

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

CRYSTAL JOHNSON and  
CORISSA L. BANKS,

Plaintiffs,

v.

DELTA AIR LINES, INC., et al.,

Defendants.

CIVIL ACTION FILE

NUMBER 1:17-cv-2608-TCB

**O R D E R**

This case comes before the Court on Defendants' motion to dismiss Plaintiffs' amended class action complaint [28].

**I. Background**

In this ERISA action, Plaintiffs Crystal Johnson and Corissa L. Banks contend that Defendants breached the fiduciary duties they owed to participants and beneficiaries of the Delta Family Care Savings Plan. Plaintiffs allege that these breaches involve particular investment options and excessive recordkeeping fees. Defendants have moved to

dismiss for several reasons. Because the Court finds that Plaintiffs lack standing, Defendants' motion to dismiss will be granted.

## II. Analysis

A motion to dismiss pursuant to Federal Rule of Civil Procedure 12(b)(1) seeks dismissal due to the lack of subject matter jurisdiction. For a federal court to consider the merits of a claim, "the person seeking to invoke the court's jurisdiction must establish the requisite standing to sue." *Whitmore v. Arkansas*, 495 U.S. 149, 154 (1990). Article III limits the Court's jurisdiction to "cases and controversies" between parties. U.S. CONST. art. III, § 2. To qualify as a "case or controversy," the plaintiff must have suffered an injury in fact that is fairly traceable to the challenged conduct of the defendant and is likely to be redressed by a favorable judicial decision. *Lujan v. Defs. of Wildlife*, 504 U.S. 555, 560–61 (1992). The injury-in-fact element in turn requires that the injury be "concrete and particularized" and "actual or imminent, not conjectural or hypothetical." *Id.* (quoting *Whitmore*, 495 U.S. at 155).

An ERISA plaintiff must meet both constitutional and statutory standing requirements. *In re ING Groep, N.V. ERISA Litig.*, 749 F.

Supp. 2d 1338, 1345 (N.D. Ga.2010); *see also Glanton ex rel. ALCOA Prescription Drug Plan v. Advance PCS Inc.*, 465 F.3d 1123, 1127 (9th Cir. 2006) (holding that plan beneficiaries bringing suits on behalf of ERISA plans still must meet the requirements for Article III standing).

Defendants contend that Plaintiffs have failed to demonstrate that they suffered a “concrete and particularized” injury because the amended complaint does not allege that they were invested in the criticized investment funds or paid the recordkeeping fees they contend were excessive.<sup>1</sup> Plaintiffs, relying upon out-of-circuit law, contend that they may sue on behalf of the plan even if they were not personally injured. However, the Eleventh Circuit is clear that personal injury is a prerequisite to standing. *Piazza v. Ebsco Indus., Inc.*, 273 F.3d 1341, 1350 (11th Cir. 2001); *see also Prado-Steiman ex rel. Prado v. Bush*, 221

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<sup>1</sup> Defendants further contend that Plaintiffs cannot establish standing because they were not invested in the funds during the class period (as the funds were not available options during the time) and Plaintiffs did not pay an excessive amount of fees. They assert that the plan’s Form 5500s, upon which Plaintiffs rely, actually include historical investments that were no longer available, and urge the Court to look instead to the Schedule of Assets, attached to Schedule H of the Form 5500s, and the Plan and Trust Agreement documents to confirm that the criticized funds were not options on or after December 31, 2010. However, the Court need not delve into whether Plaintiffs *could* allege they personally suffered the injuries that purportedly affected the plan, because Plaintiffs did not do so.

F.3d 1266, 1280 (11th Cir. 2000) (“a claim cannot be asserted on behalf of a class unless at least one named plaintiff has suffered the injury that gives rise to that claim”) (quoting *Griffin v. Dugger*, 823 F.2d 1476, 1483 (11th Cir. 1987)).

Plaintiffs further contend that even if individual injury is required, the mere fact that Defendants allegedly violated ERISA rights creates an injury to them. *See, e.g., Horvath v. Keystone Health Plan East, Inc.*, 333 F.3d 450, 456 (3d Cir. 2003). However, Plaintiffs still point to no Eleventh Circuit law to support their assertion, and the cases upon which they rely address situations in which an ERISA plaintiff has been unable to demonstrate that the alleged violations caused her financial injury. They do not address the situation we have here, in which the Plaintiffs do not allege that the purported violations affected them at all.

As another court in this district has held when confronting a similar situation:

To proceed with this claim, Plaintiff must show some injury to herself caused by the Plan’s offering of the STI Classic International Equity Index Fund. Plaintiff, beyond the bare assertion that a breach of fiduciary duty harms all plan

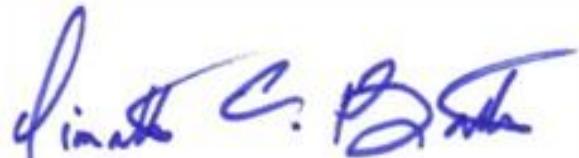
participants, has not described how the offering of a fund in which she did not invest caused her a non-speculative injury. . . . Plaintiff is correct that, once the requirements of Article III standing are established, she may pursue claims which bring relief to a broader class than herself. This does not eliminate the necessity of making a showing of the requirements of an Article III case or controversy, including injury in fact and redressibility. It has been recognized that in a particular case, a plaintiff might be able to show that the constellation of funds in the plan is structured in such a way that plaintiff would sustain injury from selection and offering of an investment not made by plaintiff. *Taylor v. United Techs. Corp.*, No. 3:06CV1494 (WWE), 2008 WL 2333120, at \*2–3 (D. Conn. June 3, 2008). The allegations of the Amended Complaint shed no light on this matter. It is insufficient to allege generally that offering a prohibited investment damaged the plan and its participants.

*Fuller v. SunTrust Banks, Inc.*, No. 1:11-cv-784-ODE, 2012 WL 1432306, at \*8 (N.D. Ga. Mar. 20, 2012). Here, similarly, Plaintiffs have not alleged that they were invested in the criticized funds or paid the allegedly excessive fees. Therefore, Plaintiffs do not have standing.

### III. Conclusion

For the foregoing reasons, Defendants' motion to dismiss Plaintiffs' amended class action complaint [28] is granted. The Clerk is directed to close this case.

IT IS SO ORDERED this 12th day of December, 2017.



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Timothy C. Batten, Sr.  
United States District Judge