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February 27, 2020

Via ECF & UPS Overnight

The Honorable Laura Taylor Swain
United States District Court
Southern District of New York
500 Pearl Street
New York, New York 10007

Re: *Arthur Bekker, et al. v. Neuberger Berman Group, LLC, et al.*
No. 16-cv-6123 (LTS) (BCM)

Dear Judge Swain:

On September 13, 2019, Defendant filed its Motion for Summary Judgment. Dkt. 106. In its Memorandum in Support, Defendant argued that Plaintiff's claim was time-barred because an exception to ERISA's six-year statute of limitations applied — § 1113(2) — which requires Defendant to prove that Plaintiff had "actual knowledge" of the breach or violation of ERISA more than three years before filing his complaint. Dkt. 107. Defendant argued that because information about the fees and performance of the Value Equity Fund, the proprietary fund about which Plaintiff complains, was available to Plaintiff, he had actual knowledge of the contents of such disclosures. Defendant noted that the U.S. Supreme Court had granted *certiorari* to review the question of whether the limitations period runs from the date of disclosure or from the date the participant has read and understood the information contained therein. Dkt. 107 at 22 fn.8.

On February 26, 2020, the Supreme Court issued its opinion in *Intel Corp. v. Sulyma*. (Slip Op. attached hereto as Exhibit 1).

The opinion *unequivocally rejects* Defendant's argument. The Supreme Court held: "§ 1113(2) requires more than evidence of disclosure alone... To meet § 1113(2)'s 'actual knowledge' requirement... the plaintiff must in fact have become aware of that information." Slip Op. at 8; *see also*, Slip Op. at 6 ("[t]o have 'actual knowledge' of a piece of information, one must in fact be aware of it."). Just as the Supreme Court found that mailed and online disclosures were insufficient to prove "actual knowledge" in the *Intel* case, so to this Court must find mailed and online disclosures are insufficient to prove "actual knowledge" of Plaintiff's claims here.

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We thank the Court for its consideration.

Respectfully,

/s/ Gregory Y. Porter

Gregory Y. Porter

GYP/msc

cc: All counsel of record (via ECF)