

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

RONDA A. PLEDGER, *et al.*,

Plaintiffs,

v.

RELIANCE TRUST COMPANY, *et al.*,

Defendants.

Civil Action No.
1:15-cv-04444-MHC

UNOPPOSED MOTION TO MODIFY THE CLASS DEFINITION

Plaintiffs and Reliance Trust Company (the “Settling Parties”), by and through their counsel, move under Rule 23(c) of the Federal Rules of Civil Procedure to modify the definition of the Class for purposes of effectuating the recent settlement between the Settling Parties. They seek to certify the following modified Class:

“All participants and beneficiaries of the Insperity 401(k) Plan from December 22, 2009 through March 31, 2019, excluding the Defendants.” The Insperity

Defendants do not oppose this motion.

Acting on a stipulation proposed by the parties, the Court previously certified a class under Rule 23(b)(1) consisting of: “All participants and beneficiaries of the Insperity 401(k) Plan from December 22, 2009 through September 30, 2017, excluding the Defendants.” Doc. 101 at 4 (¶2). The Settling Parties move to extend the Class period end date from September 30, 2017 to March 31, 2019. Because

certification of the modified Class definition is appropriate based on the same reasoning applied in the Court's prior certification order (Doc. 101), the Settling Parties respectfully request that the Court grant this motion and modify the Class definition.

Respectfully submitted this 12th day of October, 2020.

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CERTIFICATE OF COMPLIANCE

Under the Civil Local Rules of Practice for the United States District Court for the Northern District of Georgia, this is to certify that the foregoing document complies with the font and point selections approved by the Court in Local Rule 5.1.C. The foregoing was prepared on computer using Times New Roman font (14 point).

/s/ Jerome J. Schlichter
Attorney for Plaintiffs

CERTIFICATE OF SERVICE

I certify that on October 12, 2020, I caused to be served a true and correct copy of the foregoing with the Clerk of Court using the CM/ECF system, which will send notification of such filing to all parties to this matter via electronic notification.

/s/ Jerome J. Schlichter
Attorney for Plaintiffs

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**MEMORANDUM OF LAW IN SUPPORT OF UNOPPOSED MOTION TO
MODIFY THE CLASS DEFINITION**

Plaintiffs and Reliance Trust Company (the “Settling Parties”), by and through their counsel, move under Rule 23(c) of the Federal Rules of Civil Procedure to modify the definition of the Class for purposes of effectuating the recent settlement between the Settling Parties. The Insperity Defendants do not oppose this motion.

Acting on a stipulation proposed by the parties, the Court previously certified a class under Rule 23(b)(1) consisting of: “All participants and beneficiaries of the Insperity 401(k) Plan from December 22, 2009 through September 30, 2017, excluding the Defendants.” Doc. 101 at 4 (¶2). The Settling Parties move to extend the Class period end date from September 30, 2017 to March 31, 2019. Because certification of the modified Class definition is appropriate based on the same reasoning applied in the Court’s prior certification order (Doc. 101), the Settling

Parties respectfully request that the Court grant this motion and modify the Class definition.

INTRODUCTION

Plaintiffs, on behalf of the Insperity 401(k) Plan (Plan), brought this action against Reliance Trust Co., Insperity, Inc., Insperity Holdings, Inc., and Insperity Retirement Services, L.P. alleging violations of 29 U.S.C. §§1104 and 1106 related to the operation and administration of the Plan. On July 19, 2017, the parties reached a Stipulation Regarding Class Certification And Adjudication Of Plaintiffs' Claims On A Class Basis. Doc. 94. The Court approved the Stipulation on November 7, 2017, and certified the following class under Rule 23(b)(1): “All participants and beneficiaries of the Insperity 401(k) Plan from December 22, 2009 through September 30, 2017, excluding the Defendants.” Doc. 101 at 4 (¶2). The Court appointed Ronda A. Pledger, Sandra Britt, Jennifer Primm, Alex Brooks, Jr. and Edward Comer Buck as Class representatives and Schlichter Bogard & Denton LLP as Class Counsel. *Id.* at 4–5 (¶¶3, 5).

In order to effectuate the settlement reached in this case, the Settling Parties move, without opposition from the Insperity Defendants, to modify the Class definition for purposes of settlement as follows: “All participants and beneficiaries of the Insperity 401(k) Plan from December 22, 2009 through March 31, 2019,

excluding the Defendants.” *See* Settlement Agreement, §2.9. The Settling Parties seek modification of the Class period so that it encompasses the full period relevant to Plaintiffs’ claim that the Plan’s use of revenue-sharing classes of investment options did not comport with ERISA. The Settling Parties agree that this period runs through the date that Reliance Trust’s service as the Plan’s discretionary trustee ended (March 31, 2019).

The additional Class members included in the expanded Class definition will not participate in the portion of the settlement distribution that is tentatively allocated to investors in the Plan’s challenged target date funds, as those funds were removed from the Plan in 2017. Instead, under the Plan of Allocation proposed by Plaintiffs, any new members of the Class will participate only in the distribution of sums allocated to the Plaintiffs’ revenue-sharing claims (Count III).

ARGUMENT

“An order that grants or denies class certification may be altered or amended before final judgment.” Fed.R.Civ.P. 23(c)(1)(C); *In re Bayshore Ford Trucks Sales, Inc.*, 471 F.3d 1233, 1254 (11th Cir. 2006). The standard for modifying a class definition, even for settlement purposes, is the same as it is for certifying a class: the requirements of Rule 23(a), and at least one of the requirements of Rule 23(b), must be met. *Columbus Drywall & Insulation, Inc. v. Masco Corp.*, 258

F.R.D. 545, 553 (N.D. Ga. 2007); *Melanie K. v. Horton*, No. 14710-WSD, 2015 WL 1308368, at *4 (N.D. Ga. Mar. 23, 2015); Fed. R. Civ. P. 23(a), (b). As demonstrated below, the proposed Class satisfies Rule 23(a) and Rule 23(b)(1) for certification.

I. Rule 23(a) is satisfied.

A. Numerosity.

The proposed Class contains well over 80,000 members. Doc. 254 at 116:14–19; Plaintiffs’ Tr. Ex. 11 at 2. The numerosity requirement under Rule 23(a)(1) is therefore easily satisfied because joinder of all Class members is impracticable. Doc. 101 at 4 (¶2(a)); *Cox v. Am. Cast Iron Pipe Co.*, 784 F.2d 1546, 1553 (11th Cir. 1986).

B. Commonality and Typicality.

Consistent with the Court’s prior certification order based on the parties’ stipulation, the proposed Class satisfies commonality under Rule 23(a)(2) because there are “questions of law or fact common to the class”, including whether the Defendants were fiduciaries of the Plan, breached any applicable duty, and caused losses to the Plan. Fed. R. Civ. P. 23(a)(2); Doc. 101 at 4 (¶2(b)). Likewise, the Named Plaintiffs’ claims are “typical” of the claims of the Class because they were participants in the Plan during the Class period and, for each claim for relief, there

is at least one Named Plaintiff whose alleged injuries arise from the same course of conduct as do the alleged injuries of the Plan and similarly situated Class members. Fed. R. Civ. P. 23(a)(3); Doc. 101 at 4 (¶2(c)).

Importantly, there is at least one Named Plaintiff serving as a Class representative who has participated in the Plan through the period for which the Settling Parties request an extension of the Class definition. Doc. 267 at 27 (¶18) (Plaintiff Primm). There is at least one Named Plaintiff who did not invest in the target-date fund that was challenged by Plaintiffs, and so is due to participate in the settlement distribution only as to the portion allocated to the revenue sharing claim in Count III. *Id.* at 26 (¶17) (Plaintiff Pledger); Doc. 241 at 9 (Plaintiff investments). The presence among the Named Plaintiffs of Class representatives whose experiences, and entitlements under the settlement, closely resemble those of the additional Plan members who will be covered by the settlement under the proposed modification of the Class definition reinforces a finding of typicality.

C. Adequacy of Representation.

For over four years of litigation, the Named Plaintiffs have demonstrated their commitment to the case by responding to Defendants' discovery requests, monitoring the progress of the action, and when necessary, testifying at trial. As this Court previously found, the Named Plaintiffs will "fairly and adequately

protect the interests of the class.” Fed. R. Civ. P. 23(a)(4); Doc. 101 at 4 (¶2(d); Docs. 85-2 – 85-6.

In addition, Schlichter Bogard & Denton are competent and able to fairly and adequately represent the interests of the Class. Fed. R. Civ. P. 23(g); Doc. 101 at 4 (¶3). Class Counsel has amply shown exceptional commitment and perseverance in representing Plan participants by litigating this complex case through trial. Other courts have concluded that “Plaintiffs’ attorneys are clearly experts in ERISA litigation.” *Tussey v. ABB, Inc.*, No. 06-4305, 2012 WL 5386033, at *3 (W.D. Mo. Nov. 2, 2012); *Krueger v. Ameriprise Fin., Inc.*, No. 11-2781, 2015 WL 4246879, at *2 (D. Minn. July 13, 2015).

II. The requirements of Rule 23(b)(1) are met.

The proposed Class meets the requirements under Rule 23(b)(1) “because the prosecution of separate actions by individual class members would create a risk of inconsistent or varying adjudications which would establish incompatible standards of conduct for Defendants,” and “because adjudications with respect to individual Class members would, as a practical matter, be dispositive of the interests of non-party Class members.” Doc. 101 at 5 (¶4).

CONCLUSION

The Settling Parties respectfully request that the Court grant the motion and modify the Class definition for purposes of the settlement as requested herein.

Respectfully submitted this 12th day of October, 2020.

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**[PROPOSED] ORDER GRANTING UNOPPOSED MOTION TO MODIFY
THE CLASS DEFINITION**

Upon consideration of the Settling Parties' Unopposed Motion to Modify the Class Definition, the Court **GRANTS** the motion. To effectuate the terms of the settlement, the Settling Parties moved under Rule 23(c) of the Federal Rules of Civil Procedure to modify the Class definition (Doc. 101 at 4 (¶2)) and certify the following Class for settlement purposes: "All participants and beneficiaries of the Insperity 401(k) Plan from December 22, 2009 through March 31, 2019, excluding the Defendants." The Court finds that the proposed Class satisfies the requirements under Rule 23(a) and Rule 23(b)(1). The Court reaffirms its prior certification order (Doc. 101) appointing the Named Plaintiffs as Class representatives and Schlichter Bogard & Denton LLP as Class Counsel under Rule 23(g).

SO ORDERED:

DATED: _____, 2020

HON. MARK H. COHEN
UNITED STATES DISTRICT JUDGE