending practices. [redacted] Following the burst of the housing bubble, however, "SunTrust has now ended four straight quarters in the red, recording $1.8 billion in losses over that stretch."

162. SunTrust operates primarily in the Southeast – home to some of the areas hardest hit by problems in the housing and commercial real estate market.

163. During the Class Period, the Company's business model included originating and retaining risky residential mortgage loan products such as "Alt-A" low documentation loans, interest only loans, high loan-to-value ("LTV") loans and low initial interest rate loans. Some of the loans were first lien and some were second lien loans.

164. Although the low documentation loans originated by SunTrust during the Class Period were generally not made to customers with subprime FICO scores, SunTrust's low documentation loans effectively functioned like subprime loans in the sense of having a high rate of early defaults and later delinquencies.

165. A Morning Star report dated April 23, 2008 noted that SunTrust "has $1.6 billion of low-documentation mortgages, which despite having prime FICO scores are performing more like subprime mortgages."

166. SunTrust's loan portfolio included billions of dollars in residential real estate loans and home equity lines. For example, as of December 31, 2006, shortly before the commencement of the Class Period, SunTrust owned $47.9 billion in residential real estate loans, plus an additional $19 billion in commitments to extend credit on such loans. At year end 2007, SunTrust owned $47.7 billion in residential real estate loans and home equity loans (representing 39% of SunTrust's total loans), and an additional $20.4 billion in commitments to extend credit on home equity loans. In addition to SunTrust ownership of residential real estate loans, SunTrust also held, at year end 2006, $28.2 billion in mortgage loan commitments, and $12.9 billion in mortgage loan commitments at year end 2007.

167. SunTrust's business model also included selling or securitizing various assets classes, including student loans, residential mortgages, commercial loans, trust preferred securities, and asset-backed debt securities, that were either originated by the Company or purchased in the market and warehoused prior to the sale or securitization. These securitization activities involved selling all or a portion of a pool of assets to Company-sponsored or third-parties. SunTrust often warehoused assets prior to sale or securitization, retained interests in securitizations, and maintained a portfolio of loans that it traded in the secondary market.

168. By the middle of 2007, as a result of the unsustainable profits from subprime lending which had artificially inflated Company Stock through mid-2006, SunTrust was trading near $90 per share, a ten-year high and close to the stock's all-time high.

169. On May 15, 2007, the first day of the Class Period, SunTrust announced a series of initiatives to "enhance shareholder value," that is to say, to increase its share price. Despite the problems in the mortgage and credit markets, on the same day, in a slide presentation at the UBS Global Financial Services Conference, SunTrust touted its "disciplined approach to credit risk management" and its focus on optimizing capital structure through continuation of balance sheet management and capital restructuring opportunities. As a "2007 Growth Driver," the Company indicated that it would expand its sales force in order to increase loan production, as well as enhance its customer lending suite.

170. The Company's May 15, 2007 announcement of its "disciplined approach to credit risk management" was significant good news which SunTrust offered to the market generally and its Plan Participants. Shortly before the May 15, 2007 announcement, SunTrust had (on May 9, 2007) filed its first quarter 2007 Form 10-Q, which had discussed an increase in non-performing loans at SunTrust, the fact that SunTrust's loans were concentrated as loans secured by residential real estate and that there had been an increase in charge offs from SunTrust's

residential real estate loans. The "bad news" from the May 9, 2007 10-Q, however, was more than offset by the May 15, 2007 touting of SunTrust's "disciplined approach to credit risk management" which supposedly distinguished SunTrust from other banks.

171. The Company's touting of its "disciplined approach to credit risk management" had the predictable effect of boosting SunTrust Stock price, as the price rose from $77.69 (the adjusted close on May 15, 2007) to $79.16 the next day, and the stock price continued to rise into the low $80's the next week.

172. In its May 15, 2007 announcement Defendant SunTrust failed to disclose its true level of exposure to losses related to the problems in the mortgage and credit markets – particularly, exposure to mortgage loan losses and net valuation losses within the Company's portfolio. Certainly by no later than May 15, 2007, the first day of the Class Period, Defendants knew or should have known that SunTrust Stock was an imprudent investment for the Plan. Defendants knew or should have known that SunTrust's stock price would suffer immensely, once the truth regarding the Company's full exposure to mortgage related losses and the deterioration of the value of its assets became known. Moreover, due to the Company's serious mismanagement the Company's Stock had become overly risky for the Plan Participants.

173. For a time, the Company's deception was successful. In June 2007, SunTrust Stock hit a 52-week high of $90.47 per share, buoyed by the Company's May 15, 2007 touting of its disciplined approach to credit risk management and similar boasts. Though the mortgage and credit crisis was severely affecting other lenders, SunTrust portrayed itself, and so was generally perceived, as a more conservative bank that had protected itself from such losses.

174. Throughout the summer of 2007, the mortgage and credit crisis continued. Mortgage loan delinquencies had risen steadily, together with foreclosure rates. Additionally, the market for mortgage-backed securities had taken a severe beating, creating illiquidity in a market that had once prospered.

175. While SunTrust began to tightening credit standards for some of its loans in 2007, this did not prevent the previously-made loans generated with inadequate credit standards and kept in the Company's portfolio from plaguing SunTrust throughout 2007 and thereafter. For example, while SunTrust ceased originating 1st Lien Alt-A loans from its own portfolio in December 2006, and ceased originating 2nd Lien Alt-A1 loans in March 2007, the previously generated 1st Lien Alt-A loans and 2nd Lien Alt-A1 loans remained on SunTrust books as non-performing loans or as loans of questionable value for which, as discussed below, the Company did not maintain an adequate reserve. Further, SunTrust had packaged, or was in the process of packaging these Lien Alt-A loans and 2nd Lien

Alt-A1 loans into mortgage-backed securities which SunTrust either continued to own or remained contingently liable with respect thereto.

176. Alt-A1 loans are similar to subprime loans. While subprime loans are issued to borrowers who have poor credit histories or a history of delinquency in mortgage payments, Alt-A mortgages generally fall loosely in between these subprime loans and the traditional prime mortgage loans, typically being offered to borrowers with good credit scores but other negatives. Features of Alt-A mortgages often include, among others, reduced documentation requirements, "no doc" loans, loans for second or vacation homes and high loan-to-value loans.

177. On August 20, 2007, SunTrust announced that it would eliminate approximately 2,400 employees, representing 7% of its workforce, in an effort to overhaul the bank and reduce cost. Evelyn M. Rusli, *SunTrust Slashes Staff,* Forbes.com (August 20, 2007). However, the Company expressly denied any connection to problems arising from the declining mortgage and housing markets. In fact, "SunTrust spokesman Barry Koling assured Forbes.com . . . that the bank's latest move had 'nothing to do with the current mortgage and credit market related issues.'" *Id.*

178. On November 15, 2007, in a slide presentation prepared for the Merrill Lynch Banking and Financial Services Conference held in New York City, SunTrust projected it would write-off 0.4% to 0.5% of its loans at the middle of

2008. The midpoint of this range would be the highest charge-off rate for the company since 2002. However, the Company again downplayed its projected loan losses and convinced the market that its exposure to mortgage-related losses was relatively low. *See* Carl Gutierrez, *SunTrust's Homely Projections,* Forbes.com (November 15, 2007). As had been the case in May 2007, where the Company followed bad news announced in a an SEC filing with a positive statement to the market, the November 15, 2007 presentation at the Merrill Lynch Conference downplayed the increase in non-performing assets attributable to non-performing residential mortgage and home equity loans.

179. Rather than acknowledge its tremendous exposure to mortgage related loan losses and net valuation losses, SunTrust attempted to focus investors' attention on its attempt to reduce its operating expenses by streamlining its sales force and cut hundreds of jobs.

180. Complicating SunTrust's problems with residential real estate loans and home equity lines of credit was the fact that SunTrust's real estate lending was concentrated in two of the once-hottest hot, but by mid-2007, severally troubled markets, Florida and Georgia. Florida and Georgia represented most of SunTrust's "geographic footprint," and SunTrust would ultimately acknowledge in its 2008 Form 10-K (at 126) that a "significant portion of [SunTrust's] residential mortgages and commercial loan portfolios are composed of borrowers in the

Southeastern Mid-Atlantic regions of the United States, in which certain markets have been particularly adversely affected by declines in real estate value, declines in home sales volumes and declines in new home building."

181. On December 20, 2007, SunTrust announced that it intended to purchase at amortized cost, plus accrued interest, approximately $1.4 billion of securities issued by SIVs from the STI Classic Prime Quality Money Market Fund and the STI Classic Institutional Cash Management Money Market Fund. Ridgeworth Capital Management, Inc. (f/k/a Trusco Capital Management, Inc.), a wholly owned subsidiary of SunTrust, was the investment advisor to those funds.[14] As a consequence, the SunTrust estimated that it would incur a pre-tax mark-to-market write-down of $225 million to $250 million in the fourth quarter of 2007.

182. SunTrust was under no obligation to purchase the $1.4 billion of SIVs from its affiliated entities. In choosing to purchase the SIVs and assuming the related losses (such SIVs constituting securities which were backed subprime liable and by real estate-related loans of questionable value), SunTrust bore losses which should have been borne by the funds, the funds' sponsors, and the funds customers. This assumption of loss damaged SunTrust, its stock price and the retirement savings of Participants invested in SunTrust Stock. Indeed,

[14] As noted above, effective March 31, 2008, SunTrust subsidiary Trusco Capital Management, Inc. changed its name to Ridgeworth Capital Management, Inc. and the STI Classic Funds became Ridgeworth Funds.

documentary evidence exists that SunTrust purchased the SIVs to rescue its mutual fund business from bad investment decisions because "[t]he Classic funds and SunTrust broad asset management business would have suffered severe reputational damage had we not [closed the funds]." These transactions also show that SunTrust thus had exposure to subprime risk during the Class Period even though SunTrust ceased originating loans to subprime borrowers in mid-2006.

183. Similarly, and also in December 2007, the Company purchased an additional $725 million in asset-backed securities, at amortized cost plus accrued interest, from Three Pillars Funding LLC, a multi-seller commercial paper conduit sponsored by the Company. Regarding these asset-backed securities, the Company stated that, "during the fourth quarter of 2007, the rapid deterioration in the performance of the underlying collateral, *some of which is comprised of sub-prime and Alt-A mortgages*, as well as market illiquidity began to materially decrease the market value of these securities; as a result, we recorded a market value loss of $144.8 million in the fourth quarter of 2007." *See* 2007 Form 10-K (emphasis added).

184. Regarding the purchases from Ridgeworth Capital Management, Inc. and Three Pillars Funding LLC, the Company noted, "we did not have a contractual or implicit obligation to purchase these securities or provide additional support to the Funds or Three Pillars." *See* 2007 10-K. As with the loss-

generating purchases of SIVs from the STI/Ridgeworth-related entities, in the case of Three Pillars SunTrust effectively bailed out related entities and customers of those related entities but at a substantial price to SunTrust, its stock price, and the Participants whose retirement savings were invested in SunTrust Stock.

185. The December 20, 2007 announcement severely damaged SunTrust's reputation. As the Wall Street Journal observed, "Beyond the immediate bad news, the disclosures clearly signaled the end of SunTrust's long-touted reputation as a bank that guarded its performance by taking fewer risks and making smarter bets on loans than its rivals." Valerie Bauerlein, *Tried-and-True SunTrust Finds 'The Halo's Gone,'* The Wall Street Journal, December 21, 2007, at C2.

186. *The Wall Street Journal* further reported on December 21, 2007:

> The problems portend a difficult year ahead, too, with the housing market faltering severely, especially within SunTrust's core footprint in Florida and the rest of the Southeast. The bank was already reeling from a bad bet on high-rate loans late in the mortgage boom.
>
> Recent interest-rate cuts by the Federal Reserve also forestall any boost in loan profits that banks such as SunTrust were hoping would offset housing and credit woes.
>
> "The halo's gone," said Christopher Marinac, research director at FIG Partners LLC, a bank research firm in Atlanta. "People want to see performance, and performance issues for SunTrust are getting worse, not better."

187. On January 23, 2008, the Company announced its financial results for the full year 2007 and the fourth quarter ended December 31, 2007, which included net income of $3.3 million for the fourth quarter of 2007, down from $498.6 million in the fourth quarter of 2006, or a plunge of 99.3%. SunTrust attributed the loss to the declining value of asset-backed securities, losses tied to residential real estate loans, risking mortgage delinquencies and falling home prices.

188. At that time the Company reported that it had substantially increased its provision for loan losses from $115.8 million in the fourth quarter of 2006 to $356.8 million in the fourth quarter of 2007 and from $262.5 million for the full year 2006 to $664.9 million for the full year 2007. *See* SunTrust Form 8-K, filed with the SEC on January 23, 2008.

189. On January 23, 2008 the Company also reported $510 million in market valuation losses related to the securities which SunTrust had purchased during the fourth quarter of 2007 from the STI Class Market Fund, managed by its wholly owned subsidiary, Ridgeworth Capital Management, and Three Pillars. The Company announced that the markdown reflected the lack of liquidity in the market for the securities, deterioration in the credit quality of the underlying assets, and restructuring of investment vehicles. The Company's 2007 Form 10-K would ultimately admit:

> In the fourth quarter of 2007 we recorded approximately $[510] million in market valuation losses related to securities that we purchased from certain money market funds that are managed by our subsidiary Trusco Capital Management, as well as Three Pillars Funding LLC, a multi-seller commercial paper conduit sponsored by us. At the time of purchase, these securities were predominantly AAA or AA-rated, short dated residential mortgage-backed securities, structured investment vehicles ("SIVs"), and corporate and consumer collateralized debt obligations. We cannot assure you that we will not [sustain] additional losses in the future related to purchases of similar securities.

190. The Company also recognized approximately $45 million in net market valuation losses in the fourth quarter 2007 related to its trading and securitization of assets, mortgage loan valuation write-downs, and a net write-up in SunTrust corporate debt.

191. SunTrust announced that the full year 2007 results included approximately $700 million in market valuation losses related to asset-backed securities, the mortgage loan warehouse, and the capital markets warehouse and residual interests net of market valuation gains on the Company's debt.

192. Further, SunTrust stated that the Company's year 2007 results were adversely impacted by declines in the market value of recently acquired asset-backed securities, as well as credit losses related to residential real estate loans, increased delinquencies in mortgage-related loans and declines in home values,

which hampered the liquidity and value of assets tied to the residential real estate market.

193. In February 2008, SunTrust announced that it was eliminating its "piggyback" or "combo" loan program – a program that provided a first and second mortgage for borrowers unwilling or unable to put down 20% on the purchase of a home. Such loans became popular during the housing boom in 2005, and may have fostered a wave of speculating in major housing markets because they allowed, in some cases, a borrower to put zero money down on a home and flip it in the near term, when housing prices escalated. Mark DeCambre, *SunTrust Sheds Piggyback Program,* TheStreet.com (February 21, 2008).

194. On February 21, 2008, the Associated Press reported that "Shares of SunTrust Banks Inc. fell Thursday after Oppenheimer & Co. cut its rating on the regional bank Wednesday night. . . Oppenheimer analyst Jennifer Thompson said the stock is likely overvalued because it is perceived as a takeover target for another bank, but said it should instead be valued on a stand alone basis." Shares of SunTrust fell $3.19, or almost 5 percent, to $60.79.

195. On April 21, 2008, SunTrust released results for its first quarter 2008 performance and revealed that its loan losses and net valuation losses loss had continued to soar. Specifically, the Company revealed that its quarterly profit fell by 44% to $283.6 million from $513.9 million a year earlier. Additionally, net

income for the Company dropped to $283.6 million, or 81 cents per share, from $513.9 million, or $1.44, a year earlier; and net interest income dropped to $1.14 billion from $1.16 billion a year earlier.

196. The Company also reported that, during the first quarter of 2008, it had recorded approximately $287 million in market valuation losses related primarily to investments in asset-backed securities that were acquired in late 2007 and other trading and securitization activities. Further, the Company's mortgage division reported a net loss of $31.4 million, a decrease in income of $38.3 million compared to the first quarter of 2007, due to "higher credit related costs."

197. Further, due to the continued problems within the Company's residential mortgage loan portfolio, SunTrust increased its provision for loan losses to $560 million – up from $56.4 million a year earlier – increasing the ratio of allowance to total loans outstanding to 1.25% as of March 31, 2008. The increase in the allowance for loan and lease losses was also attributable to an increase in expected losses in the existing residential mortgage, home equity lines of credit and residential construction portfolios.

198. In the first quarter of fiscal 2008 SunTrust also experienced an increase in mortgage loan delinquencies. Gross charge-offs in real estate loans as a percent of real estate loans increased to 0.31% in the first quarter of 2008 from

0.04% during the prior year period, with the most significant increases recorded in home equity lines, real estate construction and residential mortgages.

199. But, notably, Defendant Wells remained defiant – although he acknowledged "growth in credit costs associated with the residential real estate correction," he stated, "SunTrust is financially strong, with ample liquidity, adequate capital, and a solid balance sheet, and we are effectively managing through this difficult environment."

200. On May 8, 2008, SunTrust filed its 10-Q for the first quarter of 2008. The Company admitted its concentration of risky mortgage loans:

> As of March 31, 2008, the Company owned $16.7 billion of interest only loans, primarily with a ten year interest only period. Approximately $1.5 billion of those loans had combined original loan to value ratios in excess of 80%. Additionally, the Company owned approximately $2.2 billion of amortizing loans with combined loan to value ratios in excess of 80% with no mortgage insurance.

See SunTrust Form 10-Q, filed with SEC on May 8, 2008 (Emphasis added)

201. SunTrust was also impacted by increasing delinquencies on home equity loans. According to SNL Financial, from October 2007 to March 2008, $6.7 billion in home-equity loans became delinquent, increasing the total by 45% over the prior year period.

202. In June 2008, SunTrust Stock continued to suffer. On Tuesday, June 17, SunTrust shares dropped almost 9%, amid concerns over continuing loan losses. On June 28, 2008, Morgan Keegan bank analyst Bob Patten cut his earnings estimates for SunTrust by 14%, citing the potential deterioration of the bank's loan portfolio and the weak economy.

203. During the Class Period SunTrust's purported valuations of its assets suffered from improper valuations. In the second quarter of 2007, the Company began recording at fair value certain newly-originated mortgage loans held for sale based upon defined product criteria. As the Company has acknowledged:

> SunTrust used significant unobservable inputs (Level 3) to fair value certain trading assets, securities available for sale, portfolio loans accounted for at the fair value, loans held for sale, other assets and other liabilities as of March 31, 2008. The need to use unobservable inputs generally results from the lack of market liquidity for certain types of loans and securities, which has resulted in diminished observability of both actual trades and assumptions that would otherwise be available to value these instruments. More specifically, the asset-backed securities market and certain residential loan markets have experienced significant dislocation and illiquidity in both new issues and the levels of secondary trading.

See SunTrust Form 10-Q, filed with the SEC on May 8, 2008.

204. Essentially, according to the three-level hierarchy for measuring the fair value of assets and liabilities set forth in Financial Accounting Standards Board (FASB) Statement No. 157, "Level 3" fair values are measured using

"unobservable inputs." While companies cannot actually see the changes in the fair values of their assets and liabilities, they are allowed to book them through earnings anyway, based upon their own subjective assumptions. This is problematic, as investors are often unable to truly ascertain a company's true value. As one analyst noted, "If you see a big chunk of earnings coming from revaluations involving 'Level 3' inputs, your antennae should go up. It's akin to voodoo." *See Wells Fargo Gorges on Mark-to-Make Believe Gains,* Jonathan Weil, Bloomberg.com (August 22, 2007) (quoting Jack Ciesielski, publisher of the Analyst's Accounting Observer research service in Baltimore, Maryland).

205. SunTrust engaged in such creative valuation with a number of its assets. The Company's "Level 3" trading assets included: residual interests retained from Company-sponsored securitizations of commercial loans, structured asset sales participations, SIVs, and investments in other asset-backed securities for which little or no market activity exists or whose value of the underlying collateral is not market observable.

206. During the first quarter of 2008, SunTrust transferred $424.3 million of trading and available for sale securities into "Level 3" due to the illiquidity of these securities and lack of market observable information to value these securities. Additionally, during the first quarter of 2008, based on illiquidity in the secondary

markets, the Company transferred $158.0 million of mortgage loans held for sale, including $40.7 million of commercial real estate loans, into "Level 3."

207. In other words, as the markets deteriorated and certain loans were not actively trading as either whole loans or as securities, the Company began employing alternative, and entirely speculative and unreliable, valuation methodologies to determine the fair value of the loans.

208. This uncertainty as to the true value of the Company's assets did little to help stop the deterioration of the value of SunTrust Stock.

209. It was becoming clearer, and it was or should have been known to all Defendants, that that the collectability of the Company's loans was increasingly, and would continue to be, in serious doubt for the foreseeable future.

210. On June 18, 2008, Morgan Keegan cut its earnings estimate for SunTrust, citing to the weak economy and potential deterioration of the bank's loan portfolio. "Despite our recent conversation with management and stress testing of SunTrust's loan portfolio, our conviction level has decreased around the timing and deterioration in credit," Morgan Keegan analyst Bob Patten said in the report.

211. In response, SunTrust's share price dropped about 9 percent to $36.95, dipping to its lowest level since 1996.

212. On July 1, 2008, SunTrust Stock closed at $36.05, a 60% drop from its Class Period-high of $90.47.

213. In response to these results, a JP Morgan analyst report stated that SunTrust's loan "[l]oan loss reserves grew 21 bp qoq to 1.46% of loans but fell to 66% of NPLs, among the lowest in our universe."

214. In an announcement made on July 22, 2008, SunTrust continued its practice of downplaying its credit risk and lending problems and defiantly disagreeing with those who questioned the reliability of the Company's loan loss reserve and earnings figures. In the July 22, 2008 announcement, Defendant Wells referred to certain transactions by SunTrust in connection with its ownership of shares of Coca-Cola Corp., and stated that these transactions "made SunTrust even better prepared to address the challenges of the current environment as well as strengthen our position for the long term." Defendant Wells further stated:

> "Against a backdrop of economic weakness, deteriorating market conditions, and industry-wide volatility, our second quarter results reflect the Company's intense focus on managing our core business, balance sheet, and credit risk through this difficult cycle."

215. Not surprisingly, Defendant Wells' overly optimistic boasts about SunTrust's continued viability boosted SunTrust's stock price from $39.66 to $43.21 (both adjusted closing prices).

216. On August 25, 2008, a Citigroup analyst issued a "sell" rating on SunTrust, noting in a report that SunTrust in recent years expanded into higher-risk real estate lending and packaging of real estate loans "that has been a source of sizable mark-to-market losses." In response, shares fell $2.59, or 6 percent, to $40.12.

217. On September 10, 2008, at the Lehman Brothers Global Finance Services Conference, Defendant Chancy made the following statements:

> *We believe that we have a very diversified franchise with a solid capital and liquidity position that provides downside protection.*
>
> * * *
>
> There's a lot of focus on capital, as there should be in today's environment. And one of the things that we mentioned is that at the end of the second quarter we are continuing to evaluate our capital position. We believe that we have adequate capital, given our current views on the credit environment.
>
> * * *
>
> Provision on a quarter-over-quarter basis declined. It was $448 million in the second quarter, down from $560 million in the first quarter. The reserve itself moved up to 1.46%.
>
> * * *
>
> As it relates to the fourth quarter, we continue to believe that charge-offs will not be dramatically higher or lower, again, as you have both an increasing level of charge-offs in certain categories that I will talk about in a minute, as

> well as some that we anticipate will decline.
>
> And as it relates to the allowance, while we believe that it will continue to grow over the next few quarters, we believe it will grow at a more modest level than it has in the past couple of quarters. So we are trying to give you some information to develop a view both on charge-offs, as well as provision expense and the allowance percentage.
>
> We believe overall we're taking the right actions to mitigate our risk on these various portfolios, and as we add new production to mitigate our risk on the new levels of loans that we're bring [sic] into the balance sheet. (Emphasis added)

218. On September 11, 2008, the Wall Street Journal noted that "Analysts have been hammering SunTrust lately because of its problem real estate loans --- three more [analysts (Morgan Keegan, Portales Partners and Keefe, Bruyette & Woods)] downgraded the stock this week --- *but bank officials speaking at a Wall Street investor's conference Wednesday made their case that the company's outlook is strong.*" (emphasis added). The article quotes Defendant Chancy as stating, "[w]e believe that SunTrust is very well-positioned to weather the current storm."

219. As a result of the September 11, 2008 article and quote of Defendant Chancy, SunTrust Stock closed at $45.95/share, up almost 4.5% from the prior day's closing price.

THE TRUTH ABOUT THE GRAVITY OF SUNTRUST'S PROBLEMS <u>SLOWLY COMES TO LIGHT</u>

220. On October 23, 2008, the Company issued a press release entitled "SunTrust Reports Third Quarter Earnings of $0.88 Per Share," which stated in part:

> SunTrust Banks, Inc. today reported net income available to common shareholders of $307.3 million for the third quarter of 2008, or $0.88 per average common diluted share, compared to $412.6 million, or $1.18 per average common diluted share, in the third quarter of 2007. . . .
>
> * * *
>
> Mr. Wells said that potential impact of economic weakness on credit quality remains "near-term concern number one" for SunTrust even though the Company has been seeing some "signs of slowing credit deterioration." Mr. Wells said charge-offs, which were in line with expectations in the third quarter, are likely to remain at elevated levels into 2009.
>
> . . . Mr. Wells noted that the Company's Board of directors has authorized an application for the sale of preferred stock to the U.S. Treasury under the TARP program, and also that the Company continues to evaluate its capital structure and dividend policy. Mr. Wells said he expects the evaluation to be completed "in short order" with any decisions communicated promptly.
>
> * * *
>
> <u>Asset Quality</u>
>
> Nonaccrual loans were $3,289.5 million, or 2.60%, of total loans as of September 30, 2008, compared to

$2,625.3 million, or 2.09%, of total loans as of June 30, 2008 and $974.8 million, or 0.81%, of total loans as of September 30, 2007. The increase in nonaccrual loans was mainly due to an increase in real estate construction loans and residential mortgages, as the overall weakening of the housing markets and economy continued to increase delinquencies. Other real estate owned also increased $52.5 million, or 15.7%, to $387.0 million, as the Company foreclosed on the collateral securing specific nonperforming loans. Restructured loans still accruing interest increased $217.7 million to $381.0 million as a result of actions the Company is proactively taking to mitigate further losses and enable borrowers to repay their loans under revised terms that in the long run preserve the value of the Company's interests.

Annualized quarterly net charge-offs in the third quarter of 2008 were 1.24% of average loans, up from 0.34% in the third quarter of 2007 and 1.04% in the second quarter of 2008 compared to $322.7 million in the second quarter of 2008 and $103.7 million in the third quarter of 2007. The increase in net charge-offs over the third quarter of 2007 reflects the deterioration in consumer credit and home values, particularly in residential real estate secured loans. The increase in net charge-offs in 2008 has been most pronounced in home equity lines, residential mortgages, and construction loans as home values continued to fall. The provision for loan losses increased to $503.7 million compared to $448.0 million in the second quarter of 2008 and $147.0 million in the third quarter of 2007.

The allowance for loan and lease losses was $1,941.0 million as of September 30, 2008 and represented 1.54% of period-end loans. Since year-end 2007, the allowance to loans outstanding has increased 49 basis points, as the deterioration in certain segments of the consumer and residential real estate market continued. The allowance for loan and lease losses as of September 30, 2008

> represented 1.24 times annualized net charge-offs in the quarter and 62.1% of period-end nonperforming loans.

221. On October 23, 2008, during the Company's third quarter 2008 earnings conference call, Defendant Wells made the following statements:

> Now, moving on to some credit matters, net charge-offs increased to 1.24% of loans, while NPA's increased 24% to $3.7 billion in the quarter. Both of these outcomes were at the high end of the ranges we had anticipated. On the other hand, early stage delinquencies remained stable in the 1.5% range again this quarter. Additionally, the forward view of lost content in the existing portfolio increased less than in the past few quarters. The reserve growth of $112 million was lower than prior quarters and raised the loss reserve by 8 basis points to 154 basis points.
>
> * * *
>
> We said during our earnings call last quarter that while we didn't think we needed significant additional capital, we would continue to evaluate the capital markets to determine if regulatory capital could be raised in a cost effective manner. The public markets were not conducive to raising capital during the majority of the Third Quarter and so we did not access the market.
>
> As you all know, the Treasury announced it will be making direct investments in selected institutions in the form of preferred securities. Given the progress we've made in increasing regulatory capital we are in a position of strength and do not have a deep need for this capital; however, given the level of economic uncertainty it may be prudent to pursue this option particularly since the preferred stock is attractively priced. . . .
>
> As we enter 2009 we are evaluating our capital structure

> including our current regulatory and tangible capital levels and the potential issuance of preferred securities under the TARP program. Our Board of Directors authorized an application to sell preferred stock to the US treasury under that program and the potential range for SunTrust under the program is between $1.6 billion to $4.9 billion. . . We expected additional decisions related to our overall capital structure and dividend policy will be resolved and communicated properly.

222. On the same call, Defendant Chancy stated:

> Net charge-offs increased to $392 million or 1.24% of loans which was in line with the high end of our expectations. $112 million of provision was recorded in excess of net charge-offs and this excess provision increased the allowance ratio to 1.54%.
>
> * * *
>
> As expected we recorded another $48 million in reserves for expected losses related to our Twin Rivers mortgage reinsurance Company; however mortgage application fraud is the real story. The run rate cost of fraud loss is effectively doubled versus last year and last quarter. Further, we established a $40 million reserve during the quarter for expected future fraud related losses.

223. Thomas Freeman, SunTrust's Chief Risk Officer, also participated in the call, stating:

> The subset of portfolios under significant stress comprises just 12% of our total loan book, and we've been taking aggressive actions to mitigate the risk. In residential mortgages, we eliminated Alt A portfolio lending in mid 2006. We have significantly tightened underwriting guidelines across all of our products, and have augmented our default management capabilities

> with people, enhanced processes, and tools. . . .
>
> . . . Credit deterioration was consistent with market conditions and our expectations during the third quarter. Early stage delinquencies remain stable. . . .
>
> I'll conclude my remarks with an outlook for charge-offs. The current internal forecast shows net charge-offs in the Fourth Quarter up approximately 20% driven by continued weakness in the consumer sectors.

224. As a result of these disclosures, SunTrust's stock price dropped $3.93, a 10% decline, in one day. This decrease in SunTrust's stock price was a result of artificial inflation coming out of the stock price. The Company's stock continued to trade at artificially inflated levels, however, because Defendants failed to fully disclose the adverse information set forth in above.

225. On October 23, 2008, a Deutsche Bank analyst report on SunTrust stated:

> **3Q falls short**
>
> SunTrust reported 3Q08 EPS of $0.88, core EPS per press release items of 49 cents (consensus = $0.59) . . . . Results reflected higher end expectations for credit losses, lack of revenue growth, and negative operating leverage, mitigated by slightly higher capital ratios. We are lowering our 2009 est. due to our expectation for higher loan loss levels, reserves and expenses and establishing a 2010 est of $3.25, but maintain our Hold rating as the long term positioning of the bank remains strong.

> **Credit continues to get worse**
>
> Credit quality got worse, including charge-offs (from 1.04% to 1.24%), problem assets (up 1/4th), and trends in other areas, such as commercial which had higher losses in small business (to 1.6% - not too bad) and publishing.

226. On October 27, 2008, the Company issued a press release entitled "SunTrust Plans Sale of $3.5 Billion in Preferred Stock to U.S. Treasury; Company Separately Announces 30% Dividend Reduction." The release stated in part that the Company had received preliminary approval to sell the U.S. Treasury $3.5 billion in preferred stock and related warrants as part of TARP.

227. TARP allows the United States Department of the Treasury to purchase or insure up to $700 billion of "troubled" assets. "Troubled assets" are defined as:

> (A) residential or commercial mortgages and any securities, obligations, or other instruments that are based on or related to such mortgages, that in each case was originated or issued on or before March 14, 2008, the purchase of which the Secretary determines promotes financial market stability; and (B) any other financial instrument that the Secretary, after consultation with the Chairman of the Board of Governors of the Federal Reserve System, determines the purchase of which is necessary to promote financial market stability, but only upon transmittal of such determination, in writing, to the appropriate committees of Congress.

See A Congressional Budget Office Report: The Troubled Asset Relief Program: Report on Transactions Through December 31, 2008, at 1.

228. On October 29, 2008, a JP Morgan analyst report on SunTrust stated:

> What is different about SunTrust's (STI) announcement as regards the capital investment under TARP is that, *unlike most regional banks, STI chose to take less than the maximum allowed* – STI took little over 2% of risk-weighted assets in capital because of its concerns about the dilution from the capital due to difficulties in levering it materially. (Emphasis added)

229. The impression created by SunTrust by taking less than the maximum TARP money permitted to SunTrust—that SunTrust was doing fine, or at least better than other banks and didn't need the government's money—was a false impression, as shown by subsequent events, where SunTrust changed its decision and accessed the full amount of TARP capital available to it. See the Morgan Keegan Analyst Report of December 10, 2008, identified hereinafter.

230. On November 9, 2008, a Ladenburg Thalman analyst report on SunTrust stated:

> SunTrust's reserves are low relative to its non-performing assets and non-performing assets are growing rapidly. This means that the loan loss provision will continue to rise. Management is arguing that the rate of growth is about to slow, however.

231. On November 13, 2008, at the Merrill Lynch Banking & Financial Services Conference, Defendant Chancy made the following statements:

> As many of you know, we announced our intent and were ultimately approved to participate in the capital purchase program. We applied for and received approval for $3.5

> billion worth of preferred stock, which is a little bit more than the 2% allocation. That is the level that we required.
>
> We went through, as you might expect, a pretty thorough review, looking at our own capital position as we exited the third quarter. We did some sensitivity analysis around our credit metrics and our capital position, which we feel very good about. We felt that the incremental capital would allow us to work ourselves through the current credit environment, and further extend certain loan categories, and grow our loan book in a prudent fashion.
>
> * * *
>
> So, we believe that we have taken, as outlined here on the right-hand side of the page, significant actions to mitigate our ongoing risk and manage the risk that we have it [sic]. This is approximately 12% of our overall loan portfolio. As noted about $15 billion in total outstanding. There are the areas that we will continue to focus on as we move into 2009.

232. After his prepared statement, Defendant Chancy engaged in the following colloquy with the audience:

> Unidentified Audience Member: I had a couple of questions. The first is concerning provisions only being up 8 basis points. I understand the rationale in terms of looking at the 38 – to 89-day delinquencies, early stage in this funnel delinquencies, and seeing some stability.
>
> My concern is this. We have heard from everyone, covering every facet of the economy, that in the last two months things have deteriorated significantly. So, my concern is, you are nowhere even close to provisioning enough given the current reality and near-term future reality.

I know it makes numbers look prettier on the quarter to not provision too much. But is it really an accurate reflection of what is going to be happening in the future? Then I have a follow-up after that.

[Chancy:] Okay, well, as the industry does, focus on the current information that we have as it relates to our portfolio, as well as the forward view of how those portfolios are going to perform. We look over a period of time that is between one and two and a half years depending upon the type of portfolio. And we take all of that information into consideration when designing the appropriate level of reserves.

* * *

One of the things that people as they are looking at SunTrust's reserve position often compare is our nonperforming loans; and *nonperforming loans have been going up pretty substantially, particularly in the residential mortgage arena*. One thing to note around that – and we try to provide some information in our earnings presentation deck to give you an illustration – is we have taken a substantial amount of charge off against those nonperforming loans in the residential category. About two-thirds of the loans have already been written down. (Emphasis added)

We go through a process at the end of 180 days where we do an updated fair market value of the property. We then mark it at 85% of that estimated fair market value; and we charge off the difference between our loan balance and that adjusted fair market value estimate. Those charge offs on those nonperforming loans have already been realized by the Company.

So when you are trying to balance the appropriate level of allowance by loan category, given the level of charge offs that have already been realized as well as those that you expect in the future, we take each of those elements

> into consideration for the pools.
>
> We also have a process where we go through on a loan-by-loan basis for all loans greater than $2 million that are in a nonperforming status, to do specific reserving. So all I can tell you is that we are taking all of the current and our expected views on these portfolios into consideration as we build up the allowance on a pool-by-pool basis.
>
> We certainly believe that it was adequate as of the end of the quarter. We will obviously continue to evaluate the reserve position. What we have said in the past is that we expect the reserve to continue to grow on a quarterly basis, although at a slowing pace relative to the last several quarters. And that was what we realized during the third quarter, we were up about $100 million quarter-over-quarter.

233. On December 9, 2008, the Company issued a press release entitled "SunTrust Approved to Sell Remaining Allotment of Preferred Stock Under Treasury Program; 'Prudent Step' Bolsters Capital in Increasingly Uncertain Economy." The release stated in part:

> SunTrust Banks, Inc. said today it has received preliminary approval to sell to the U.S. Treasury the remaining $1.4 billion of preferred securities available to it under Treasury's Capital Purchase Program. As previously announced, SunTrust has already received an initial $3.5 billion under the program. *This additional amount brings the combined total to approximately $4.9 billion,* or the full 3% of risk weighted assets for which SunTrust was eligible.
>
> "As we now know from the most recent data, the economic situation is decidedly bleaker than was the case when we announced our initial, partial regulatory capital

> transaction under the Treasury program," said James M. Wells III, SunTrust Chairman and Chief Executive Officer. "Given the increasingly uncertain economic outlook, we have concluded that further augmenting our capital at this point is a prudent step, especially if the current recession proves to be longer and more severe than previously expected." (Emphasis added)

234. As a result of these disclosures, SunTrust's stock price dropped $3.72 per share, a decrease of 11% in one day. This decrease in SunTrust's stock price was a result of the artificial inflation caused by Defendants' misleading statements coming out of the stock price. The Company's stock continued to trade at artificially inflated levels however, because Defendants still failed to fully disclose the full extent of SunTrust losses resulting from residential mortgage originations and securitization.

235. On December 10, 2008, a Morgan Keegan analyst report on SunTrust stated:

> We are downgrading our rating on SunTrust to Market Perform from Outperform following the recent period of outperformance in STI shares and on the bank's announcement yesterday that it had changed its previous decision and decided to access the remaining $1.4 billion in TARP capital (it has already received $3.5 billion) that management had previously decided against applying for.

236. On January 22, 2009, before the markets opened, the Company issued a press release entitled "SunTrust Reports 2008 Profit of $2.13 Per Share," which stated in part that:

> [t]he Company recorded provision for loan losses of $962.5 million, or $410.0 million in excess of net charge-offs, increasing the allowance for loan losses to 1.86% of total loans during the fourth quarter. Additionally, during the fourth quarter, the Company recorded $236.1 million in operating losses, which were primarily related to losses stemming from borrower misrepresentations and insurance claim denials, and $100.0 million related to mortgage reinsurance reserves.
>
> * * *
>
> Asset Quality
>
> Nonaccrual loans, as of December 31, 2008, totals $3,940.0 million compared to $3,289.5 million as of September 30, 2008 and $1,430.4 million as of December 31, 2007. Residential mortgage and construction loans were 47% and 32%, respectively, of total nonaccrual loans as of December 31, 2008. Net charge-offs for the fourth quarter were $552.5 million compared to $168.0 million for the fourth quarter in 2007. Annualized net charge-offs to average loans for the quarter ended December 31, 2008 was 1.72% compared to 1.24% for the quarter ended September 30, 2008 and 0.55% for the quarter ended December 31, 2007. The increase in net charge-offs was primarily related to consumer and residential real estate loans, as well as commercial related loans. Other real estate owned increased to $500.5 million, up 29.3% over September 30, 2008, as the Company foreclosed on the collateral securing nonperforming loans.
>
> For the fourth quarter, the provision for loan losses exceeded net charge-offs by $410.0 million as the overall impact of the housing market and increased delinquencies impacted the allowance for loan losses, which totalled $2.351.0 million as of December 31, 2008 and was 1.86% of total loans. The allowance for loan losses was 1.05% of total loans as of December 31, 2007.

237. Also on January 22, 2009, on the Company's fourth quarter 2008 earnings conference call, Chancy and Mr. Freeman made the following statements:

> [Chancy:] Total provision expense for the quarter was $963 million, bring the full year amount to $2.5 billion. Net charge-offs increased to $553 million or 1.72% of loans in the fourth quarter. Charge-offs were increasing about as expected through November, however, a significant increase in December drove the overall rate of increase higher *with residential mortgages being the largest contributor*. $410 million of provision was recorded in excess of net charge-offs in the quarter. This excess provision increased the allowance to $2.4 billion, or 1.86% of loans. *For the full year, we have increased the reserve by 83% or $1.1 billion from the end of 2007*. (Emphasis added)
>
> * * *
>
> [Freeman:] The increase in early stage delinquencies was driven by a sudden jump in consumer roll rates in October and November with December showing some improvement in mortgage roll rates. Roll rates are the proportion of the delinquency stage, say 30 to 59 days past due that moves on to the next stage, say 60 to 89 days past due during the course of a reporting period. We adjusted our residential real estate roll rate assumptions for delinquency and frequency which necessitated an increase in the allowance for loan losses. The increase in projected mortgage losses drove the $410 million increase to 1.86% of loans. At the margin, the expected increase in losses is driven by changes in consumer payment behaviour, and the resulting increase in loss frequency.

238. As a result of these disclosures, SunTrust's stock price dropped from $15.21 per share to $13.55 per share (both adjusted closing prices), or 11%, in a

single day. This decrease in SunTrust's stock price was a result of the artificial inflation caused by Defendants' misleading statements coming out of the stock price.

239. On January 28, 2009, as a result of information which Defendants had or should have had during the Class Period, S&P downgraded SunTrust Stock. S&P stated that "[t]he downgrade was triggered by continued deterioration in SunTrust's asset quality. Until fourth-quarter 2008, asset quality problems had been largely contained to home equity and Alt-A loans with high loan-to-value ratios, but are now beginning to spread to SunTrust's large portfolio of first mortgage loans on residential properties," said Standard & Poor's credit analyst Charles D. Rauch. SunTrust has been "particularly vulnerable" during the downturn because of its exposure to real estate in *Florida*, S&P said, *calling the state one of the most overbuilt in the country.* (Emphasis added)

240. During the Class Period, SunTrust's loan charge-off procedure provided that once a loan was delinquent 120 days, it was classified as non-performing and an appraisal was commissioned to determine the then-current value of the property. Once a loan became 180 days delinquent, the difference between the loan amount and some proportion of the appraised value was charged off. Accordingly, the loans that SunTrust wrote down in October, 2008 and January, 2009 had become delinquent at least six months earlier. As these delinquencies

aged, getting closer and closer to the 180-day limit, it should have become obvious to Defendants that they would have to be written off. Indeed, at least two months before the October, 2008 and January, 2009 write-downs, SunTrust had appraised all of the properties at issue pursuant to its own procedures.

241. During the Class Period Defendants reduced SunTrust's provision for loan losses from what they had been in the first quarter of 2008. Specifically, SunTrust maintained a provision of $560 million in the first quarter of 2008, but this was lowered to $448 million in the second quarter of fiscal 2008. In the third quarter of 2008, which saw the bankruptcy of Lehman Brothers and the seizing up of the country's credit system, SunTrust's provision for loan losses was only $503.7 million, still less than it had been in the first quarter of the year. Finally, only after SunTrust had raised $4.9 billion from TARP and another $2.75 billion from the Temporary Liquidity Guarantee Program, SunTrust raised its provision for loan losses a whopping 48% to $962.5 million.

242. On April 24, 2009, The American Banker reported in an article entitled "SunTrust Defies Credit Optimism in Southeast," that SunTrust's problems are not confined to the U.S. housing market alone, but also include the Company's corporate banking portfolio, or its "commercial book." As reported in the article, the Company's first quarter 2009 financial results listed "corporate banking as one of the primary drivers for higher credit costs that helped put the

company in the red for the second straight quarter." According to the article, SunTrust's $38.6 billion commercial portfolio experienced a 5.9% reduction from the prior quarter as utilization among midsize and large corporate clients fell 2%.

243. During a conference call to discuss the Company's first quarter 2009 results, Defendant Wells stated that the Company was "seeing some weakness in [SunTrust's] commercial client base," and that the Company is "not looking for things to turn around quickly." Defendant Chancy stated during the call that "[i]nventories are being reduced and investments are being delayed or cancelled due to the economic environment."

244. The April 24, 2009 the American Banker article also reported that "[c]redit quality weighed heavily on SunTrust's results," with a quarterly increase of 17.7% in nonperforming assets, led by a 25.6% increase in commercial real estate and a 24.3% spike in commercial loans. Net charge offs climbed 10.4% over the prior quarter and doubled from a year earlier. Although the Company increased its loan-loss provision, that allowance would cover just 52% of its nonperforming loans.

245. The bad news at SunTrust continued on July 22, 2009 when SunTrust reported a second-quarter loss of $164.4 million, compared to a profit of $530 million reported for the comparable quarter in 2008. This second quarter loss was the third straight fiscal quarter in which SunTrust suffered a loss. In the July 22,

2009 announcement, Thomas Freeman, SunTrust's Chief Risk Officer, predicted that charge offs would continue to rise during this quarter (that is, the third fiscal quarter of 2009). Mr. Freeman also stated that residential mortgages would "drive elevated losses over the near term."

246. SunTrust's report of its second quarter 2009 results of operations also included a section entitled "Asset Quality," which stated in part:

> The allowance for loan and lease losses was $2,896.0 million as of June 30, 2009, up $161.0 million during the quarter and represented 2.37% of period-end total loans, as compared to 2.21% as of March 31, 2009. The increase in the allowance for loan and lease losses was attributable to further deterioration in the housing market and credit quality deterioration due to increasing economic stress in the commercial market. The majority of the increase in the allowance for loan losses related to home equity lines, specific reserves for residential developers, primarily construction, and specific reserves for larger corporate loans.
>
> * * *
>
> Net charge-offs increased in all loan categories, except consumer indirect*, with the majority of the increase occurring in residential real estate related loans*. The downturn in the economy has impacted the level of commercial loan net charge-offs, which increase $115.1 million compared to the second quarter of 2008.
>
> * * *
>
> Nonperforming loans were . . . 4.48% of total loans, as of June 30, 2009, compared to . . . 3.75% of total loans as of March 31, 2009 . . . or 2.09% of total loans as of June 30, 2008. The increase in nonperforming loans was mainly

> due to an increase in residential mortgage and real estate construction loans, as well as larger commercial borrowers in economically sensitive industries. (Emphasis added)

247. On July 22, 2009 SunTrust held a conference call with securities analysts. In the call Defendant Wells, commenting on the second quarter 2009 results, indicated that "[o]verall asset quality deteriorated in the quarter, as evidenced by higher charge-offs and increasing nonperforming low levels. *Losses and risks remain largely concentrated in residential real estate secured portfolio,* and early stage delinquencies in those categories showed improvement. I will add that we are seeing increased strain on certain economically sensitive industries within our commercial portfolios." (emphasis added)

248. In the same July 22, 2009 conference call Defendant Chancy commented on SunTrust's exposure to commercial lending as follows:

> Our aggressive effort to reduce exposure to construction lending is evident from the 13% balance decline versus last quarter, and 44% decline compared to last year. Most other loan categories display small declines, primarily driven by sluggish demand from creditworthy commercial and consumer borrowers. Commercial real estate is an exception, as many of the completed commercial construction projects, migrate out of construction and into min-perm loans.
>
> This migration does not concern us, as it is part of the normal life cycle of such projects. We typically underwrite commercial construction projects to our portfolio credit standards, that are more stringent than

> historic CMBS guidelines, and the majority of the migration into commercial real estate is owner occupied. While still showing year-over-year growth, commercial loans declined again in the second quarter.
>
> This continued the trend of declining line of credit utilization among our mid sized and larger corporate clients, due to improved access to capital markets, and lower working capital needs. However, loan balances were augmented in the first quarter by over $1 billion, due to disruption in the variable rate demand note market. We believe the situation is temporary, and will therefore cause some additional downward pressure on loan balances for the next two quarter.

249. Mr. Freeman also commented on SunTrust asset quality during the July 22, 2009 analyst call, noting that:

> [a]sset quality issues were primarily found in the residential real estate portfolios. This include residential mortgages, home equity products, residential construction, and construction to firm (sic). The small decrease we noted in early stage delinquencies during the first quarter trended down further during the second quarter. The downward trend was broad based, occurring in most of the portfolios. Particularly notable are home equities and the residential mortgages, where early stage delinquencies declined meaningfully for the second straight quarter. Commercial charge-offs increased again in the second quarter. We are seeing some increased stress in our C&I portfolio, which is still most evident in the more sickly sensitive industries.
>
> * * *
>
> [N]on-accrual loans trended higher. This increase in non-accruals . . . reflect the results of the increase delinquencies that occurred in the fourth quarter of 2008. The trend higher for residential mortgage NPLs

[nonperforming loans] reflects our presence in Florida. As a reminder from past calls, Florida is a judicial foreclosure state, and as a result of this and high volumes in the Florida Court system we are experiencing extended timeframes of more than twelve months from filing to foreclosure. In summary, while we are pleased with the decline in residential mortgage delinquency high non-accruals and lower home values will continue to drive elevated losses over the near term.

* * *

The residential portion of the portfolio continues to be the most problematic. Early stage delinquencies are down from the first quarter, however charge-offs have increased in the construction and land categories, in particular as more problem loans get through the work out process. We believe we will continue to see elevated charge-offs in the residential construction portfolio, as we continue to work out process with the builders. *42% of the residential construction NPLs are in Florida, where the judicial foreclosure process is extended,* as compared to the rest of our markets.

Let me summarize today's credit discussion before turning the call over to Steve. Please turn to Slide 22, overall the basic credit themes we talked about last quarter remained in place in the second quarter. Credit performance weakened with the deterioration most evident in residential real estate related charge-offs and NPL growth.

In the second quarter the decline in early stage delinquencies was significant and broad based, particularly in consumer and mortgage products. We are seeing some weakening in the C&I book, notably in the industry sectors most impacted by the residential construction decline, and by reductions in consumer spending. But overall, the C&I portfolio is well diversified and performance is in-line with our expectations, given the recessionary environment. Residential mortgage delinquencies and balances in certain larger and higher risk portfolios declined meaningfully, while nonaccrual balances trended higher in the core portfolio.

Less than one-quarter of the home equity portfolios continued to drive more than half of the charge-offs. The two-thirds of the portfolio that is of better quality exhibited higher charge-offs and stable nonaccruals. The construction portfolio continued its rapid balance decline. Performance of the construction to perm product has stabilized, residential construction remained weak, and commercial construction continued to perform well.

We believe credit losses and nonperforming loans will increase in the third quarter, given our expectation for continued weakness in the residential real estate related and cynically sensitive commercial exposures. Delinquency trends particularly in consumer are encouraging, relative to potential loss rates in the fourth quarter and beyond. We are still anxious as to the direction of the economy. (Emphasis added)

250. On July 23, 2009, the Wall Street Journal reported:

Smaller regional banks KeyCorp and SunTrust could yet face larger troubles in coming quarters. Both competed aggressively in now-sinking markets for commercial real estate.

* * *

SunTrust, of Atlanta, posted a net loss of $183.5 million, compared with year-earlier income of $504 million. Nonperforming commercial real-estate loans, including those for construction projects, have more than doubled in the past year to $1.9 billion. *Problems among loans to businesses have increased sixfold over the same periods to $716 million*. (Emphasis added)

251. After and partly as a result of the government-run "stress test" on 19 banks in 2009, including SunTrust, business analysts identified SunTrust as being "at risk of failure." *See*, for example The Associated Press, April 28, 2009 ("We consider eight institutions . . . to be at risk of failure. They are JPMorgan Chase, Citibank, Wells Fargo, **SunTrust**, Goldman Sachs, HSBC America, National City and Countrywide Bank."); May 5, 2009 Market Wire (providing Weiss Research Evaluation of 19 Institutions Subject to Federal Stress Test, and listing SunTrust as at being at "risk of failure"); May 7, 2009 Associated Press, "5 Regional Banks must raise $8.2B after Test"). Indeed, the May 7, 2009 Associated Press article gets right to the heart of SunTrust's fundamental business problems during the Class Period. The article states in relevant part:

> Five of the nation's largest regional banks are vulnerable to a worsening recession and need to raise a total $8.2 billion in new capital based on results of government "stress tests" release Thursday.
>
> The two regional banks based in the Southeast, Regions Financial Corp. and SunTrust Banks Inc., got bigger capital-raising mandates than the three based in the Midwest Fifth Third Bancorp, KeyCorp and PNC Financial Services Group Inc. Minneapoli*s-b*ased U.S. Bancorp and BB&T Corp. in Winston-Salem, N.C., do not need to raise additional moneys.
>
> Many regional banks hold concentrations of commercial real estate loans, a hot spot of potential trouble that make them vulnerable to weakness in their geographic areas. If the recession deepened, defaults on the high-risk loans

could soar. Companies already have shut down and vacated shopping malls and office buildings that were financed by the loans.

The government tests found that Birmingham, Ala.-based Regions Financial Corp. needs to raise $2.5 billion; Atlanta-based SunTrust needs $2.2 billion; Cleveland's KeyCorp needs $1.8 billion; Fifth Third in Cincinnati needs $1.1 billion; and Pittsburgh-based PNC need $600 million.

Regional banks can be bellwethers of the health of their local economies, making loans to businesses and industries in the region, financing development projects and employing thousands of people. Analysts and investors have been eager to see how the seven regional banks fared on the government's tests of their financial conditions.

SunTrust is strongly concentrated in Florida, where conditions for both residential and commercial real estate have been especially bleak. And Regions Financial and Fifth Third also have been notably stung by losses on commercial real estate loans in that state.

The most vulnerable banks are those with large loan holdings in areas with the highest unemployment and the most severe fallout from the subprime mortgage crisis, like Michigan, Ohio, California and *Florida*, said Joe Gladue, an analyst who follows smaller regional banks at investment bank B. Riley & Co. in Philadelphia.

Unlike the home-loan disaster, which appears to be in its final stages, "it seems there's probably more pain to come" in the commercial real estate business, Gladue said.

Sheila Bair, chairman of the Federal Deposit Insurance Corp., last year told banks that if they have concentrations of commercial real estate loans, they

> should take steps to strengthen their risk controls, and maintain capital cushions and reserves against loan losses.
>
> The stress tests were designed to gauge whether any of the nation's 19 largest banks, including the seven regionals, would need more capital to survive a deeper recession. It turns out many of the banks do: Ten of the 19 need a total of around $75 billion in new capital to withstand losses under that scenario.
>
> The tests put the banks through two scenarios: one that reflected expectations about the current recession and another that envisioned a recession deeper than what analysts predict.
>
> The heavy holdings of commercial real estate loans can even give regional banks a riskier profile than some big Wall Street banks which carry bigger portfolios of securities such as mortgage-backed bonds that already have plunged in value. The stress tests treated those securities as more durable than they did loans.
>
> (Emphasis added)

252. SunTrust's financial woes continued. As reported in an October 2009 article, SunTrust's losses more than doubled from the previous quarter as the company wrote off soured loans. The Company's total for loan losses at the time was more than $1.1 billion. *SunTrust, Synovus post big losses as real estate woes continue*, Paul Donsky, *The Atlanta Journal-Constitution*, Oct. 23, 2009

253. As the article details, SunTrust veered away from its "historically conservative" approach and "bet heavily on home mortgages and residential home building during the real estate boom." Following the burst of the housing bubble,

however, "SunTrust has now ended four straight quarters in the red, recording $1.8 billion in losses over that stretch."

254. In the article Defendant Wells was quoted as saying the third quarter results reflect the "difficult operating environment for more traditional banks." However, despite Defendant Wells' suggestion not all banks were faring as poorly as SunTrust. Indeed, SunTrust was among the worst banks in the entire state of Georgia.

255. In the *TheStreet.com's Ratings*, which uses a conservative model to assign bank and thrift financial-strength ratings, placing the greatest weight on capital strength, credit quality and, earnings stability, SunTrust earned a "D-minus (weak) rating" using the most recent complete figures as of June 30, 2009. *Georgia's Strongest and Weakest Banks*, Philip van Doorn, *TheStreet.com*, Oct. 20, 2009.

256. This rating was "driven by three consecutive quarterly losses, along with declining asset quality and an annualized charge-off ratio in excess of its ratio of loan-loss reserves to total loans." *Id.* SunTrust's "D-" rating was tied for worst on *TheStreet.com's* ranking of ten largest Georgia banks and savings and loan institutions.

257. On January 22, 2010, SunTrust reported a net loss of $316.4 million for the fourth quarter of 2009, and a net loss of $1.7334 billion for full-year 2009.

SunTrust's earnings release recognized that "key items affecting full year 2009 results included increased loan loss provision expense, decreased noninterest income, and the full year impact of preferred dividends paid to the U.S. Treasury." Loan losses continued increasing.

258. On April 22, 2010, SunTrust reported a net quarterly loss of $229 million for the first quarter of 2010.

259. On July 22, 2010, SunTrust reported a net loss of $56 million for the second quarter of 2010, driven by the loan problems described above.

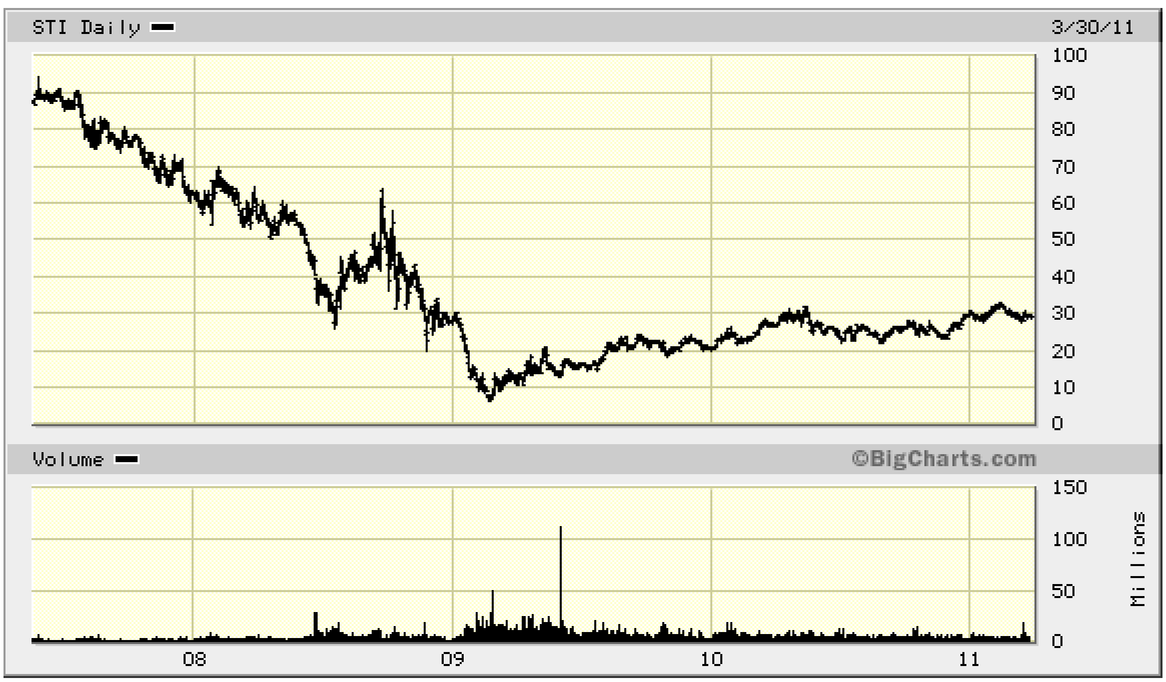
260. While SunTrust began to show some improvements in its financials over the next few months it was still not out of the woods yet, and its loan problems continued to haunt it.

261. It was not until March 30, 3011 when SunTrust re-paid the $4.85 billion in TARP money it received more than two years earlier to help with its troubled assets, *see* SunTrust Banks, Inc. 2011 Form 10-K at p. 26, filed with the SEC on February 24, 2012, that SunTrust's risk profile was such that it's stock was again prudent for Participants' retirement savings.[15]

262. The Plan and the Participants have suffered massive losses as the market price of SunTrust Stock has declined precipitously due to the Company's

[15] As noted in *supra* n. 12, Plaintiffs reserve their right to modify the Class Period definition in the event that further investigation/discovery reveals a more appropriate and/or broader time period during which SunTrust Stock was an imprudent investment option for the Plan.

residential lending and commercial and industrial lending practices described herein. As alleged above, at year end 2006 the Plan had about one-half of its assets invested in SunTrust Stock, and the Plan's assets have been substantially invested in SunTrust Stock throughout the Class Period. The adjusted closing price of SunTrust Stock on May 15, 2007, the first day of the Class Period, was $77.69. The adjusted closing price on March 30, 2011, was $27.98, a decline of 64%. The following chart illustrates the decimation of the Plan's assets during the Class Period:



Source: http://www.bigcharts.com.

Post-Class Period Events Substantiate The Imprudence of Company Stock During the Class Period

263. In November 2012, it was reported that SunTrust was under investigation by regulators for alleged mortgage fraud against Fannie Mae from 2006 to 2008. *See* "SunTrust Under Investigation," Teri Buhl. http://www.grwothcapitalist.com/2012/11/suntrust-under-sec-investigation.

264. According to the article, whistleblowers who worked in SunTrust's residential mortgage underwriting group filed a whistleblower suit with the Securities and Exchange Commission in early 2012. *Id.* The whistleblower complaint alleges that SunTrust executives taught underwriters how to manipulate a "custom underwriting system that connected to Fannie's automated mortgage buying program…to make it accept loans that were actually less than prime quality." *Id.*

265. The article quotes one whistleblower as saying "we knew we were making Alt-A loans but Fannie thought they [sic] we were selling them prime. Then [SunTrust] would also book the loan as Prime because that's what Fannie bought. This amounted to ***billions*** of Alt-A loans booked as Prime." *Id.* (emphasis added).

266. The clear import of these allegations is that SunTrust had even more Alt-A loans during the Class Period than it let on to the public and the Plan

Participants causing the Company Stock to be artificially inflated during the Class Period.

267. The Company still remains under investigation by government regulators for this alleged fraudulent conduct. In the Company's latest Form 10-K filed on February 24, 2014, the Company mentions in the notes to the Consolidated Financial Statements that "[i]n January 2014, the [Department of Justice] notified [SunTrust] of an investigation of the origination and underwriting of single family residential mortgage loans sold by [SunTrust] to Fannie Mae and Freddie Mac. [SunTrust] is cooperating with the investigation, which is in its preliminary stages."

268. On October 10, 2013, SunTrust announced it was paying more than $1 billion to settle federal allegations of mortgage violations, in an effort to put behind it costly issues stemming from its involvement in the financial crisis. "SunTrust to Pay $1 Billion in Broad Pact on Mortgages," Andrew R. Johnson and Alan Zibel.

269. Reflecting on the settlements, Defendant Rogers stated "SunTrust is pleased to have resolved a number of legacy mortgage matters…. These settlements reduce uncertainty, further improve our risk profile, and enhance our ability to focus on future growth." *Id.* Defendant Rogers' statement explicitly

acknowledged that SunTrust's risk profile had undergone a change for the worse in the years prior.

270. As described herein, Defendants, as fiduciaries of the Plan were obligated to ensure that the Plan's investment options—including Company Stock—were prudent investments for the Plan's assets. However, Defendants failed to do so—to the substantial detriment of the Plan and its Participants.

Defendants Knew or Should Have Known That SunTrust Stock Was An Imprudent Investment For The Plan, Yet Failed To Protect the Plan's Participants

271. During the Class Period, although they knew or should have known that the Company's Stock was an imprudent investment for the Plan's assets, Defendants failed to adequately protect the heavy investment of the Plan's assets in SunTrust Stock. [redacted]

272. As a result of the enormous erosion of the value of Company's Stock, the Plan's Participants, the retirement savings of whom were heavily invested in SunTrust Stock, suffered unnecessary and unacceptable losses.

273. Because of their high ranking positions within the Company and/or their status as fiduciaries of the Plan, Defendants knew or should have known of the existence of the above-mentioned problems.

274. Defendants knew or should have known that, due to the Company's heavy exposure to the subprime market, the Company Stock price would suffer and devastate Participants' retirement savings once the truth became known. Yet, Defendants failed to protect the Plan and its Participants from foreseeable losses.

275. Rather, during the Class Period, despite its obligation to prudently manage the Plan's assets—including the Plan's heavy investment in SunTrust Stock—the Company misrepresented its true financial condition, thereby precluding Plan Participants from properly assessing the prudence of investing in Company Stock.

276. As a result of Defendants' knowledge of and, at times, implication in creating and maintaining public misconceptions concerning the true financial health of the Company, any generalized warnings of market and diversification risks that Defendants made to the Plan Participants regarding the Plan's investment in SunTrust Stock did not effectively inform the Plan Participants of the past, immediate, and future dangers of investing in Company Stock.

277. An adequate (or even cursory) investigation by Defendants would have revealed to a reasonable fiduciary that investment by the Plan in SunTrust

Stock was clearly imprudent. A prudent fiduciary acting under similar circumstances would have acted to protect Participants against unnecessary losses, and would have made different investment decisions.

278. Because Defendants knew or should have known that SunTrust Stock was not a prudent investment option for the Plan, they had an obligation to protect the Plan and its Participants from unreasonable and entirely predictable losses incurred as a result of the Plan's investment in SunTrust Stock.

279. Defendants had available to them several different options for satisfying this duty, including, among other things: making appropriate public disclosures as necessary; divesting the Plan of SunTrust Stock; discontinuing further contributions to and/or investment in SunTrust Stock under the Plan; consulting independent fiduciaries regarding appropriate measures to take in order to prudently and loyally serve the participants of the Plan; and/or resigning as fiduciaries of the Plan to the extent that as a result of their employment by SunTrust they could not loyally serve the Plan and its Participants in connection with the Plan's acquisition and holding of SunTrust Stock.

280. Despite the availability of these and other options, Defendants failed to take any action to protect Participants from losses resulting from the Plan's investment in SunTrust Stock. In fact, the Defendants continued to invest and to

allow investment of the Plan's assets in Company Stock even as SunTrust's problems came to light.

CLAIMS FOR RELIEF UNDER ERISA

281. At all relevant times, Defendants were and acted as fiduciaries within the meaning of ERISA § 3(21)(A), 29 U.S.C. § 1002(21)(A).

282. ERISA § 502(a)(2), 29 U.S.C. §1132(a)(2), provides, in pertinent part, that a civil action may be brought by a participant for relief under ERISA § 409, 29 U.S.C. §1109.

283. ERISA § 409(a), 29 U.S.C. §1109(a), "Liability for Breach of Fiduciary Duty," provides, in pertinent part, that any person who is a fiduciary with respect to a plan who breaches any of the responsibilities, obligations, or duties imposed upon fiduciaries by this title shall be personally liable to make good to such plan any losses to the plan resulting from each such breach, and to restore to such plan any profits of such fiduciary which have been made through use of assets of the plan by the fiduciary, and shall be subject to such other equitable or remedial relief as the court may deem appropriate, including removal of such fiduciary.

284. ERISA § 404(a)(1)(A) and (B), 29 U.S.C. § 1104(a)(1)(A) and (B), provides, in pertinent part, that a fiduciary shall discharge his duties with respect to a plan solely in the interest of the participants and beneficiaries, for the exclusive

purpose of providing benefits to participants and their beneficiaries, and with the care, skill, prudence, and diligence under the circumstances then prevailing that a prudent man acting in a like capacity and familiar with such matters would use in the conduct of an enterprise of a like character and with like aims.

285. These fiduciary duties under ERISA § 404(a)(1)(A) and (B) are referred to as the duties of loyalty, exclusive purpose and prudence and are the "highest known to the law." *Woods v. Southern Co.*, 396 F. Supp. 2d 1351, 1360 (N.D. Ga. 2005) (Story, J.) (citing *Herman v. NationsBank Trust Co.*, 126 F.3d 1354, 1361 (11th Cir. 1997)). They entail, among other things:

> (a) The duty to conduct an independent and thorough investigation into, and continually to monitor, the merits of all the investment alternatives of a plan;
>
> (b) A duty to avoid conflicts of interest and to resolve them promptly when they occur. A fiduciary must always administer a plan with an "eye single" to the interests of the participants and beneficiaries, regardless of the interests of the fiduciaries themselves or the plan sponsor;
>
> (c) A duty to disclose and inform, which encompasses: (1) a negative duty not to misinform; (2) an affirmative duty to inform when the fiduciary knows or should know that silence might be harmful; and

(3) a duty to convey complete and accurate information material to the circumstances of participants and beneficiaries.

286. ERISA § 405(a), 29 U.S.C. § 1105 (a), "Liability for breach by co-fiduciary," provides, in pertinent part, that:

> [I]n addition to any liability which he may have under any other provision of this part, a fiduciary with respect to a plan shall be liable for a breach of fiduciary responsibility of another fiduciary with respect to the same plan in the following circumstances: (A) if he participates knowingly in, or knowingly undertakes to conceal, an act or omission of such other fiduciary, knowing such act or omission is a breach; (B) if, by his failure to comply with section 404(a)(1), 29 U.S.C. §1104(a)(1), in the administration of his specific responsibilities which give rise to his status as a fiduciary, he has enabled such other fiduciary to commit a breach; or (C) if he has knowledge of a breach by such other fiduciary, unless he makes reasonable efforts under the circumstances to remedy the breach.

287. Plaintiff therefore brings this action under the authority of ERISA §502(a) for Plans-wide relief under ERISA § 409(a) to recover losses sustained by the Plans arising out of the breaches of fiduciary duties by the Defendants for violations under ERISA §404(a)(1) and ERISA §405(a).

COUNT I

FAILURE TO PRUDENTLY MANAGE THE PLAN AND ASSETS OF THE PLAN (BREACHES OF FIDUCIARY DUTIES IN VIOLATION OF ERISA § 404 AND § 405 BY THE BENEFITS PLAN COMMITTEE)

288. This Count alleges breaches of the duty of prudence against the Benefits Plan Committee ("Prudence Defendants"). Plaintiffs incorporate the allegations contained in the previous paragraphs of the Complaint as if fully set forth herein.

289. At all relevant times, as alleged above, the Prudence Defendants were fiduciaries within the meaning of ERISA § 3(21)(A), 29 U.S.C. § 1002(21)(A), in that they exercised discretionary authority or control over the administration and/or management of the Plan or disposition of the Plan's assets.

290. Under ERISA, fiduciaries who exercise discretionary authority or control over management of a plan or disposition of a plan's assets are responsible for ensuring that investment options made available to participants under a plan are prudent. Furthermore, such fiduciaries are responsible for ensuring that assets within the plan are prudently invested. Accordingly, the Prudence Defendants were responsible for ensuring that all investments in the Company's Stock in the Plan were prudent and that such investment was consistent with the purpose of the Plan. The Prudence Defendants are liable for losses incurred as a result of such investments being imprudent.

291. A fiduciary's duty of loyalty and prudence requires it to disregard plan documents or directives that it knows or reasonably should know would lead to an imprudent result or would otherwise harm plan participants or beneficiaries. ERISA § 404(a)(1)(D), 29 U.S.C. § 1104(a)(1)(D). Thus, a fiduciary may not blindly follow plan documents or directives that would lead to an imprudent result or that would harm plan participants or beneficiaries, nor may it allow others, including those whom they direct or who are directed by the plan, including plan trustees, to do so.

292. The Prudence Defendants' duty of loyalty and prudence also obligates them to speak truthfully to participants, not to mislead them regarding the plan or its assets, and to disclose information that participants need in order to exercise their rights and interests under the plan. This duty to inform participants includes an obligation to provide participants and beneficiaries of the plan with complete and accurate information, and to refrain from providing inaccurate or misleading information, or concealing material information, regarding plan investments/investment options such that participants can make informed decisions with regard to the prudence of investing in such options made available under the plan.

293. The Prudence Defendants breached their duties to prudently and loyally manage the Plan's assets. During the Class Period the Prudence

Defendants knew or should have known that, as described herein, SunTrust Stock was not a suitable and appropriate investment for the Plan. Investment in Company Stock during the Class Period clearly did not serve the Plan's stated purposes. The Prudence Defendants failed to take into account the changing risk profile of the SunTrust Stock investment as a result of circumstances described herein and the Company's deteriorating financial circumstances as demonstrated by objective indicators for evaluating a company's ongoing viability.

294. Yet, during the Class Period, despite their knowledge of the imprudence of the investment, the Prudence Defendants failed to take any meaningful steps to protect the Plan's Participants from the inevitable losses that they knew would ensue as the non-disclosed material problems, concerns and business slowdowns took hold and became public.

295. Defendants also breached their duties of loyalty and prudence by failing to conduct an appropriate investigation into whether SunTrust Stock was a prudent investment for the Plan and, in connection therewith, failed to provide complete and accurate information regarding the Company's true financial condition to the Plan's Participants so that Participants could make informed decisions regarding their investments in the Plan.

296. An adequate or even cursory investigation by Defendants would have revealed to a reasonable fiduciary that, under the circumstances described herein,

investment by the Plan in SunTrust Stock was excessively and unduly risky, and, thus, imprudent. A prudent fiduciary acting under similar circumstances would have acted to protect Participants against unnecessary losses and would have made different investment decisions.

297. During the Class Period, upon information and belief, the Company fostered a positive attitude toward the Company's Stock, and/or allowed Participants in the Plan to follow their natural bias towards investment in the equities of their employer by not disclosing negative material information concerning investment in the Company's Stock. As such, participants in the Plan could not appreciate the true risks presented by investments in the Company Stock and therefore could not make informed decisions regarding their investments in the Plan.

298. The Prudence Defendants also breached their co-fiduciary obligations by, among their other failures: knowingly participating in, or knowingly undertaking to conceal, the other Defendants' failure to disclose crucial information regarding the severe mismanagement of the Company and the imprudence of the Company Stock. The Prudence Defendants had or should have had knowledge of such breaches by other fiduciaries of the Plans, yet made no effort to remedy them.

299. As a direct and proximate result of the breaches of fiduciary duties alleged herein, the Plan, and indirectly Plaintiffs and the Plan's other Participants and beneficiaries, lost a significant portion of their retirement investment.

300. Pursuant to ERISA § 502(a), 29 U.S.C. § 1132(a) and ERISA § 409, 29 U.S.C. § 1109(a), Defendants in this Count are liable to restore the losses to the Plan caused by their breaches of fiduciary duties alleged in this Count.

COUNT II

FAILURE TO MONITOR FIDUCIARIES (AGAINST DEFENDANT SUNTRUST, THE EXECUTIVE OFFICER DEFENDANT, THE COMPENSATION COMMITTEE AND DEFENDANT CHANCY)

301. Plaintiffs incorporate the allegations contained in the previous paragraphs of the Complaint as if fully set forth herein.

302. This Count alleges breaches of the fiduciary duty to monitor other fiduciaries and is brought against Defendants SunTrust, the Compensation Committee Chairman, Defendant Wells, and Defendant Chancy (the "Monitoring Defendants").

303. As alleged above, during the Class Period the Monitoring Defendants were ERISA fiduciaries who were bound by the duties of loyalty, exclusive purpose and prudence.

304. The scope of the fiduciary responsibilities of the Monitoring Defendants included the responsibility to appoint, and remove, and thus, monitor the performance of other fiduciaries, including the Benefits Plan Committee Defendants.

305. Under ERISA, a monitoring fiduciary must ensure that the monitored fiduciaries are performing their fiduciary obligations, including those with respect to the investment and holding of plan assets, and must take prompt and effective action to protect the plan and participants when they are not.

306. The monitoring duty further requires that appointing fiduciaries have procedures in place so that on an ongoing basis they may review and evaluate whether the "hands-on" fiduciaries are doing an adequate job (for example, by requiring periodic reports on their work and the plan's performance, and by ensuring that they have a prudent process for obtaining the information and resources they need). In the absence of a sensible process for monitoring their appointees, the appointing fiduciaries would have no basis for prudently concluding that their appointees were faithfully and effectively performing their obligations to plan participants or for deciding whether to retain or remove them.

307. Furthermore, a monitoring fiduciary must provide the monitored fiduciaries with complete and accurate information in their possession that they know or reasonably should know that the monitored fiduciaries must have in order

to prudently manage the plan and the plan assets, or that may have an extreme impact on the plan and the fiduciaries' investment decisions regarding the plan.

308. The Monitoring Defendants breached their fiduciary monitoring duties by, among other things: (a) failing, at least with respect to the Plan's investment in Company stock, to monitor their appointees, to evaluate their performance, or to have any system in place for doing so, and standing idly by as the Plan suffered enormous losses as a result of their appointees' imprudent actions and inaction with respect to Company stock; (b) failing to ensure that the monitored fiduciaries appreciated the true extent of SunTrust's risky and inappropriate business practices, and the likely impact of such practices on the value of the Plan's investment in SunTrust Stock; (c) the Company's failure to properly account for and to disclose its exposure to losses tied to the illiquidity of mortgage-backed securities and its business operations in the declining real estate market, which caused the price of SunTrust Stock to be artificially inflated during the Class Period; and (d) failing to remove appointees whose performance was inadequate in that they continued to make and maintain investments in SunTrust Stock despite their knowledge of practices that rendered SunTrust Stock an imprudent investment during the Class Period for participants' retirement savings in the Plan, and who breached their fiduciary duties under ERISA.

309. The Monitoring Defendants are also liable as co-fiduciaries because they knowingly participated in each other's fiduciary breaches as well as those by the monitored fiduciaries, they enabled the breaches by these Defendants, and they failed to make any effort to remedy these breaches, despite having knowledge of them.

310. As a consequence of the Monitoring Defendants' breaches of fiduciary duty, the Plan suffered tremendous losses. If the Monitoring Defendants had discharged their fiduciary monitoring duties as described above, the losses suffered by the Plan would have been minimized or avoided. Therefore, as a direct and proximate result of the breaches of fiduciary duty alleged herein, the Plan, and indirectly Plaintiffs and the other Class members, upon information and belief, lost hundreds of millions of dollar of retirement savings.

311. Pursuant to ERISA §§ 409, 502(a)(2), 29 U.S.C. §§ 1109(a), 1132(a)(2), the Monitoring Defendants are liable to restore the losses to the Plan caused by their breaches of fiduciary duties alleged in this Count and to provide other equitable relief as appropriate.

CAUSATION

312. SunTrust's stock price collapse of 64 percent devastated the Plan's assets. The decimation of Participants' retirement savings could and would have been avoided, in whole or in part, by Defendants complying with their ERISA

fiduciary duties, which fiduciary duties included the options to, for example and not as an inclusive list: investigate whether SunTrust was a prudent retirement investment; retain outside advisors to consult them or to act as fiduciaries; seek guidance from governmental agencies (such as the Department of Labor or Securities & Exchange Commission); resign as Plan fiduciaries pursuant to Plan § 9.1(c)(1); stop or limit additional purchases of SunTrust common stock by the Plan; and/or making a complete and appropriate disclosure of SunTrust's problems.

313. Despite these and other options, which options are not mutually exclusive, Defendants—who knew or should have known that SunTrust was an imprudent retirement investment—chose, when acting as fiduciaries, to practically ignore the Plan's investment in SunTrust Stock and to continue allowing the Plan to acquire further SunTrust Stock, while taking no action to protect their wards as SunTrust's condition worsened, as the Plan's holdings of SunTrust Stock became progressively riskier, and as the Participants' retirement savings shrunk by hundreds of millions of dollars. Prudent fiduciaries would have acted otherwise, after an appropriate investigation, and taken appropriate actions to protect the Plan and its Participants.

314. The Plan suffered at least hundreds of millions of dollars in losses because substantial Plan assets were imprudently invested, or allowed to be

invested by Defendants, in breach of Defendants' fiduciary duties, in SunTrust securities during the Class Period. These losses were reflected in the diminished account balances of the Plan's Participants.

315. Defendants failed to accurately apprise the Participants of SunTrust's problems as set forth above) and of the fact that Company Stock was an imprudent retirement investment option due to, *inter alia*, numerous undisclosed problems, which once revealed, caused its stock price to plummet. Moreover, as further described above, Defendants misrepresented the soundness of SunTrust securities as an investment vehicle by allowing the Plan to hold SunTrust's common stock. As a consequence, regardless of any ability to divest, participants did not exercise independent control over their investments in the Company securities, and Defendants remain liable under ERISA for losses caused by such investment.

316. Had the Defendants properly discharged their fiduciary and/or co-fiduciary duties, the Plan and its Participants would have avoided substantial losses suffered through continued investment in Company Stock. Disclosure might not have prevented the Plan from taking a loss on Company Stock it already held; but it would have prevented the Plan from acquiring (through Plaintiffs' uninformed investment decisions and through continued investment of matching contributions) additional shares of overpriced Company Stock: the longer the fraud continued, the

more of the Plan's good money went into a bad investment; and full disclosure would have cut short the period in which the Plan bought at inflated prices.

317. A prudent fiduciary facing similar circumstances would not have stood idly by, as Defendants did here, while the Plan lost millions of dollars through continued investing in additional imprudent SunTrust Stock. Instead, Defendants allowed the Plans to ***purchase*** hundreds of thousands of shares according the Plan's Forms 11-K:[16]

	Value of SunTrust Stock held by the Fund	SunTrust Common shares held by the Fund	Year-End Share Price	Net Plan Assets Available for Benefits	Percentage of Plan Assets Represented by the Fund
12/31/2006	$1,158,966,549	13,723,701.00	$84	$2,379,885,444	48.6984%
12/31/2007	$808,521,741	12,938,418.00	$62	$2,147,708,229	37.6458%
12/31/2008	$399,839,970	13,535,544.00	$29	$1,355,749,615	29.4922%
12/31/2009	$299,218,476	14,747,091.00	$20	$1,526,167,439	19.6059%
12/31/2010	$413,920,480	14,026,448.00	$30	$1,852,857,701	22.3396%
12/31/2011	$233,026,571	13,165,343.00	$18	$1,755,004,415	13.2778%

Defendants Failed to Investigate the Fund's Prudence

318. Defendants took no meaningful action to investigate the Fund's prudence during the Class Period, as Plaintiffs' investigation and exhaustion of administrative remedies has confirmed.

[16] Links to the relevant Forms 11-K are available at www.sec.gov/cgi-bin/browse-edgar?action=getcompany&CIK=0000750556&type=11&dateb=&owner=exclude&count=40

319. Minutes of Committee meetings show that Defendants conducted ***no*** investigation, analysis, or review of SunTrust's changed and changing circumstances. [redacted]

320. What Defendants did with respect to the Fund was minimal, if existent. [redacted]

[redacted]

321. [redacted]

322. [redacted]

323. Defendants' procedural imprudence is unsurprising given that they misunderstood their ERISA-imposed duty of prudence. Indeed, Defendants have

[17] The chart is reproduced in footnote 10, *supra*.

taken the position with this Court that they "ha[d] no authority to limit, expand or remove the Employer Stock Fund" (Document 160, p.6-7); *id.* at 5-8 (arguing Defendants had no discretion under the Plan to take any action to protect Participants); *see also* Document 158-1, pp.12-15.

324. Having already argued they believed they had no discretion under the Plan to take any protective action (an argument which is legally incorrect), Defendants should not now be permitted to backtrack and suggest their course of conduct was prudent as a matter of law. Defendants' inaction and lack of review of the Fund was procedurally imprudent and resulted in a *prima facie* loss to the Plan.

If Defendants Had Properly Investigated, They Should or Would Have Taken One of the Following Alternative Actions

325. The following alternative options—which are pled as alternative statements under FED. R. CIV. P. 8(d)(2) to the extent they are inconsistent— were available to Defendants and (a) could have been done without violating securities laws or any other laws; (b) should have been done to fulfill Defendants' fiduciary obligations under ERISA and (c) would not have been more likely to harm the Fund than to help it.

Alternative One: Freezing Company Stock Purchases

326. There were significant new contributions invested in SunTrust Stock in the Fund during the Class Period. While exact amounts are not disclosed in the Forms 11-K, the Plan acquired shares during the Class Period.

327. [redacted] [redacted] Defendants continued to allow investments in the Fund.

328. The following chart shows the Fund's holding year-over-year and the volume weighted-average closing price of STI for each year.

	SunTrust Common shares held by the Fund	Year-over-year change in Shares Held by the Fund	Weighted Average Closing Price of STI	Approximate Amount Net Amount Added / Removed from the Fund	Average Daily Volume of STI Traded
12/31/2006	13,723,701.00				
12/31/2007	12,938,418.00	(785,283)	$78.70	($61,801,772)	2,503,547
12/31/2008	13,535,544.00	597,126	$44.11	$26,339,228	6,537,578
12/31/2009	14,747,091.00	1,211,547	$16.29	$19,736,101	13,430,153
12/31/2010	14,026,448.00	(720,643)	$25.52	($18,390,809)	7,434,060
12/31/2011	13,165,343.00	(861,105)	$23.15	($19,934,581)	6,698,142

[redacted]

329. Nothing in the Plan documents or ERISA, both of which gave Defendants considerable discretion, required that (1) the Fund be kept open to new purchase and/or (2) that the Fund's buffer be kept at or near 1%. As recognized by *Lanfear v. Home Depot, Inc.*, 679 F.3d 1267 (11th Cir. 2012) (abrogated in part on other grounds), "[p]rimarily does not mean exclusively; primarily exclusively means primarily." *Id.* at 1277. Defendants were similarly advised. *See, e.g.,* CBPC 002880 ("Where plan document says invest primarily in employer stock, the fiduciary cannot read this to mean 'exclusively' in employer stock.")

330. Accordingly, Defendants, in the exercise of the fiduciary duties, had discretion to cease Fund inflows or, alternatively, to invest more of the Fund's assets in cash instead of SunTrust common stock.

331. Defendants took *precisely* this action at one point. [redacted]

[redacted]

[redacted]

332. The Committee thus, without amendment[redacted] or disclosure, doubled the Fund's cash buffer on December 8, 2006.

333. Had Defendants, for example directed that all Company and Participant contributions to the Fund be held in cash rather than be used to purchase SunTrust Stock, no securities laws "transaction" would have occurred for purposes of insider trading rules.

334. These actions would not have required any independent disclosures that could have had a material adverse effect on the stock price.

335. Given the relatively small number of SunTrust shares that might not have been purchased by the Fund (as discussed below, the Plan may use a suspense account and the Company may contribute treasury shares) in comparison to the enormous volume of actively traded shares, it is extremely unlikely that this decrease in the number of shares that would have been purchased, considered alone, would have had an appreciable impact on the share price.

[redacted]

336. Alternatively, Defendants should have closed the Fund itself to further contributions and directed that contributions be diverted from the Fund into other (prudent) investment options based upon Participants' instructions or, if there were no such instructions, the Plan's default investment option.

Alternative Two: Complete and Accurate Disclosure

337. As courts have recognized, the speculative effect of a hypothetical disclosure is a counterfactual that requires discovery and expert testimony.

338. Plaintiffs believe that a less significant drop would have occurred upon earlier disclosure. For example, it could well be that the market further discounted SunTrust Stock based upon the withholding of SunTrust's disclosures for months, treating it as something of a "black box" because investors feared that other risks were being hidden. *See* King, R. "The Liar's Discount," *Forbes*, May 30, 1988 (suggesting that firms that obtain a reputation for being less than forthcoming about impending bad news trade at a discount to other stocks). Thus, earlier disclosures would have, contrarily, caused investors to be willing to pay more for SunTrust's stock because they would have more comfort that management was forthright and nothing was being hidden. *Id.* ("[g]etting bad news out fast and straight is perhaps the cardinal rule of effective public relations.")

339. An early disclosure would have caused SunTrust Stock to drop less because, among other things: it would have caused less reputational damage; it could have allowed the Company to avoid defending and facing judgment in the securities cases, and it could have put the Company at less risk of defending against other regulatory and/or governmental investigations and/or paying fines or penalties associated therewith. An earlier disclosure may have also stopped further corporate malfeasance or limited statements with respect to goodwill, backlogs, and so forth, during the Class Period. *See* Richard A. Booth, *Article: Class Conflict in Securities Fraud Litigation*, 14 U. PA. J. BUS. L. 701, 708-09 ("holders suffer a further loss because of the expenses suffered by the corporation in defending itself against the class action and any other enforcement proceedings (not to mention possible fines and the intangible costs of management distraction). Moreover, the corporation may suffer reputational harm that increases its cost of capital and further drives down stock price. Although buyers may recover for these losses because they are built into the total decline in stock price, they are losses suffered by all of the stockholders and not merely those who bought during the fraud period.") (footnotes and citations omitted)

340. Alternatively, any drop from disclosure would have been no more than the amount of artificial inflation, and would have protected Plan Participants from making additional Fund purchases while the price of SunTrust's shares

remained artificially inflated and unduly risky for retirement savings. In short, disclosure would have prevented the purchases of additional shares at artificially inflated prices, necessarily helping the Plan.

Alternative Three: Contribute Cash Instead of Stock to the Plan

341. Plan Section 5.02 states of "Employer Contributions" that "Employers may contribute shares of Employer Stock, and/or cash to purchase Employer Stock, and/or may have shares of Employer Stock released from the Suspense Account under Subsection 3.4(f)." SunTrust was thus given discretion by the Plan as to the form of its matching contribution. To the extent it does not concede it was a Plan fiduciary, it could not cause cash contributed to purchase Employer Stock, but only suggest the same.

342. According to the Plan's 11-Ks, matching contributions were invested in the Fund until January 1, 2009. After January 1, 2009, matching contributions were invested in accordance to each participant's investment elections for their individual contributions unless they provided different instructions for their matching contributions. The 11-Ks did not specify that Employer Contributions were made in Employer Stock in the Fund.

343. The decision whether to contribute cash or stock was a exercise of "authority or control respecting management or disposition of its assets," so it was a fiduciary decision. 29 U.S.C. § 1102 (21)(A)(i). Thus a fiduciary decision was

made by SunTrust to contribute highly risky, artificially inflated SunTrust stock to the Plan in violation of ERISA. Alternatively, to the extent SunTrust was not acting as a fiduciary, this was a violation of the Plan's terms because Participants did not receive their full entitlement because matching contributions were earned compensation, not gifts,[20] that could have and should have been kept in the Fund's cash buffer if they had to be directed to the Fund.

344. As a result of imprudent matching contributions, a significant amount of SunTrust stock ($67,783,805 in 2007 and $78,877,150 in 2008) was deposited into the Plan in the form of highly risky, artificially inflated SunTrust common stock. 2008 11-K at 4, 2009 11-K at 3.

345. To the best of Plaintiffs' knowledge, no disclosure would have been required had the matching contribution, made in SunTrust Stock, been made in cash instead. At most, the SPD's disclosure that "only a small amount of cash (usually less than 1%) for liquidity purposes" is generally maintained in the Fund would have to be corrected. But that disclosure was never made, and would not have to have been made, publicly to the best of Plaintiffs' knowledge.

[20] Company contributions are not a gift, they are earned compensation: "The participants in a pension plan are the investors even if the employer alone contributes to the plan, since, as we mentioned, there is no free lunch. An employer who had no pension obligations would pay his employees higher wages, and they would then make their own arrangements for retirement." *Steinman v. Hicks*, 352 F.3d 1101, 1104 (7th Cir. 2003).

Other Alternatives Available to Defendants

346. Defendants also could have:

- Sought guidance from the DOL or SEC;
- Resigned as Plan fiduciaries if they could not act loyally and prudently;
- Retained outside experts to serve either as advisors or as independent fiduciaries, as directed by the February 27, 2006 Investment Policy Statement which states that "[i]f the Committee becomes aware of extraordinary circumstances that indicate that continuing to provide an Employer Stock as an investment alternative would be an abuse of discretion . . ., then the Committee should seek outside counsel's assistance and advice as to carrying out its fiduciary duties with respect to Plan participants and beneficiaries[,]or;
- Limited Participant to a certain maximum account percentage in the Fund.

347. Instead, Defendants' lack of action to protect the Participants, which was likely a result of their failure to prudently investigate the merits of the Fund as a retirement savings vehicle under the proper standard, caused the Participants to lose a significant amount of their retirement savings.

348. Had Defendants properly discharged their fiduciary and co-fiduciary duties, including the monitoring and removal of fiduciaries who failed to satisfy their ERISA-mandated duties of prudence and loyalty, eliminating SunTrust Stock as an investment alternative when it became imprudent, and divesting the Plan of SunTrust Stock when maintaining such an investment became imprudent, the Plan

would have avoided some or all of the losses that it, and indirectly the participants, suffered.

REMEDIES FOR BREACHES OF FIDUCIARY DUTY

349. The Defendants breached their fiduciary duties in that they knew or should have known the facts as alleged above, and therefore knew or should have known that the Plan's assets should not have been invested in SunTrust Stock during the Class Period.

350. As a consequence of Defendants' breaches, the Plan suffered significant losses.

351. ERISA § 502(a)(2), 29 U.S.C. § 1132(a)(2) authorizes a plan participant to bring a civil action for appropriate relief under ERISA § 409, 29 U.S.C. § 1109. Section 409 requires "any person who is a fiduciary . . . who breaches any of the . . . duties imposed upon fiduciaries . . . to make good to such plan any losses to the plan…." Section 409 also authorizes "such other equitable or remedial relief as the court may deem appropriate…."

352. With respect to calculation of the losses to the Plan, breaches of fiduciary duty result in a presumption that, but for the breaches of fiduciary duty, the Plan would not have made or maintained its investments in the challenged investment and, instead, prudent fiduciaries would have invested the Plan's assets in the most profitable alternative investment available to them. Alternatively,

losses may be measured not only with reference to the decline in stock price relative to alternative investments, but also by calculating the additional shares of SunTrust Stock that the Plan would have acquired had the Plan fiduciaries taken appropriate steps to protect the Plan. The Court should adopt the measure of loss most advantageous to the Plan. In this way, the remedy restores the Plan's lost value and puts the participants in the position they would have been in if the Plan had been properly administered.

353. Plaintiffs and the Class are, therefore, entitled to relief from the Defendants in the form of: (a) a monetary payment to the Plan to make good to the Plan the losses to the Plan resulting from the breaches of fiduciary duties alleged above in an amount to be proven at trial based on the principles described above, as provided by ERISA § 409(a), 29 U.S.C. § 1109(a); (b) injunctive and other appropriate equitable relief to remedy the breaches alleged above, as provided by ERISA §§ 409(a), 502(a), 29 U.S.C. §§ 1109(a), 1132(a)(2); (c) reasonable attorney fees and expenses, as provided by ERISA § 502(g), 29 U.S.C. § 1132(g), the common fund doctrine, and other applicable law; (d) taxable costs and interest on these amounts, as provided by law; and (f) such other legal or equitable relief as may be just and proper.

354. Under ERISA, each Defendant is jointly and severally liable for the losses suffered by the Plan in this case.

EXHAUSTION OF ADMINISTRATIVE REMEDIES

355. All Plaintiffs have either exhausted the administrative remedies available to them under the Plan or should be deemed to have exhausted all such administrative remedies by virtue of an agreement with representatives of SunTrust prior to the filing of this Complaint.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs pray for:

A. A Declaration that the Defendants, and each of them, have breached their ERISA fiduciary duties to the participants;

B. An Order compelling the Defendants to make good to the Plan all losses to the Plan resulting from Defendants' breaches of their fiduciary duties, including losses to the Plan resulting from imprudent investment of the Plan's assets, and to restore to the Plan all profits the Defendants made through use of the Plan's assets, and to restore to the Plan all profits which the participants would have made if the Defendants had fulfilled their fiduciary obligations;

D. Imposition of a Constructive Trust on any amounts by which any Defendant was unjustly enriched at the expense of the Plan as the result of breaches of fiduciary duty;

E. An Order requiring Defendants to appoint one or more independent fiduciaries to participate in the management of the Plan's investment in SunTrust Stock;

F. Actual damages in the amount of any losses the Plan suffered, to be allocated among the participants' individual accounts in proportion to the accounts' losses;

G. An Order awarding costs pursuant to 29 U.S.C. § 1132(g);

H. An Order for equitable restitution and other appropriate equitable and injunctive relief against the Defendants.

JURY TRIAL DEMANDED

Plaintiffs demand a trial by jury on all issues so triable.

Dated: December 15, 2014

Respectfully submitted by:

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

Interim Liaison Class Counsel

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

KESSLER TOPAZ
MELTZER & CHECK, LLP
Edward W. Ciolko
Donna Siegel Moffa
Mark K. Gyandoh
Julie Siebert-Johnson
280 King of Prussia Road
Radnor, Pennsylvania 19087
(610) 667-7706
(610) 667-7056 (fax)
eciolko@ktmc.com

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

Interim Co-Lead Class Counsel

GAINEY McKENNA & EGLESTON
Thomas J. McKenna
440 Park Avenue South, 5th Floor
New York, NY 10016
(212) 983-1300
(212) 983-0380 (fax)
tjmckenna@gme-law.com

STATMAN, HARRIS & EYRICH, LLC
Alan J. Statman
Jeffrey P. Harris
Elizabeth L. Hutton
3700 Carew Tower
441 Vine Street
Cincinnati, Ohio 45202
(513) 621-2666
(513) 621-4896 (fax)
bgiles@statmanharris.com

DYER & BERENS LLP
Robert J. Dyer, III
Jeffrey A. Berens
682 Grant Street
Denver, Colorado 80203
(303) 861-1764
(303) 395-0393 (fax)
jeff@dyerberens.com

LAW OFFICE OF DOUGLAS E. HART
Douglas E. Hart
Suite 4192
441 Vine Street
Cincinnati, OH 45202
(513) 621-6709
(513) 621-6981 (fax)
douglasehart.com

Attorneys for Plaintiffs