UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI

Valeska Schultz and Melanie Waugh, individually and on behalf of themselves and all others similarly situated,

Plaintiffs,

vs.

Edward D. Jones & Co., L.P., The Jones Financial Companies, L.L.L.P., the Investment and Education Committee, the Profit Sharing and Administrative Committee, James D. Weddle, Brett G. Bayston, and Jane and John Does 1-40,

Defendants.

Case No.: 4:16-cv-01762

JURY DEMAND

COMPLAINT

Plaintiffs Valeska Schultz and Melanie Waugh, by and through their attorneys, on behalf of the Edward D. Jones & Co. Profit Sharing and 401(k) Plan (formerly known as the Edward D. Jones & Co. Profit Sharing and Deferred Compensation Plan) (the "Plan"), themselves and all others similarly situated, allege the following:

INTRODUCTION

1. This is a class action brought pursuant to §§ 409 and 502 of the Employee Retirement Income Security Act of 1974 ("ERISA"), 29 U.S.C. §§ 1009 and 1132 against Edward D. Jones & Co. L.P. ("Edward Jones"), The Jones Financial Companies, L.L.L.P. ("Jones Financial"), the Investment and Education Committee (the "Investment Committee"), the Profit Sharing and Administrative Committee (the "Administrative Committee"), James D.

Weddle, Brett G. Bayston, and John Does 1-20 (the "Partners"), and John Does 20-40 (the "Committee members").

2. Plaintiffs were participants in the Plan during the Class Period (defined below), during which the Plan's fiduciaries breached their duties of loyalty and prudence to the Plan and its participants by, among other things, including and maintaining the higher fee share class of identical investment options in lieu of the lower cost share class, including and maintaining a poorly performing money market account, and including and maintaining an unreasonable number of high risk investment options to the detriment of Plan participants. Upon information and belief, the following options were included and maintained, either throughout the Class Period or for portions of the Class Period, because they conferred a benefit upon Defendants:

- American Funds Capital World Bond Fund
- American Funds Capital World Growth & Income Fund
- American Funds EuroPacific Growth Fund
- American Funds New Perspective Fund
- American Funds New World Fund
- American Funds Small Cap World Fund
- American Funds AMCAP Fund
- American Fundamental Investors Inc. Fund
- American Funds Investment Company of America Fund
- American Funds Mutual Fund
- American Funds Washington Mutual Investors Fund
- American Funds New Economy Fund
- American Funds Capital Income Builder Fund

- American Funds Income Fund of America Fund
- American Funds Bond Fund of America Fund
- American Funds High-Income Trust Fund
- American US Government Securities Fund
- American Funds Money Market Fund
- American Funds Growth Fund of America Fund
- BlackRock Equity Dividend Fund
- Franklin Templeton Mutual Global Discovery Fund
- Franklin Income Fund
- Franklin Balance Sheet Investment Fund
- Hartford Capital Appreciation Fund
- Hartford Growth Opportunities Fund
- Hartford Dividend Growth Fund
- Lord Abbett Affiliated Fund
- Lord Abbett Bond Debenture Fund
- Lord Abbett Classic Stock Fund
- Lord Abbett Core Fixed Income Fund
- Lord Abbett Total Return Fund
- Federated Kaufmann Fund
- Federated Total Return Bond
- Goldman Sachs Small Cap Value Fund
- Goldman Sachs Growth and Income Fund
- Goldman Sachs Capital Growth Fund

- Invesco Comstock Fund
- Invesco Mid Cap Core Equity Fund
- Invesco Equity and Income Fund
- JPMorgan Core Bond Fund
- MFS Growth Fund
- MFS Bond
- Champlain Mid Cap

3. 401(k) plans, like the Plan, confer benefits on participating employees to incentivize saving for retirement or other long-term goals. An employee participating in a 401(k) plan is limited to the investment options selected by the plan's fiduciaries. Here, the Investment Committee selected and maintained the investment options of fund companies who participated in revenue sharing, "shelf space[1]," or other business arrangements with Edward Jones. In selecting and maintaining the investment options of these "Product Partners," or other companies which returned a benefit to Edward Jones, Defendants engaged in a form of self-dealing and cost the Plan participants millions of dollars.

4. Plaintiffs allege that Defendants, as Plan "fiduciaries," as the term is defined under ERISA § 3(21)(A), 29 U.S.C. § 1002(21)(A), breached their duties owed to Plaintiffs and to the other participants and beneficiaries of the Plan in violation of §§ 404(a) and 405, 29 U.S. C. §§ 1104(a) and 1105, by, among other things, selecting and maintaining the investment options of fund companies with whom Edward Jones maintained revenue sharing and/or other arrangements and by failing to use their expertise and the Plan's bargaining power, as a result of

[1] A "shelf space" agreement is one by which the custodian, investment advisor, and/or plan sponsor charge mutual fund companies "rents" or other fees for a recommended spot in sales to clients or a spot in a retirement plan.

its massive assets (valued between $2.28 and $4.17 billion during the Class Period), to secure lower fees on the investment options in the Plan, and consequently, in Plaintiffs' portfolio.

5. Specifically, in Count I, Plaintiffs allege that Defendants breached their fiduciary duties to Plaintiffs and members of the Class by failing to prudently and loyally manage the Plan's investments by: (1) selecting and maintaining the investment options of fund companies with whom Edward Jones maintained revenue sharing and/or other arrangements; (2) selecting and maintaining the higher fee share classes of identical funds; (3) offering a money market account with a high fee and significantly lower performance than a low fee stable value fund; and (4) including and maintaining an unreasonable number of high risk investment options. These actions/inactions cost Plan participants millions of dollars and run directly counter to the express purpose of ERISA 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").

6. Plaintiffs' Count II alleges that Edward Jones breached their fiduciary duties by failing to adequately monitor other persons to whom management/administration of Plan assets was delegated, despite the fact that Edward Jones knew or should have known that such other fiduciaries were imprudently allowing the Plan to select and continue to offer Plan participants the higher fee share class options of the identical funds, maintain a poor performing and high fee money market account, and select and maintain risky investment options.

7. This action seeks to recover the Plan's losses that Defendants are liable for under ERISA §§ 409 and 502, 29 U.S.C. §§ 1109 and 1132. Because Plaintiffs' claims apply to the Plan, which includes all participants with accounts invested in funds offered during the Class Period, and because ERISA specifically authorizes participants such as the Plaintiffs to sue for

relief to the Plan for breaches of fiduciary duty such as those alleged herein, Plaintiffs bring this suit as a class action on behalf of the Plan and all participants and beneficiaries of the Plan during the proposed Class Period.

JURISDICTION AND VENUE

8. This court has subject matter jurisdiction over this action pursuant to 28 U.S.C. § 1331 because it is a civil action arising under the laws of the United States, and pursuant to 29 U.S.C. § 1332(e)(1), which provides for federal jurisdiction of actions brought under Title I of ERISA, 29 U.S.C. § 1001, *et seq*.

9. This Court has personal jurisdiction over Defendants because they are headquartered and transact business in, or reside in, and have significant contacts with, this District, and because ERISA provides for nationwide service of process.

10. Venue is proper in this District pursuant to ERISA § 502(e)(2), 29 U.S.C. § 1132(e)(2), because some or all of the ERISA violations occurred in this District and Defendants reside and may be found in this District. Venue is also proper in this District pursuant to 28 U.S.C. § 1391 because Defendants do business in this District and a substantial part of the events or omissions giving rise to the claims asserted herein occurred within this District.

PARTIES

Plaintiffs

11. Plaintiff Valeska Schultz is a citizen and resident of Brentwood, California. Plaintiff was employed as a Branch Office Administrator from 2014 to 2016 at Edward Jones. Plaintiff was a participant in the Plan during the Class Period. As a participant, and within the applicable statute of limitations, Plaintiff invested in the "Profit Sharing – Balanced Toward Growth" portfolio ("Balanced Toward Growth Portfolio").

12. The Balanced Toward Growth Portfolio combines numerous funds with the "objective [ ] to emphasize growth and rising income potential with a secondary goal of current income." *See* Exhibit A at 1 (Notice of Qualified Default Investment Alternative dated August 18, 2011). According to Defendants, "[o]ver the long term, it should have moderate to higher risk." *Id.*

13. The Balanced Toward Growth Portfolio has included the following funds during the Class Period (some funds have been replaced or removed):

- American Funds New World (RNWFX)
- Goldman Sachs Small Cap Value (GSSIX)
- American Funds Fundamental Investors (RFNFX)
- Franklin Templeton Mutual Discovery (MDISX)
- Dodge & Cox Income (DODIX)
- American Funds Bond Fund of America (RBFFX)
- Munder Mid Cap Core Growth (MGOYX)
- Champlain Mid Cap (CIPIX)
- Invesco Mid Cap Core Equity (GTAVX)
- Hartford Dividend Growth (HDGTX)
- Dodge & Cox International Stock (DODFX)
- Lord Abbett Core Fixed Inc. (LCRYX)
- Hartford Capital Appreciation (ITHTX)
- American Funds Small Cap World (RSLFX)
- American Funds EuroPacific Growth (RERFX)
- Invesco Comstock (ACSDX)

- American Funds Capital World Growth & Income (RWIFX)
- American Funds Capital World Bond (RCWFX)
- Federated Kaufmann (KAUAX)
- T. Rowe Price Blue Chip Growth (TRBCX)
- American Funds New Perspective (RNPFX)
- BlackRock Equity Dividend (MADVX)
- Lord Abbett Bond Debenture (LBNYX)
- MFS Growth (MFEJX)

14. Plaintiff Melanie Waugh is a citizen and resident of Oroville, California. Plaintiff was employed as a Branch Office Administrator from 2008 through 2014 at Edward Jones. Plaintiff was a participant in the Plan during the Class Period. As a participant, and within the applicable statute of limitations, Plaintiff invested in the Balanced Toward Growth Portfolio.

Defendants

15. Defendant Edward Jones, the Plan Sponsor and Plan Administrator, is a partnership that engages in the business of providing financial advice particularly as to retirement savings and wealth management. Edward Jones primarily derives its revenue from the retail brokerage business through the distribution of mutual fund shares, fees related to assets held by and account services provided to its clients, including investment advisory services, the purchase or sale of listed and unlisted securities and insurance products, and some principal transactions. For at least a portion of the Class Period, Edward Jones also served as the Investment Advisor to the Plan. Edward Jones is organized under the laws of Missouri, and maintains its headquarters in Des Peres, Missouri. Edward Jones is a subsidiary of The Jones Financial Companies, L.L.L.P.

16. Defendant The Jones Financial Companies, L.L.L.P. is a registered limited liability limited partnership, owned by some of its employees and retirees, organized under the laws of Missouri with its headquarters in Des Peres, Missouri. Edward Jones is the principal operating subsidiary of Jones Financial, which operates as a holding company. Upon information and belief, the Principals of Edward Jones are the partners of Jones Financial.

17. Defendant Investment and Education Committee is comprised of employees, senior executives and/or partners of Edward Jones. The Investment Committee has the authority to select the investments options made available to Plan Participants and to develop and oversee the implementation of any investment education program. The Investment Committee members are selected by the Managing Principal of Edward Jones, or his designee.

18. Defendant Profit Sharing and Administrative Committee is comprised of employees, senior executives and/or partners of Edward Jones. The Administrative Committee has been designed by Edward Jones to "administer the Plan, and construes, interprets and administers all provisions of the Plan." *See* Exhibit B (Summary Plan Description for the Edward D. Jones & Co. Profit Sharing and 401(k) Plan), at 12. Upon information and belief, the Administrative Committee members are selected by the partners of Edward Jones.

19. Defendant James D. Weddle is the Managing Partner (or Principal) of Edward Jones, a position he has held since January 2006. In his capacity as Managing Partner, he selected the members of the Investment Committee and the Administrative Committee. Upon information and belief, he is also a partner of Jones Financial.

20. Defendant Brett G. Bayston is a Financial Advisor at Edward Jones. He serves as the Chairman of the Investment and Education Committee. In his capacity as a member of the

Investment Committee, he had the authority to select, maintain or remove any investment option made available to Plan Participants.

21. Defendants John Does 1-20 are the partners of Edward Jones who appointed members to the Administrative Committee.

22. Defendant John Does 20-40 are the unnamed members of the Investment and Administrative Committees who selected, maintained or removed investment options for the Plan or acted as the Plan Administrator during the Class Period.

THE PLAN

23. The Plan is a "defined contribution" or "individual account" plan within the meaning of ERISA § 3(34), 29 U.S.C. § 1002(34), in that the Plan provided for individual accounts for each participant and for benefits based solely upon the amount contributed to those accounts, and any income, expense, gains and losses, and any forfeitures of accounts of the participants that may be allocated to such participant's account. Consequently, retirement benefits provided by the Plan are based solely on the amounts allocated to each individual's account.

24. The Plan's original effective date was January 1, 1976. Upon information and belief, it has been restated several times since 1976. For example, the Plan was restated in January 1, 2012, and January 1, 2015. In 2014, the Plan changed its name from the Edward D. Jones & Co. Profit Sharing and Deferred Compensation Plan to the Edward D. Jones & Co. Profit Sharing and 401(k) Plan. Full-time associates who are age 21 or over are immediately eligible to participate in the Plan as long as the associate is receiving pay for services to Edward Jones. *See* Exhibit B, at 1. Part-time associates who are age 21 or over are eligible to participate in the Plan after they are compensated for 1,000 Hours of Service with Edward Jones in the first

year of employment or in any subsequent calendar year. *See id.* Full-time associates may be eligible to share in Edward Jones' profit sharing contributions on July 1 following the date they are hired by Edward Jones and may be eligible to receive matching contributions on the January 1 following the date they are hired by Edward Jones. *See id.* at 5.

25. General partners who are age 21 or over are immediately eligible to participate in the Plan as long as they are identified as a general partner in Edward Jones's partnership income tax return. *See id.* at 1.

26. Plan participants may "elect to contribute to the Plan through payroll deductions up to 75% of [their] Compensation on a 'pre-tax' basis or 'Roth' basis" and "may also elect to contribute to the Plan up to 25% of [their] Compensation on an 'after-tax' (non-Roth) basis." *See id.* at 5. Contributions are fully vested at all times. *See id.*

27. Since September 23, 2011, the Plan has automatically enrolled eligible employees into a default investment option, the Profit Sharing – Balanced toward Growth investment option. *See* Exhibit A. Full-time associates of Edward Jones are automatically enrolled in the Plan 30 days after their start date. *See id.* After that date, 5% of their paychecks and bonus paychecks are deducted. *See id.* Full-time associates have to affirmatively opt out or affirmatively change their allocations otherwise they are enrolled in the default investment. *See id.* Part-time associates generally are automatically enrolled in the plan 30 days after being compensated for 1,000 hours within the first year of employment or any subsequent plan year. *See id.* Unless these employees affirmatively opt-out or change their allocation, the employees are enrolled in the Profit Sharing – Balanced toward Growth investment option. *See id.*

28. Edward Jones is the Plan Sponsor and its designee, the Administrative Committee, acts as the Plan Administrator. *See* Exhibit C (Investment Policy Statement for the

Edward D. Jones & Co. Profit Sharing and 401(k) Investment and Education Committee) (hereinafter "Investment Policy Statement"). According to the Investment Policy Statement, "[m]embers of the [Investment] Committee are appointed by the Managing Principal of Edward Jones, or their designee." *Id.*

29. The responsibilities of the Investment Committee include the prudent selection of investment options, oversight of consultants, advisors and any other fiduciaries, control and monitoring of investment-related expenses, and the avoidance of prohibited transactions and conflicts of interest. *Id.*

30. In regards to investments, the Investment Policy Statement provides that when selecting investment options "[r]elative investment performance will also take into account investment-related expenses." *Id.* Additionally, "[t]otal expenses (including investment management fees, 12b-1 fees, etc.) related to the investment options shall be reviewed periodically to ensure that such expenses are competitive, as compared to their respective overall peer group averages, ***and being managed in the best interest of the Plan's participants and beneficiaries***." *Id.* (emphasis added). However, the Committee also stated "an investment option that does not meet these standards may nevertheless be retained if the Committee determines that the option warrants retention." *Id.*

31. The Investment Committee has all necessary authority and discretion to "select all investments for the Plan and to educate Participants about the Plan." *See* Exhibit B at 12.

CLASS ACTION ALLEGATIONS

32. Plaintiffs bring this action as a class action pursuant to Rule 23 of the Federal Rules of Civil Procedure on behalf of themselves and the proposed class (the "Class") defined as follows:

> All persons, except Defendants and their immediate family members, who were participants in or beneficiaries of the Plan, at any time between November 11, 2010 and the present (the "Class Period").

33. The members of the Class are so numerous that joinder of all members is impractical. Upon information and belief, the Class includes thousands of persons.

34. Plaintiffs' claims are typical of the claims of the members of the Class because Plaintiffs' claims, and the claims of all Class members, arise out of the same conduct, policies, and practices of Defendants as alleged herein, and all members of the Class are similarly affected by Defendants' wrongful conduct.

35. There are questions of law and fact common to the Class and these questions predominate over questions affecting only individual Class members. Common legal and factual questions include, but are not limited to:

A. Whether Defendants are fiduciaries of the Plan;

B. Whether Defendants breached their fiduciary duties of loyalty and prudence with respect to the Plan;

C. Whether Defendants breached their duty of loyalty by including investment options which benefited themselves to the detriment of the Plan's participants;

D. Whether Defendants failed to monitor the Plan's fiduciaries to ensure the Plan was being managed in compliance with ERISA; and

E. Whether the Plan fiduciaries breached their fiduciary duties in failing to comply with the provisions of ERISA set forth above.

36. Plaintiffs will fairly and adequately represent the Class, and have retained counsel experienced and competent in the prosecution of ERISA class action litigation. Plaintiffs have

no interests antagonistic to those of other members of the Class. Plaintiffs are committed to the vigorous prosecution of this action and anticipate no difficulty in the management of this litigation as a class action.

37. This action may be properly certified under either subsection of Rule 23(b)(1). Class action status in this action is warranted under Rule 23(b)(1)(A) because prosecution of separate actions by the members of the Class would create a risk of establishing incompatible standards of conduct for Defendants. Class action status is also warranted under Rule 23(b)(1)(B) because prosecution of separate actions by the members of the Class would create a risk of adjudications with respect to individual members of the Class that, as a practical matter, would be dispositive of the interests of other members not parties to this action, or that would substantially impair or impede their ability to protect their interests.

38. In the alternative, certification under Rule 23(b)(2) is warranted because the 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.

DEFENDANTS' FIDUCIARY STATUS

39. During the Class Period, each Defendant was a fiduciary of the Plan, either as a named fiduciary or as a *de facto* fiduciary with discretionary authority with respect to the management of the Plan and/or the management or disposition of the Plan's assets.

40. 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. § 1102(a)(1).

41. ERISA treats as fiduciaries not only persons explicitly named as fiduciaries under § 402(a)(1), 29 U.S.C. § 1102(a)(1), but also any other persons who in fact perform fiduciary functions. Thus a person is a fiduciary to the extent "(i) he exercises any discretionary authority or discretionary control respecting management of such plan or exercise any authority or control respecting management or disposition of its assets, (ii) he 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).

42. At all times relevant to this Complaint, Defendants were fiduciaries of the Plan because:

(a) they were so named; and/or

(b) they exercised authority or control respecting management or disposition of the Plan's assets; and/or

(c) they exercised discretionary authority or discretionary control respecting management of the Plan; and/or

(d) they had discretionary authority or discretionary responsibility in the administration of the Plan.

43. 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.

44. Plaintiff does not allege that each Defendant was a fiduciary with respect to all aspects of the Plan's 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.

45. Instead of delegating all fiduciary responsibility for the Plan to external service providers, the Company chose to assign the appointment and removal of fiduciaries to the Committee, whose members were selected by Edward Jones itself.

46. During the Class Period, all of Defendants acted as fiduciaries of the Plan pursuant to ERISA § 3(21)(A), § 1002 (21)(A), and the law interpreting that section.

47. Edward Jones was and remains a fiduciary of the Plan, as a Plan Sponsor and as the Plan Administrator—through the Administrative Committee—for the entirety of the Class Period.

48. As Plan Administrator, Edward Jones exercised discretionary authority with respect to management and administration of the Plan and/or exercised authority or control over the management and disposition of the Plan's assets.

49. Instead of delegating fiduciary responsibility for the Plan to external service providers, Edward Jones chose to internalize certain vital aspects of this function to the Investment and Administrative Committees.

50. As noted above, Edward Jones acted through the Committees, as well as the committee members who were partners or employees of Edward Jones. Edward Jones had, at all times, effective control over the activities of its partners or employees, appointed by Edward

Jones to perform Plan-related fiduciary functions in the course and scope of their employment, including over their Plan-related activities.

51. By failing to properly discharge their fiduciary duties under ERISA, Defendants breached fiduciary duties they owned to the Plan, its participants and their beneficiaries. Such individuals were appointed by Edward Jones to perform Plan-related fiduciary functions in the course and scope of their employment. Accordingly, the actions of such employee or general partner fiduciaries are imputed to Edward Jones under the doctrine of *respondeat superior*, and Edward Jones is liable for these actions.

52. As noted above, the Investment Committee members were appointed by Edward Jones' Managing Partner, Defendant Weddle. The duties of the Investment Committee included the appointment of the investment managers for the Plan, selection, monitoring and replacement of investment options for the Plan, and communication of information to participants as required under ERISA.

53. The Administrative Committee, whose members were appointed upon information and belief by the partners and principals of Edward Jones, selected and appointed Mercer HR Services ("Mercer") as custodian, trustee and recordkeeper.

54. The Committees Defendants were fiduciaries of the Plan, within the meaning of ERISA § 3(21)(A), 29 U.S.C. § 1002(21)(A), in that they exercised discretionary authority with respect to the management and administration of the Plan and/or management and disposition of the Plan's assets.

55. ERISA mandates that Plan fiduciaries have a duty of loyalty to the plan and its participants which includes the duty to speak truthfully to the Plan and its participants when communicating with them.

56. The duty of loyalty also includes a mandate that the fiduciary display complete loyalty to the beneficiaries, and set aside the consideration of third persons. As noted in an Advisory Opinion 88-16A by the Department of Labor:

> …in deciding whether and to what extent to invest in a particular investment, a fiduciary must ordinarily consider only factors relating to the interests of plan participants and beneficiaries in their retirement income. A decision to make an investment may not be influenced by non-economic factors unless the investment, when judged solely on the basis of its economic value to the plan, would be equal or superior to alternative investments available to the plan.

1988 WL 222716, at *3 (Dec. 19, 1988).

57. During the Class Period, upon information and belief, the Defendants acted in the interests of themselves, to the detriment of the Plan and its participants and beneficiaries, by including mutual fund investments, in the Plan, from Edward Jones' Product Partners' and/or business partners that charged higher fees than where available either through the same partners or from competitors.

58. Not only did the Defendants include these investments out of self-interest, but they also failed to adequately disclose the conflict of interest to Plaintiffs and members of the Class.

59. Pursuant to 29 U.S.C. § 1104(a)(1)(B), ERISA also mandates that fiduciaries act with prudence in the disposition of Plan assets and selection and monitoring of investments including the monitoring and minimization of administrative expenses.

60. During the Class Period, upon information and belief, Defendants, *inter alia*, selected investments for the Plan with higher administrative fees than were available for the same funds and on the market for similar investments; have included a money-market fund that has had negative returns for every year it has been part of the Plan; and have selected and

maintained an unreasonable number of high risk investment options to the detriment of Plan participants.

SUBSTANTIVE ALLEGATIONS

A. Overview

61. Edward Jones was originally founded in 1922 with the goal of offering clients appropriate, quality investments. Today, Edward Jones conducts business in the U.S. and Canada with its clients, various brokers, dealers, clearing organizations, depositories and banks, while its corporate parent serves as a holding company.

62. Edward Jones established, maintained, and currently maintains the Plan for the benefit of its employees, associates, and partners, which includes employees at all levels of sophistication in investing from administrative professionals to certified public accountants.

63. The investment options offered within the Plan are pooled investment products known as mutual funds, which are subject generally to lower fees because of the large value of the assets under management, which ranged from approximately $2.28 billion at the end of 2010 to approximately $4.17 billion at the end of 2015. Throughout the Class Period, the investment options available to participants were exclusively mutual funds.

64. Each investment option within the Plan charged certain fees, to be paid by deductions from the pool of assets under management. For passively managed funds, which are designed to mimic a market index such as Standard & Poor's 500, securities were purchased to match the mix of companies within the index. Because they are simply a mirror of an index, these funds offer both diversity of investment and comparatively low fees.

65. By contrast, actively managed funds, which have a mix of securities selected in the belief they will beat the market, have higher fees, to account for the work of financial

planners. However, long-term data suggests that actively managed funds "lagged their passive counterparts across nearly all asset classes, especially over a 10-year period from 2004 to 2014." *See Index funds trounce actively managed funds: Study*, available at http://www.cnbc.com/2015/06/26/index-funds-trounce-actively-managed-funds-study.html.

66. In fact, one of the key findings of a Morningstar study was:

> Actively managed funds have generally underperformed their passive counterparts, especially over longer time horizons, and experienced high mortality rates (i.e. many are merged or closed). In addition, the report finds that failure tends to be positively correlated with fees (i.e. higher cost funds are more likely to underperform or be shuttered or merged away and lower-cost funds were likelier to survive and enjoyed greater odds of success).

See Morningstar's Active/Passive Barometer: A new yardstick for an old debate, at 2 (June 2015) available at http://corporate.morningstar.com/US/documents/ResearchPapers/MorningstarActive-PassiveBarometerJune2015.pdf

B. Improper Management of an Employee Retirement Plan Can Cost the Plan's Participants Millions in Savings

67. ERISA requires plan fiduciaries to provide diversified investment options for a defined-contribution plan. *See* 29 U.S.C. § 1104(a)(1)(C)

68. In addition to providing a diversified set of investment options for the Plan participants, under 29 U.S.C. § 1104(a)(1)(C), a plan fiduciary must also ensure that the costs of these investments are reasonable. *See* U.S. Dep't of Labor, *A look at 401(k) Plan Fees*, (Aug. 2013), available at https://www.dol.gov/ebsa/publications/401k_employee.html (last visited Nov. 10, 2016) ("You should be aware that your employer also has a specific obligation to consider the fees and expenses paid by your plan."). This is because, as described by the Department of

Labor, a one percent difference in fees and expenses can reduce a participant's retirement account balance by 28 percent over 35 years. *Id.*

69. In fact, the Department of Labor has explicitly stated that employers are held to a "high standard of care and diligence" and must: (1) "establish a prudent process for selecting investment options and service providers;" (2) "ensure that fees paid to service providers and other expenses of the plan are reasonable in light of the level and quality of services provided;" and (3) "monitor investment options and service providers once selected to see that they continue to be appropriate choices," among other duties. *Id.*

70. The duty to evaluate and monitor fees includes fees paid directly by Plan participants to investment providers, usually in the form of an expense ratio, or a percentage of assets under management within a particular investment. *See* Investment Company Institute ("ICI"), *The Economics of Providing 401(k) Plans: Services, Fees, and Expenses*, (August 2014), at 5. "Any costs not paid by the employer, which may include administrative, investment, legal, and compliance costs, effectively are paid by plan participants." *Id*. at 6.

71. Plan fiduciaries have a responsibility to take into account the reasonableness of any expense ratio when selecting a mutual fund or any other investment option for the Plan.

72. On average, there are lower expense ratios for 401(k) participants than those for other investors. *See The Economics of Providing 401(k) Plans*, at 10. ERISA-mandated monitoring of investments lead to plan sponsors that continually evaluate performance and fees, leading to great competition among mutual funds in the marketplace. Furthermore, the large average account balances of 401(k) plans, especially the largest ones with over a $1 billion in assets managed, lead to economies of scale and special pricing within mutual funds. *Id*.

73. This has led to falling mutual fund expense ratios for 401(k) plan participants since 2000. In fact, these expense ratios have fallen 30 percent from 2000 to 2014 for equity funds, 24 percent for hybrid funds and 28 percent for bond funds. *Id*. at 1.

74. The following figure published by the ICI best illustrates that 401(k) plans on average pay far lower fees than regular industry investors, even as expense ratios for all investors continued to drop for the past several years.[2]

FIGURE 7

Average Total Mutual Fund Expense Ratios

Percent, 2012–2014

	2012		2013		2014	
	Industry[1]	401(k)[2]	Industry[1]	401(k)[2]	Industry[1]	401(k)[2]
Equity funds	**0.77**	**0.63**	**0.74**	**0.58**	**0.70**	**0.54**
Domestic	0.71	0.59	0.67	0.54	0.65	0.50
World	0.93	0.78	0.90	0.73	0.86	0.67
Hybrid funds	**0.79**	**0.60**	**0.80**	**0.57**	**0.78**	**0.55**
Bond funds	**0.61**	**0.50**	**0.61**	**0.48**	**0.57**	**0.43**
High yield and world	0.85	0.82	0.83	0.79	0.78	0.65
Other	0.53	0.47	0.51	0.44	0.48	0.40
Money market funds	**0.17**	**0.21**	**0.17**	**0.19**	**0.13**	**0.16**

[1] The industry average expense ratio is measured as an asset-weighted average.
[2] The 401(k) average expense ratio is measured as a 401(k) asset-weighted average.
Note: Data exclude mutual funds available as investment choices in variable annuities and tax-exempt mutual funds.
Sources: Investment Company Institute and Lipper

Id. at 12.

75. Prudent and reasonable plan sponsors thus should be monitoring both the performance and cost of the investments selected for their 401(k) plans, leveraging the size of

[2] This chart does not account for the strategy of a mutual fund, which may be to mirror an index, a so-called passive management strategy, or may attempt to "beat the market" with more aggressive investment strategies via active management. Active management funds tend to have significantly higher expense ratios compared to passively managed funds because they require a higher degree of research and monitoring than funds which merely attempt to replicate a particular segment of the market.

their plan to ensure that well-performing, lower cost investment options are available to plan participants.

76. This is especially critical because while higher-cost mutual funds may outperform a less-expensive option, such as a passively-managed index fund, over the short term, they rarely do so over a longer term. *See* Jonnelle Marte, *Do Any Mutual Funds Ever Beat the Market? Hardly*, The Washington Post, available at https://www.washingtonpost.com/news/get-there/wp/2015/03/17/do-any-mutual-funds-ever-beat-the-market-hardly/ (citing a study by S&P Dow Jones Indices which looked at 2,862 actively managed mutual funds, focused on the top quartile in performance and found most did not replicate performance from year to year). Conversely, mutual funds with the worst performance tend to continue to perform poorly in the future. Jonathan B. Berk, Jing Xu, *Persistence and Fund Flows of the Worst Performing Mutual Funds*, at 6 (2004) available at http://citeseerx.ist.psu.edu/viewdoc/download?doi=10.1.1.421.2127&rep=rep1&type=pdf (attributing continuing poor mutual fund performance to less responsive investors who do not pull their capital from the funds, causing the fund manager to change strategies).

77. As a result, plan fiduciaries such as Defendants here must be continually mindful of investment options to ensure they do not unduly risk plan participants savings and do not charge unreasonable fees.

78. Defendants must also be aware of the particular share class of the mutual fund available for investment to institutional and 401(k) plans, as certain shares can have lower fees than others. This lower fee is usually predicated on larger investment, *e.g.* the lower fee class of share is only available to those who can invest more money in the mutual fund. Thus, for the

same investment with the same manager, the fee can vary by 50 basis points or more between the retail share and the institutional share.

79. Plan fiduciaries must also be wary of conflicts of interest that arise when plan administrators and other fiduciaries select funds of business affiliates as investment options for the plans the fiduciaries administer. The inherent conflict of interest in such situations can cause affiliated funds to be selected when they are not the most prudent investment option and can cause those same funds to remain as an investment option despite poor performance.

80. In fact, one recent Pension Research Council working paper found in a study of such situations that "[a]ffiliated funds are more likely to be added and less likely to be removed from 401(k) plans" especially for the worst performing funds. *See* Pool, Veronika, Clemons Sialm, and Irina Stefenescu, *It Pays to Set the Menu: Mutual Fund investment Options in 401(k) Plans*, at 2 (May 2015). Moreover, even though plan participants may be aware of the affiliation, due to their documented naivety in investments and general inactivity in changing those investments, the study found "participants are not generally sensitive to poor performance and thus they do not undo the trustee bias." *Id*. at 3.

81. Nor did the possibility that fiduciaries could have had superior information about Edward Jones' Product Partners' or their business partners' funds correlate to improved performance. *Id*. "[A]ffiliated funds that rank poorly based on past performance but are not deleted from the menu do not perform well in the subsequent year" and thus "the decision to retain poorly-performing affiliated funds is not driven by information about the future performance of these funds." *Id*. at 3, 26.

82. Given the vulnerability of Plan participants, who are presented a menu of very limited choices but who are dependent on the retirement income earned by those choices, Plan

fiduciaries must be particularly vigilant about the selection and maintenance of affiliated funds in their 401(k) plans.

C. Defendants' Breaches of Fiduciary Duty

(1) Defendants Breached their Fiduciary Duty by Including Funds That Materially Benefitted Edward Jones' Business Arrangements and Cost Plan Participants Millions

83. The Supreme Court recently reaffirmed the ongoing fiduciary duty to monitor a plan's investment options in *Tibble v. Edison, Int'l*, 135 S. Ct. 1823 (2015). *Tibble* held that "an ERISA fiduciary's duty is derived from the common law of trusts," and that "[u]nder trust law, a trustee has a continuing duty to monitor trust investments and remove imprudent ones." *Id.* at 1828. In so holding, the Supreme Court referenced with approval the Uniform Prudent Investor Act (the "UPIA"), treatises, and seminal decisions confirming the duty.

84. *Tibble* cites with approval to the UPIA which enshrines trust law and recognizes that "the duty of prudent investing applies both to investing and managing trust assets. . . ." 135 S. Ct. at 1828 (quoting 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 comment.

85. 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 comment e(1) (emphasis added).

86. As described *supra*, one of the responsibilities of the Plan fiduciaries is to select investment options which have reasonable and not excessive fees for the performance and quality of service received, and to "avoid unwarranted costs" by being aware of the "availability and continuing emergence" of alternative investments that may have "significantly different costs." Restatement (Third) of Trusts ch. 17, intro. note (2007). *See also* Restatement (Third) of Trusts § 90 cmt. B (2007) ("Cost-conscious management is fundamental to produce in the investment function.") Adherence to these duties requires regular performance of an "adequate investigation" of existing investments in the Plan to determine whether any of the Plan's investments are "improvident," or if there is a "superior alternative investment" to any of the Plan's holdings. *See Pension Ben. Gaur. Corp. ex rel. St. Vincent Catholic Med. Ctrs. Ret. Plan v. Morgan Stanley Inv. Mgmt.*, 712 F.3d 705, 718-19 (2d Cir. 2013).

87. As the amount of assets under management approaches and exceeds $1 billion, the economies of scale dictate that lower and lower cost investment options will be available to these Plans. When large plans, particularly those with over $1 billion in assets, have options which approach the retail cost of shares for individual investors or are simply more expensive than the average institutional shares for that type of investment, a careful review of the Plan and each option is needed for the fiduciaries to fulfill their obligations to the Plan participants.

88. Throughout the Class Period, Edward Jones maintained revenue sharing and/or other business arrangements with certain mutual fund companies. These arrangements, both formal and informal, led to business partnerships (described below) in which Edward Jones

granted access to the investment option selection process for the Plan in return for consideration in the retail/client-side of their business.

89. Edward Jones, as an investment advisor, has the ability to recommend or not recommend any investment it deems "suitable" for its retail clients, because there is no fiduciary duty to retail clients at this time.[3] As a result, Edward Jones can and has entered into arrangements with various mutual fund companies, such as American Funds, Invesco, Goldman Sachs, Lord Abbett, and others, so that it can receive a portion of the investment fees charged to its clients in return for recommending their partners' products.

90. However, retail clients are free to pick from a wide variety of investment options. In order to entice these mutual fund companies into these arrangements, Edward Jones used the "captive market" of their own 401(k) plan, in which the menu of investment options was totally controlled by Edward Jones and its employees appointed to the Investment Committee. This would guarantee their business partners received investment management fees from Plan participants, who would have few options but to investment in the mutual funds of Edward Jones' business partners.

91. By this method, Edward Jones and Jones Financial profited by exploiting the captive market of the billions of dollars of assets under management in the Plan.

92. In so doing, Plan participants were forced to pay for high fee investment products because these business arrangements gave Edward Jones the incentive not to seek similar-performing, lower-cost alternatives on the market and not to leverage the size of the Plan into lower fees for the same investment products that were already in the Plan.

[3] The new so-called "fiduciary rule," which mandates businesses like Edward Jones provide investment advice that is in their clients' "best interest," will not go into effect until April 2017.

93. Some of these business partners, called "Product Partners," were in arrangements whereby "Edward Jones receives payments known as revenue sharing from certain mutual fund companies." *See* Exhibit D (2012 Revenue Sharing Disclosure); Exhibit E (2015 Revenue Sharing Disclosure). These revenues account for a majority of Edward Jones's profits and are costs borne directly by their clients in the form of higher asset management fees.

94. Edward Jones and the Committees Defendants do not have any duty to put its clients' interest before its own in providing brokerage or investment advice, unlike the fiduciary duties it had towards Plan participants.[4]

95. At best, Edward Jones' disclosures aimed at its clients (*see supra*, ¶ 93) only alerted Plan participants to a possible conflict of interest, without specifying the degree of conflict, the effect of the conflict, or whether it complied with the requirements of ERISA. Nor did the disclosures evaluate that conflict of interest in the situation in which Edward Jones had a fiduciary duty, such as it does with Plan participants.

96. Edward Jones was able to negotiate and secure these acknowledged Revenue Sharing Agreements with its Product Partners in part by guaranteeing them access to the billions of assets under managements in the Plan, where Edward Jones, through its designees, could choose all of the investment options. Edward Jones' participation in these revenue sharing agreements, by which it would be able to gain more fees from its clients, was contingent upon its provision of the Product Partners investment options in the Plan.

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[4] In fact, in response to new financial regulation mandating that brokers must put their clients' interests before their own, Edward Jones announced that it would no longer allow clients in commission-based accounts to invest in mutual funds or electronic transfer funds. *See Why This Brokerage Won't Let Investors Buy Funds and ETFs in Their IRAs*, Time.com (August 2016), available at http://time.com/money/4459130/edward-jones-bans-funds-etfs-in-iras/

97. Unlike the retail clients of Edward Jones, who can reject any investment despite its recommendation, the Plan participants are limited to the mutual funds made available for investment. Thus, the Plan participants and their billions of dollars of assets under management, are ***guaranteed income to the Product Partners***, who pay for their access to the Plan participants' money by sharing revenue with Edward Jones on their retail-side business.

98. Because of their business arrangements with the Product Partners, Defendants did not review the mutual fund offerings of the Product Partners with a critical eye. At the very least, the existence and profitability of the revenue-sharing arrangements with the Product Partners prevented Defendants from evaluating their proprietary investment options with an impartial view that considered the needs of the Plan and its participants first.

99. Moreover, the Revenue Sharing Agreements are not the only business arrangements that Edward Jones has with the providers of mutual funds. There are other arrangements, both formal and informal, that Edward Jones maintains with the Product Partner companies as well as other mutual fund companies that ensure those companies' products will be in the Plan so that Edward Jones can profit from steering its clients to those same products on the retail side.

100. By including the Product Partners' and other business partners' funds in the Plan, Defendants exposed Plan participants to unreasonably high fees both compared to cheaper shares in the same investment and compared to similar performing funds with lower fees available in the market, as demonstrated below. Additionally, by including and failing to remove the Product Partners' and other business partners' funds in the Plan, Edward Jones guaranteed that the Product Partners would have a steady stream of income from the Plan participants' investment in such funds by way of the management fees Plan participants have to pay.

101. Had Plan participants not wanted to invest in the Product Partners' funds, they would have been limited to four investment options in 2011 and eight investment options in 2015. Thus, Edward Jones materially benefitted its own revenue sharing relationships with the Product Partners and other business partners to the detriment of Plan participants by limiting Plan participants' investment options to the high fee investment options of the mutual fund companies with which it had business relationships which allowed it to profit directly from their retail-client's investments.

(a) <u>Product Partners' and Other Affiliated Entity Funds</u>

(i) 2010 Plan Year

102. At the end of 2010, the Plan fiduciaries maintained 36 mutual funds in the Plan of which 32, or approximately 89%, were managed by Defendants' Product Partners or other business partners. The Plan ended 2010 with $2,288,050,093 in total assets of which $2,269,544,690, or approximately 99.2%, were assets invested in the Product Partners' funds or Edward Jones' proprietary funds.

103. Approximately $965,896,996 was invested among three proprietary Edward Jones funds: (1) the Edward Jones Growth Fund; (2) the Edward Jones Growth and Income Fund; and (3) the Edward Jones Income Fund (all together the "Proprietary Funds".)

104. The Edward Jones Proprietary Funds were not traditional mutual fund products. Rather, the Propriety Funds were merely aggregator products in which Edward Jones put together a slate of investments in mutual fund options that were already available in the Plan. Upon information and belief, the vast majority of the investments in which the Proprietary Funds invested were mutual fund options from Product Partners and/or other business partners.

105. In 2010, the default investment for Plan participants was one of the Edward Jones Proprietary Funds, ensuring that at the very least, the most unsophisticated Plan participants would be paying fees to Edward Jones Product Partners and/or business partners.

106. Upon information and belief, in 2010, Edwards Jones maintained revenue sharing and/or other mutually beneficial arrangements with, among others, the following mutual fund companies: (1) American Funds; (2) Federated; (3) Franklin Templeton; (4) Goldman Sachs; (5) Hartford Capital; (6) Lord Abbett; and (7) Invesco. At the end of 2010, the Plan participants maintained $1,303,647,694 in Plan assets in the funds of these Product Partners. Cumulatively, the Plan participants paid approximately $7,420,839 in fees for investing in the 32 mutual funds the Product Partners managed, not including the Edward Jones Proprietary Funds.

107. This $7.4 million in fees came from expense ratios that ranged from 32 basis points for a domestic bond fund to 104 basis points for an emerging markets equity product.

108. Instead of leveraging the size of the Plan's assets, worth $2.29 billion at the end of 2010, and negotiating the investment option expenses into the lowest rates available on the market for plans of this size, usually between 2 and 40 basis points, Defendants chose instead to pack the Plan with high cost investment options available from its Product and/or business partners.

109. By selecting and maintaining the Product Partners' and/or business partners' mutual funds, the Plan fiduciaries put their own interests above those of the Plan participants. As a result of selecting and maintaining these 32 mutual funds in the Plan, the Plan fiduciaries guaranteed that the Product Partners and/or business partners would cumulatively receive millions of dollars in fees in 2010.

110. Edward Jones' ability to guarantee that their Product Partners and/or business partners would receive millions in fees from the Plan participants' retirement gave Edward Jones significant leverage in negotiating terms of the business arrangements between itself and its Products Partners and business partners so that Edward Jones could reap more profits from its client-side business. For example, by selecting Product Partners' and/or business partners' mutual fund products for the Plan, Edward Jones could guarantee those partners a customer base of tens of thousands of Plan participants and thus could extract more favorable terms on revenue sharing and/or other arrangements from those partners with regards to its own client-side business.

111. In order to ensure that their partners received these fees, Edward Jones saturated the Plan's investment portfolio with high cost mutual fund options from the Product and/or business partners with whom they had business arrangements. Indeed, in 2010, only one of the thirty-six investment options offered was not either a Product Partners' fund or an Edward Jones proprietary fund. Thus, if a Plan participant wished to save for retirement and not put all of their money in a single investment, they would be forced to select at least one and more likely many of the Product Partners and/or business partners' investment options.

112. In addition, because the default investment at the time was for one of the Edward Jones's proprietary funds, which themselves invested in investment options from the Product Partners and/or business partners, a significant portion of the Plan participants were automatically invested in Product Partners and/or business partner investment options.

113. Upon information and belief, the arrangements between Edward Jones and Product Partners and/or business partners gave Edward Jones and the Committees Defendants incentive to not use the size of the Plan to negotiate lower fees, nor to search the marketplace for

funds in the same asset class with similar or better performance and lower fees. In fact, at the time, there were a number of similar funds available in the market in the same asset classes that performed similarly to the Product Partners' and/or business partners' funds but charged significantly lower fees. The chart below is a non-exhaustive representation of some cheaper and similarly performing market alternatives in lieu of the high cost funds maintained in the Plan in 2010[5]:

114. Moreover, the Plan fiduciaries' desire to keep the ability to guarantee their business partners steady, significant fees—over $7 million in fees in 2010—prevented the Plan

[5] The chart lists the average fee amount in basis points. One basis point is 1/100 of 1%, so 100 basis points equal 1.0% whereas 50 basis points equal 0.5%, as do all charts in the Complaint. The 2010 Alternative Fund Fees chart compares the average fees, of those funds for which data is available, of the Plan funds that can be categorized as: (1) International; (2) Small Cap; (3) Mid Cap; (4) Large Cap Domestic; (5) Bonds and Income with a market alternative in the same category. The alternative fund for the International category is the Vanguard International Growth Fund (VWILX); the alternative for the Small Cap category is the AllianzGI NFJ Small-Cap Value Instl (PSVIX); the alternative for the Mid Cap category is the Vanguard Capital Value Inc (VCVLX); the alternatives for the Large Cap category are the Vanguard Equity-Income Adm (VEIRX) and the Vanguard PRIMECAP Adm (VPMAX); and the alternative for the Bond and Income category is the JHancock Income R6 (JSNWX). The alternative funds are non-exhaustive alternatives that are similarly performing but with lower fees on average that could be found by doing a limited search.

fiduciaries from pro-actively using the Plan's size to negotiate lower fees with the Product and/or business partners' funds already within the Plan. Upon information and belief, the Plan participants were charged the same expense ratio for each of the Product Partners' mutual funds in the Plan as the expense ratio reported on the funds' prospectuses. Plan participants were charged the same expense ratios that the Product Partners charge plans with hundreds of millions less in plan assets.

115. Similarly, the Plan fiduciaries interest in steering the Product Partners into better revenue sharing and/or other business arrangements in Edward Jones's client side business prevented the Plan fiduciaries from selecting and maintaining lower fee class shares of the Product Partners' mutual funds.

116. For example, in 2010, approximately $969,034,756, or more than 42%, of the Plan's assets were invested among 18 American Funds investment options. In this year, the Plan fiduciaries selected and maintained the R-5 share class of the 18 American Funds investment options. The R-5 share class allows for revenue sharing; specifically, the R-5 share class of each of the 18 American Funds allows for 5 basis points of revenue sharing. However, during 2010 each of the American Funds investment options also offered a non-revenue sharing R-6 share class that was between 4 and 6 basis points cheaper than the R-5 share class.[6]

117. As demonstrated in the graph below, the Plan fiduciaries had the option of purchasing the on-average 5 basis points cheaper R-6 share class of each Fund:

[6] Both the R-5 share class and the R-6 share class required the same initial minimum amount to purchase, $250. However, to the extent less expenses share classes were available for investment options within the Plan might have had a higher minimum amount to purchase, cheaper share classes were always available to a Plan which did not have any investment option with a current fair value of less than $5 million during the Class Period.

118. Cumulatively, the Plan participants paid approximately $4,299,506 in fees to American Funds for the $969,034,756 in Plan assets invested in the Plan's 18 American Funds R-5 share class investment options. Had the Plan fiduciaries selected and maintained the same investment option's R-6 share class, the Plan participants would have paid approximately $3,820,333 in fees. As a result of the Plan fiduciaries' selecting and maintaining the R-5 share class, the Plan participants paid approximately $479,173 more in fees from their retirement savings just to American Funds.

119. According to Plan documents and Form 5500's, any revenue sharing that Mercer or Edward Jones receive in the form of fees collected by the Plan, Edward Jones returns to the Plan participants, on a pro rata basis, after netting such revenue sharing from the administrative expenses Mercer charges.

120. However, the Plan participants are not privy to nor are they informed of the exact revenue sharing and/or other arrangements between Edward Jones and its Product and business

partners, nor the nature of the compensation for any other business arrangement. In fact, according to the Form 5500's, "[f]ees are calculated by the mutual fund companies and are based on assets under management held at the mutual fund companies." Upon information and belief, the Product Partners do not remit the full amount of revenue sharing fees allowed to be charged under the higher fee share classes in 2010 and throughout the Class Period.

121. For example, in the prospectuses of the 18 American Funds investment options included in 2010, investors are informed that a maximum of 5 basis points of the fund's fees may be used to pay affiliated entities for recordkeeping services. Upon information and belief, the Product Partners that offered lower cost share of the identical funds in the Plan in 2010 did not remit the full amount of fees that can possibly be remitted to the Plan.

122. The Plan fiduciaries failed to use as leverage the size of the Plan to either enter an arrangement whereby the Product Partners would remit the full amount or to select and maintain the lower fee share class of the same identical funds, or as is possible for Plans of this size, to negotiate another rate for investment altogether. By failing to use the size of the Plan as leverage, the Plan fiduciaries breached their duties to act in the best interests of the Plan and with due care in 2010 and throughout the Class Period.

(ii) 2011 Plan Year

123. At the end of 2011, the Plan fiduciaries maintained 43 mutual funds in the Plan of which 38, or approximately 88%, were managed by Defendants' Product Partners and/or business partners. The Plan ended 2011 with $2,284,291,841 in total assets of which $1,925,498,084, or approximately 84.3%, were assets invested in the Product Partners' and/or business partners' funds.

124. In 2011 Edwards Jones maintained revenue sharing and/or other mutually beneficial arrangements with, among others, the following fund families: (1) American Funds; (2) Federated; (3) Franklin Templeton; (4) Goldman Sachs; (5) Hartford Capital; (6) Lord Abbett; (7) Invesco; and (8) MFS. At the end of 2011, the Plan participants maintained at least $1,925,498,084 in Plan assets in the funds of these Product Partners. Cumulatively, the Plan participants paid more than $11 million in fees for investing in the 40 mutual funds the Product Partners and/or business partners managed.

125. By selecting, maintaining, and adding new Product Partners' and/or other business partners' mutual funds, the Plan fiduciaries put their own interests above those of the Plan participants, due to the relationships they maintained between Edward Jones and their business partners. This consideration, and not the fitness or prudence of the investment options for retirement income, was the primary reason these options were selected and maintained.

126. As a result of selecting and maintaining the 40 Product Partner and/or other business partner mutual funds in the Plan, the Plan fiduciaries guaranteed that the Product Partners and/or other business partners would cumulatively receive millions of dollars in fees in 2011.

127. Edward Jones could guarantee that the Product Partners would receive millions in fees from the Plan participants because 40 of the 43 investment options in 2011 were the Product Partners' and or other business partners' mutual funds. Thus, as in 2010, in 2011 the Plan participants' investment choices were limited to almost exclusively Edward Jones's business partners' investment options if the Plan participants wanted to save money for retirement.

128. In 2011, Edward Jones and the Committee Defendants removed the Edward Jones propriety options and replaced them with 7 "profit-sharing" portfolios. These portfolios were

available as options in the 401(k) plan, but were the only selections available for the profit-sharing portion of the retirement plan, in addition to the American Funds Money Market Fund. These options were a pre-selected menu of the options, from 7 to 21 investments, otherwise available in the Plan, again, almost completely stocked with investment options from the Product and/or business partners of Edward Jones. At most, one to three of the options in these portfolios were from a non-partner mutual fund company and at a no time during the Class Period did any of the portfolios contain any index funds, only higher cost actively managed options.

129. In 2011, Edward Jones and Committee Defendants made one of the Profit-Sharing Portfolios the default investment for Plan participants, the Balanced Towards Growth portfolio. This would remain the default investment option for the rest of the Class Period. Of the twenty-one investments in this portfolio, only three were not from business partners.

130. As in 2010, in 2011 the Plan fiduciaries selected and maintained the higher fee share classes of the same identical funds offered by the Product Partners. For example, as demonstrated in the chart below, the Plan fiduciaries selected and maintained the 5 basis points on average higher R-5 share classes of the American Funds investment options even though the 5 basis points lower R-6 share class was available:

131. Upon information and belief, the American Funds, and the other business partner mutual fund companies, did not remit the full amount of fees to the Plan under the revenue sharing share class for each of the business partner funds selected and maintained by the Plan fiduciaries.

132. Similarly, the Plan fiduciaries did not leverage the size the Plan to purchase lower fee share classes or to negotiate lower fees for the Plan because the Plan fiduciaries sought to maintain a profitable relationship with their business partners for Edward Jones' client-side business. Moreover, upon information and belief, the arrangements between Edward Jones and Product Partners and/or business partners in 2011 gave Edward Jones and the Committee Defendants incentive to not search the marketplace for funds in the same asset class with similar or better performance and lower fees. In 2011, as in 2010, similar funds available in the market

in the same asset classes that performed similarly to the Product Partners' and/or business partners' funds but charged significantly lower fees were available to the Plan. The chart below is a non-exhaustive representation of some cheaper and similarly performing market alternatives in lieu of the high cost funds maintained in the Plan in 2011[7]:

(iii) 2012 Plan Year

133. At the end of 2012, the Plan fiduciaries maintained 43 mutual funds in the Plan of which 40, or over 90%, were managed by Defendants' Product Partners and/or other business partners. The Plan ended 2012 with $2,752,324,995 in total assets of which over $2.3 billion or over 85%, were assets invested in their business partners' funds.

[7] The 2011 Alternative Fund Fees chart compares the average fees, of those funds for which data is available, of the Plan funds in 2011 that can be categorized as: (1) International; (2) Small Cap; (3) Mid Cap; (4) Large Cap Domestic; (5) Bonds and Income with a market alternative in the same category. The alternative fund for the International category is the Vanguard International Growth Fund (VWILX); the alternative for the Small Cap category is the AllianzGI NFJ Small-Cap Value Instl (PSVIX); the alternative for the Mid Cap category is the Vanguard Capital Value Inc (VCVLX); the alternatives for the Large Cap category are the Vanguard Equity-Income Adm (VEIRX) and the Vanguard PRIMECAP Adm (VPMAX); and the alternative for the Bond and Income category is the JHanckock Income R6 (JSNWX). The alternative funds are non-exhaustive alternatives that are similarly performing but with lower fees on average that could be found by doing a limited search.

134. Upon information and belief, in 2012 Edward Jones maintained revenue sharing and/or other business arrangements with, among others, the following fund families: (1) American Funds; (2) Federated; (3) Franklin Templeton; (4) Goldman Sachs; (5) Hartford Capital; (6) Lord Abbett; (7) Invesco; and (8) MFS. At the end of 2012, the Plan participants maintained $2,319,869,952 of Plan assets in the funds of these partners. Cumulatively, the Plan participants paid more than $15 million in fees for investing in the 40 mutual funds the Product Partners managed.

135. By selecting, maintaining, and adding new Product Partners' and/or other business partners' mutual funds, the Plan fiduciaries put their own interests above those of the Plan participants, due to the relationships they maintained between Edward Jones and its business partners. This consideration, and not the fitness or prudence of the investment options for retirement income, was the primary reason these options were selected and maintained.

136. Edward Jones could guarantee that the Product Partners and other business partners would receive millions in fees from the Plan participants because 40 of the 43 investment options in 2012 were Product Partners' and/or other business partners' mutual funds. Thus, as in previous years, in 2012 the Plan participants' investment choices were limited to almost exclusively Edward Jones' business partners' investment options if the Plan participants wanted to save money for retirement.

137. Upon information and belief, no material changes were made to the profit-sharing portfolio options in 2012.

138. As in previous years, in 2012, the Plan fiduciaries selected and maintained the higher fee share classes of the same identical funds offered by the investment options in the Plan. For example, as demonstrated in the chart below, the Plan fiduciaries selected and maintained the

higher cost R-5 share classes of the American Funds investment options even though cheaper shares, the R-6, were available:

139. Upon information and belief, the American Funds, and the other business partner fund families, did not remit the full amount of fees to the Plan under the revenue sharing share class for each of the Product Partners' funds selected and maintained by the Plan fiduciaries.

140. Similarly, the Plan fiduciaries did not leverage the size the Plan to purchase lower fee share classes or to negotiate lower fees for the Plan because the Plan fiduciaries sought to maintain a more profitable relationship with their business partners for Edward Jones' client-side business. Moreover, upon information and belief, the arrangements between Edward Jones and Product Partners and/or business partners in 2012 gave Edward Jones and the Committee Defendants incentive to not search the marketplace for funds in the same asset class with similar or better performance and lower fees. In 2012, as in previous years, similar funds available in the market in the same asset classes that performed similarly to the Product Partners' and/or business partners' funds but charged significantly lower fees were available to the Plan. The

chart below is a non-exhaustive representation of some cheaper and similarly performing market alternatives in lieu of the high cost funds maintained in the Plan in 2012[8]:

(iv) 2013 Plan Year

141. At the end of 2013, the Plan fiduciaries maintained 39 mutual funds in the Plan of which 32, or over 80%, were managed by Defendants' business partners. The Plan ended 2013 with $3,552,905,812 in total assets of which $2,877,456,244, or approximately 81%, were assets invested in the named Product Partners' funds.

142. Upon information and belief, in 2013 Edwards Jones maintained revenue sharing and/or other business arrangements with, among others, the following fund families: (1)

[8] The 2012 Alternative Fund Fees chart compares the average fees, of those funds for which data is available, of the Plan funds in 2012 that can be categorized as: (1) International; (2) Small Cap; (3) Mid Cap; (4) Large Cap Domestic; (5) Bonds and Income with a market alternative in the same category. The alternative fund for the International category is the Vanguard International Growth Fund (VWILX); the alternative for the Small Cap category is the AllianzGI NFJ Small-Cap Value Instl (PSVIX); the alternative for the Mid Cap category is the Vanguard Capital Value Inc (VCVLX); the alternatives for the Large Cap category are the Vanguard Equity-Income Adm (VEIRX) and the Vanguard PRIMECAP Adm (VPMAX); and the alternative for the Bond and Income category is the JHanckock Income R6 (JSNWX). The alternative funds are non-exhaustive alternatives that are similarly performing but with lower fees on average that could be found by doing a limited search.

American Funds; (2) Federated; (3) Franklin Templeton; (4) Goldman Sachs; (5) Hartford Capital; (6) Lord Abbett; (7) Invesco; (8) MFS; and (9) JP Morgan. At the end of 2013, the Plan participants maintained $2,877,456,244 in Plan assets in the funds of the Product Partners. Cumulatively, the Plan participants paid more than $17 million in fees for investing in the 32 mutual funds the business partners managed.

143. By selecting, maintaining, and adding new Product Partners' and/or other business partners' mutual funds, the Plan fiduciaries put their own interests above those of the Plan participants, due the relationships they maintained between Edward Jones and their business partners. This consideration, and not the fitness or prudence of the investment options for retirement income, was the primary reason these options were selected and maintained.

144. As a result of selecting and maintaining the 32 Product Partner mutual funds in the Plan, the Plan fiduciaries guaranteed that Edward Jones' business partners would cumulatively receive millions of dollars in fees in 2013.

145. As noted above, Edward Jones' ability to guarantee that the Product Partners would receive millions in fees from the Plan participants' retirement savings materially benefitted Edward Jones' revenue sharing and/or other business arrangements with it business partners in Edwards Jones' client-side business. Edward Jones could guarantee that the Product Partners would receive millions in fees from the Plan participants because 32 of the 39 investment options in 2013 were the Product Partners' mutual funds.

146. Thus, as in previous years, in 2013 the Plan participants' investment choices were limited, to a mere seven investment options, if they did not want to invest with a business partner of Edward Jones. That limitation severely curtailed the ability of Plan participants to construct a

well-balanced investment portfolio unless they were to select the funds of Edward Jones' business partners.

147. As in previous years, in 2013 the Plan fiduciaries selected and maintained the higher fee share classes of the same identical funds offered by the Product Partners and/or other business partners. For example, as demonstrated in the chart below, the Plan fiduciaries selected and maintained the higher cost R-5 share classes of the American Funds investment options even though the lower cost R-6 share class was available:

148. Upon information and belief, the American Funds, and the other Product Partners fund families, did not remit the full amount of fees to the Plan attributable to revenue sharing for each of the Product Partners' funds selected and maintained by the Plan fiduciaries.

149. Upon information and belief, the Plan fiduciaries did not leverage the size the Plan to purchase lower fee share classes or to negotiate lower fees for the Plan because the Plan fiduciaries sought to maintain a profitable relationship with the business partners of Edward

Jones for their client-side business. Moreover, upon information and belief, the arrangements between Edward Jones and Product Partners and/or business partners in 2013 gave Edward Jones and the Committee Defendants incentive to not search the marketplace for funds in the same asset class with similar or better performance and lower fees. In 2013, as in previous years, similar funds available in the market in the same asset classes that performed similarly to the Product Partners' and/or business partners' funds but charged significantly lower fees were available to the Plan. The chart below is a non-exhaustive representation of some cheaper and similarly performing market alternatives in lieu of the high cost funds maintained in the Plan in 2013[9]:

[9] The 2013 Alternative Fund Fees chart compares the average fees, of those funds for which data is available, of the Plan funds in 2013 that can be categorized as: (1) International; (2) Small Cap; (3) Mid Cap; (4) Large Cap Domestic; (5) Bonds and Income with a market alternative in the same category. The alternative fund for the International category is the Vanguard International Growth Fund (VWILX); the alternative for the Small Cap category is the AllianzGI NFJ Small-Cap Value Instl (PSVIX); the alternative for the Mid Cap category is the Vanguard Capital Value Inc (VCVLX); the alternatives for the Large Cap category are the Vanguard Equity-Income Adm (VEIRX) and the Vanguard PRIMECAP Adm (VPMAX); and the alternative for the Bond and Income category is the JHanckock Income R6 (JSNWX). The alternative funds are non-exhaustive alternatives that are similarly performing but with lower fees on average that could be found by doing a limited search.

(v) 2014 Plan Year

150. At the end of 2014, the Plan fiduciaries maintained 38 mutual funds in the Plan of which 31, or approximately 79%, were managed by Defendants' Product Partners and/or business partners. The Plan ended 2014 with $3,958,142,773 in total assets of which at least $3,135,293,709, or approximately 79.2%, were assets invested in the business partners' funds.

151. Upon information and belief, in 2014 Edwards Jones maintained revenue sharing and/or other business arrangements with, among others, the following fund families: (1) American Funds; (2) Federated; (3) Franklin Templeton; (4) Goldman Sachs; (5) Hartford Capital; (6) Lord Abbett; (7) Invesco; (8) MFS; (9) JP Morgan; and (10) BlackRock. At the end of 2014, the Plan participants maintained over $3.1 billion in Plan assets in the funds of these business partners. Cumulatively, the Plan participants paid more than $17 million in fees for investing in the 32 mutual funds the Product Partners managed.

152. By selecting, maintaining, and adding new Product Partners' and/or other business partners' mutual funds, the Plan fiduciaries put their own interests above those of the Plan participants, due the relationships they maintained between Edward Jones and their business partners. This consideration, and not the fitness or prudence of the investment options for retirement income, was the primary reason these options were selected and maintained.

153. As a result of selecting and maintaining the 31 Product Partner mutual funds in the Plan, the Plan fiduciaries guaranteed that the Product Partners and/or other business partners would cumulatively receive millions of dollars in fees in 2014.

154. As noted above, Edward Jones' ability to guarantee that the Product Partners and/or other business partners would receive millions in fees from the Plan participants' retirement savings materially benefitted Edward Jones' revenue sharing and/or other business

arrangements with those business partners in Edwards Jones' client-side business. Edward Jones could guarantee that their business partners would receive millions in fees from the Plan participants because 31 of the 38 investment options in 2014 were the Product Partners' mutual funds.

155. Thus, as in previous years, in 2014 the Plan participants' investment choices were limited, to a mere seven investment options, if they did not want to invest with a business partner of Edward Jones. That limitation severely curtailed the ability of Plan participants to construct a well-balanced portfolio of investment unless they were to select the funds of Edward Jones' business partners.

156. As in previous years, in 2014 the Plan fiduciaries selected and maintained the higher fee share classes of the same identical funds offered by the Product Partners. For example, as demonstrated in the chart below, the Plan fiduciaries selected and maintained the higher fee R-5 share classes of the American Funds investment options even though the lower fee R-6 share class was available:

157. Upon information and belief, the American Funds, and the other Product Partners fund families, did not remit the full amount of fees to the Plan attributable to revenue sharing for each of the Product Partners' funds selected and maintained by the Plan fiduciaries.

158. Upon information and belief, the Plan fiduciaries did not leverage the size the Plan to purchase lower fee share classes or to negotiate lower fees for the Plan because the Plan fiduciaries sought to maintain a profitable relationship with the business partners of Edward Jones for their client-side business. Moreover, upon information and belief, the arrangements between Edward Jones and Product Partners and/or business partners in 2014 gave Edward Jones and the Committee Defendants incentive to not search the marketplace for funds in the same asset class with similar or better performance and lower fees. In 2014, as in previous years, similar funds available in the market in the same asset classes that performed similarly to the Product Partners' and/or business partners' funds but charged significantly lower fees were available to the Plan. The chart below is a non-exhaustive representation of some cheaper and

similarly performing market alternatives in lieu of the high cost funds maintained in the Plan in 2014[10]:

(vi) 2015 and Beyond

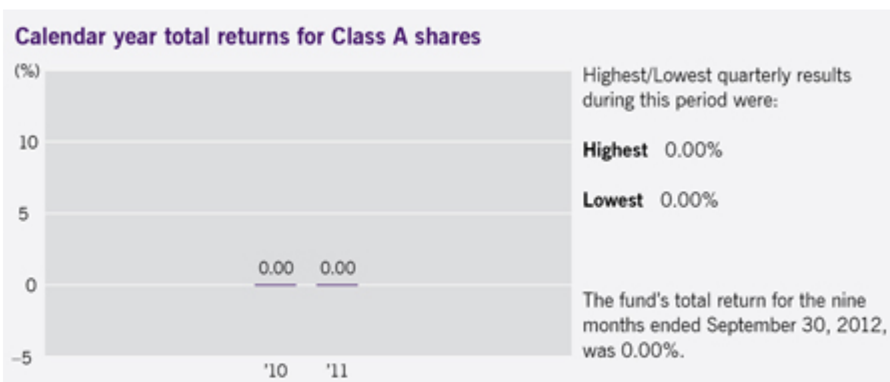
159. For both 2015 and 2016, upon information and belief, the Plan maintained the same funds as available in 2014. An analysis of the Plan's funds in 2015 and 2016 is currently not possible as the Plan's Form 5500 for 2015 does not provide a list of the funds available to Plan participants in the 2015 year and as 2016 is not yet finished, no Form 5500 has been filed for the 2016 year.

[10] The 2014 Alternative Fund Fees chart compares the average fees, of those funds for which data is available, of the Plan funds in 2014 that can be categorized as: (1) International; (2) Small Cap; (3) Mid Cap; (4) Large Cap Domestic; (5) Bonds and Income with a market alternative in the same category. The alternative fund for the International category is the Vanguard International Growth Fund (VWILX); the alternative for the Small Cap category is the AllianzGI NFJ Small-Cap Value Instl (PSVIX); the alternative for the Mid Cap category is the Vanguard Capital Value Inc (VCVLX); the alternatives for the Large Cap category are the Vanguard Equity-Income Adm (VEIRX) and the Vanguard PRIMECAP Adm (VPMAX); and the alternative for the Bond and Income category is the JHanckock Income R6 (JSNWX). The alternative funds are non-exhaustive alternatives that are similarly performing but with lower fees on average that could be found by doing a limited search.

160. However, upon information and belief, in 2016, the Plan fiduciaries after recognizing the inherent conflict of interest in maintaining the revenue sharing higher fee share classes of certain of the Product Partners' and/or business partners' funds switched some of the funds to the lower fee non-revenue sharing share classes. Nonetheless, upon information and belief, the Plan fiduciaries maintained a significant number of the Product Partners' and or business partners' funds in the Plan.

(vii) Defendants Breached their Fiduciary Duty by Including an Unreasonably High Fee and Poor Performing Money Market Fund Option Throughout the Class Period

161. During the entirety of the Class Period Defendants included the American Funds Money Market Fund (RAEXX) ("Money Market Fund") as an investment option in the Plan. On December 1, 2012, the Money Market Fund filed its Prospectus with the SEC and reported the following returns since 2010.



162. On April 22, 2016, the Monet Market Fund filed its Prospectus with the SEC and reported the following returns since 2010:

163. As demonstrated by the two charts above, **the Money Market Fund has had a return of 0% during the entirety of the Class Period**. For complete lack of a return since 2010, the Money Market Fund maintained an expense ratio of 38 basis points. As a result, any investment in the Money Market Fund would have been a guaranteed loss of value, since every year, at least 0.38% of the funds invested would have taken away for fees by American Funds.

164. As a result, due to the presence of average inflation of approximately 1.74% over the course of the Class Period means that the Plan participants who invested in the Money Market Fund had an average yearly return of *negative* 2.12%.[11]

165. Not only is the inclusion of a guaranteed loss of value investment option imprudent, Defendants chose to select the Money Market Fund of American Funds, one of its business partners, over any other Money Market Fund available during the Class Period.

166. In fact, yearly data compiled by the ICI showed that the average cost of a Money Market Fund over the Class Period, which includes the prices paid by 401(k) plans of significantly smaller size than Edward Jones' Plan, shows that the Plan was paying on average 19 more basis points than it should have been, as demonstrated below.

[11] *See* http://www.usinflationcalculator.com/inflation/current-inflation-rates/ (reporting inflation yearly inflation rates).

167. However, had Defendants included a stable value fund in the Plan, an investment option with the same risk profile as a money market fund, the Plan participants would not have suffered the negative return on their investments that they experienced in the Money Market Fund. For example, as demonstrated below, the Vanguard Retirement Trust II delivered the following inflation and expense ratio adjusted returns for each year during the Class Period:

168. As a result of Defendants including and maintaining the Money Market Fund, investors in the fund during the Class Period cumulatively lost approximately $15 million dollars.

169. The only reason to include the American Funds Money Market Fund was the business relationship between Edward Jones and American Funds, whereby Edward Jones used its Plan to guarantee American Fund customers in order to secure a material benefit on its business arrangements with American Funds on its client-side business.

(2) <u>Defendants Breached their Fiduciary Duty By Overweighting the Plan's Investment Portfolio with Product Partners' Actively Managed and Other High Risk Investment Options</u>

170. Throughout the entirety of the Class Period, Edward Jones and the Committee Defendants failed to provide a portfolio of plan investment options that would satisfy the requirements of ERISA and the stated purpose of the Plan to provide a secure retirement income.

171. Instead, Edward Jones and the Committee Defendants have flooded the Plan with aggressive, high-risk investment options that they knew would be unreasonable for the purposes of ERISA and the Plan because as sophisticated financial planners, they were aware that actively managed options tended not to outperform the market over the longer term enough to justify their higher investment management costs.

172. Despite this knowledge, Defendants did not even offer passively managed index funds until 2013, as illustrated by the chart below[12]. This is well beyond the time any reasonably prudent administrator of their sophistication would have included such options in the Plan.

[12] This chart shows options in the Plan from 2010 to 2014, as the Form 5500 filed for the Plan Year 2015 did not include a list of funds available in the Plan. Upon information and belief, the Plan options in 2015 and 2016 are similar to Plan Year 2014.

173. Additionally, rather than offer an array of options that truly encompassed a wide variety of risk/reward investment styles, as suitable for their employees with financial planner education as those who managed their offices, Defendants selected far more Large Cap, Bond and Income, and International investment options, nearly all of them actively managed, as illustrated below.

174. As a result of this unbalanced portfolio, any Plan participant who naively diversified—merely split their investments among all the options available[13]—would be overinvested in Large Cap and Bond and Income assets, as well as having a dangerous exposure to the International asset class, the most risky type of investment.

175. Even if a Plan participant did not choose every option in the Plan, this concentration of investment options in three asset classes has a strong steering effect, since exposure to only one or two options in the other classes meant that a Plan participant who was trying to diversify would have found it impossible to do so within the Mid Cap or Small Cap asset classes and then defaulted to the other classes available, Large Cap, Bond and Income, or International.

176. The menu of investment options was tailored by Defendants so that Plan participants were forced into high fee, higher risk investments if they wished to have a shot at a diversified portfolio.

177. The saturation of the Plan's portfolio with Product Partner and/or other business partners' investment options explains this completely unbalanced and unsuitable for the purposes of ERISA menu of investment choices as illustrated in the below chart.

[13] Naïve diversification is an investment approach first identified in 2001, in which an investor makes no choice and simply divides their money among all the options available. *See* Shlomo Benartzi & Richard H. Thaler, *Naïve Diversification Strategies in Defined Contribution Savings Plans*, 91 AM. ECON. REV, 79 (2001). Naïve diversification may also be enhanced by "menu effect," in which asset class allocations are decided by the options provided in the plan instead of independently arriving at an allocation that meets an investor's needs and goals, such that "investors fail to reject even unattractive investment options." *See* Jill E. Fisch & Tess Wilkinson-Ryan, *Why Do Retail Investors Make Costly Mistakes? An Experiment on Mutual Fund Choice*, 162 U. PA. L. Rev. 605, 623, 644 (2014) ("Consistent with the literature, our findings about the extent of diversification seem to confirm a high degree of naïve diversification.")

178. This steering is particularly acute in the Profit Sharing Investment Options offered by the Plan.

179. As noted *infra*, Plan participants also received profit-sharing contributions from Edward Jones. Unlike their own 401(k) contributions, profit-sharing contributions could only be invested in one of seven investment portfolios designed by the Investment Committee along with the Money Market Fund, a fund with a return of 0% while maintaining a cost of around 38 basis points throughout the Class Period.

180. Of the seven investment portfolios, one of which is the designated default investment option for all contributions, the Profit Sharing Balanced Towards Growth, not a single one included a passive-managed investment at any time during the Class Period.

181. Instead, these portfolios, which allocated investments between seven and twenty-one different mutual funds, only ever included between one and four mutual funds from firms who did not have business arrangements with Edward Jones which returned a material benefit to the Company.

182. Even for those options which were not managed by such business partners, there existed other financial relationships that were not readily disclosed to Plan participants and may have persuaded Defendants to include their products in the Plan's investment options. For example, the Champlain Mid Cap Fund which was in six of the seven profit sharing portfolios, is run by the Champlain Investment Partners, who are one of the investment sub-advisors of the Bridge Builder Mutual Funds, a proprietary investment product of Edward Jones in collaboration with Olive Street Investment Advisors, another wholly owned subsidiary of Jones Financial.

183. Moreover, the prospectuses of the Champlain Mid Cap Fund discloses that it pays "from time to time" certain affiliated or unaffiliated "financial intermediaries" for access to their clients and/or preferential treatment of their products. *See Champlain Mid Cap Fund Prospectus dated November 28, 2013*, at 20, available at http://www.cipvt.com/pdf/Champlain%20Statutory%20Prospectus%202013.pdf. As described by the Fund itself, "financial intermediaries may receive payments for making shares of the Funds available to their customers or registered representatives, including providing Funds with 'shelf space,' placing it on a preferred or recommended fund list, or promoting the Funds in certain sales programs that are sponsored by financial intermediaries." *Id.*

184. Edward Jones may have such a "shelf space" or other arrangement with Champlain Investment Partners, LLC and/or an affiliated company so that Edward Jones would put the Champlain Mid Cap Fund in its profit-sharing portfolios within the Plan. However, no information has been made available to Plan participants regarding the nature of their business arrangements.

185. Similarly, Dodge & Cox discloses in the prospectuses for its International Stock Fund and Income Funds, included in both the Plan's at-large portfolio as well as the profit-

sharing portfolios, that it makes payments to financial intermediaries "if you purchase a Fund through an employee benefit plan." *See Summary Prospectus for Dodge & Cox International Stock Fund dated May 1, 2016,* available at http://prospectus-express.newriver.com/PNET/summary.asp?clientid=edjps&fundid=DODFX. However, no disclosure of the precise nature of these arrangements was ever made to Plan participants.

186. But for these business arrangements, whether disclosed to their clients as revenue-sharing arrangements, or termed "shelf space" arrangements, or other business arrangements, Defendants would not have weighted the Plan's portfolio or the constructed profit-sharing portfolios so heavily with the actively managed funds of its affiliates, whether or not they were identified as Product Partners.

187. Further, these portfolios themselves were similarly stuffed with international and large cap options, making them inappropriate for purposes of ERISA. For example, the Balanced Towards Growth Portfolio had twenty-one actively managed mutual funds, eight of which were in the International asset class and six of which were in the Large Cap asset class and only one which did not appear to return a benefit to Edward Jones.

188. As a result of this menu-stuffing, Plan participants were forced to select funds at unduly high fees in arrangements that ultimately benefited Edward Jones and its owner, Jones Financial.

189. The options that Defendants selected contravened the purpose of ERISA, in that they provided Plan participants not with a wide array of risk/reward profiles intended to provide retirement income, but instead provided a portfolio unduly weighted towards high risk investment options intended to provide Defendants with access to revenue sharing and/or other beneficial agreements with mutual fund companies.

(3) Defendants Breached their Fiduciary Duty to Avoid Conflicts of Interest

190. By selecting and retaining the mutual funds run by its Product Partners, Defendants have acted at all times in the interest of Edward Jones, and have not acted solely in the interests of the Plan participants as is required of a fiduciary under ERISA, who are required to serve the Plan loyally with an "eye single" to the Plan. *See generally Mertens v. Hewitt Assoc.*, 508 U.S. 248, 251-52 (1993); 29 U.S.C. § 1104(a)(1)(B).

191. Given the sheer amount and cost of the mutual fund options in the Plan provided by the business partners of Edward Jones, it is clear that their ongoing business relationship affected the investment selection and retention process of Edward Jones and the Committee Defendants, in clear violation of this ERISA loyalty standard.

192. Defendants have a conflict of interest that prevented them from carrying out their fiduciary duties in a manner consistent with ERISA. Despite this conflict of interest, Defendants have failed to appoint fiduciaries who could carry out their duties to protect the Plan's participants in a manner consistent with ERISA or to take other appropriate steps to address the conflict.

CLAIMS FOR RELIEF UNDER ERISA

193. 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).

194. 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.

195. 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.

196. 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 plan solely in the interest of the participants and their 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 family with such matters would use in the conduct of an enterprise of a like character and with like aims.

197. 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." *Braden v. Wal-Mart Stores, Inc.,* 588 F. 3d 585, 598 (8th Cir. 2009) (citation omitted). 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 to 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 then 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.

198. 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 an 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.

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

FIRST CLAIM FOR RELIEF
Failure to Prudently and Loyally Manage the Plan's Assets
(Breaches of Fiduciary Duties in Violation of ERISA § 404 and § 405 by All Defendants)

200. Plaintiffs re-allege and incorporate herein by reference all prior allegations in this Complaint as if fully set forth herein.

201. At all relevant times, as alleged above, all 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.

202. 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. Defendants were responsible for ensuring that all investments available to the Plan participants were prudent and that such investments were consistent with the purpose of the Plan. Defendants are liable for losses and excessive fees incurred as a result of such investments being imprudent.

203. 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.

204. Moreover, ERISA § 404 (a)(1)(A), 29 U.S.C. § 1104(a)(1)(A), imposes on plan fiduciaries a duty of loyalty, that is, a duty to discharge their duties with respect to a plan solely in the interest of the participants and beneficiaries and for the exclusive purpose of providing benefits to participants and beneficiaries.

205. Defendants' duty of loyalty and prudence obligates them to speak truthfully to participants, not to mislead them regarding the Plan or its assets, and to disclose information that

participants need to 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.

206. Defendants breached their duties to prudently and loyally manage the Plan's assets. During the Class Period, these Defendants knew or should have known that, as described herein, the affiliated funds were not suitable and appropriate investments for the Plan. The affiliated funds included in the Plan during the Class Period, whether by excessive fees or sustained, poor performance, clearly did not serve the Plan's stated purpose. Yet, during the Class Period, despite their knowledge of the imprudence of the investment, Defendants failed to take any meaningful steps to protect Plan participants from the inevitable excessive costs and the loss of earnings that resulted.

207. Defendants additionally breached their duties to prudently and loyally manage the Plan's assets by failing to have in place a method of systematic review by impartial, non-conflicted fiduciaries, both of the Plan's individual investment options and of the portfolio as a whole, in order to ensure that the investments were suitable and appropriate for the objectives of the Plan.

208. Defendants further breached their duties of loyalty and prudence by failing to divest the Plan of these affiliated funds when they knew or should have known that they were not suitable and appropriate Plan investments.

209. Defendants further breached their duties of loyalty and prudence by failing to ensure that participants liquidated their investments in the affiliated funds and transferred the sale proceeds to the other investment options available in the Plan. With actual or constructive knowledge that Plan participants did not have full and complete information about Edward Jones' interest in these funds, and thus were unable to make fully informed decisions about whether to retain their holdings in the affiliated funds, Defendants had the fiduciary obligation to either inform Plan participants of the need to take action to protect their financial interest, or, if necessary, to liquidate the Plan's holdings of the affiliated funds on participants' behalf to ensure that they did not suffer a financial loss.

210. Defendants also breached their co-fiduciary obligations by, among their other failures: knowingly participating in, or knowingly undertaking to conceal, the self-interest of Edward Jones in retaining the expensive affiliated fund investment options. Defendants had or should have had knowledge of such breaches by other Plan fiduciaries, yet made no effort to remedy them.

211. 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 investments. Had Defendants taken appropriate steps to comply with their fiduciary obligations, participants could have liquidated some or all of their holdings in the affiliated funds and thereby eliminated, or at least reduced, losses to the Plan.

212. 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.

SECOND CLAIM FOR RELIEF
Failure to Adequately Monitor Other Fiduciaries and Provide Them with Accurate Information
(Breaches of Fiduciary Duties in Violation of § 404 by Edward Jones, The Jones Financial Companies, L.L.L.P, James D. Weddle)

213. Plaintiffs re-allege and incorporate herein by reference all prior allegations in this Complaint as if fully set forth herein.

214. At all relevant times, as alleged above, Edward Jones, The Jones Financial Companies, L.L.L.P., and James D. Weddle were fiduciaries to the Plan, within the meaning of ERISA § 3(21)(A), 29 U.S.C. § 1002(21)(A).

215. At all relevant times, as alleged above, the scope of the fiduciary responsibility of these Defendants included the responsibility to appoint, evaluate, and monitor other fiduciaries, including without limitation, the members of the various Committees and the investment managers and others to whom fiduciary responsibilities were delegated.

216. The duty to monitor entails both giving information to and reviewing the actions of the monitored fiduciaries. In this case, that means that the monitoring fiduciaries had the duty to:

(a) Ensure that the monitored fiduciaries possess the needed credentials and experience, or use qualified advisors and service providers to fulfill their duties. They must be knowledgeable about the operations of the Plan, the goals of the Plan, and the behavior of the Plan's participants;

(b) Ensure that the monitored fiduciaries are provided with adequate financial resources to do their job;

(c) Ensure that the monitored fiduciaries have adequate information to do their job of overseeing the Plan's investments;

(d) Ensure that the monitored fiduciaries have ready access to outside, impartial advisors when needed;

(e) Ensure that the monitored fiduciaries maintain adequate records of the information on which they base their decisions and analysis with respect to the Plan's investments; and

(f) Ensure that the monitored fiduciaries report regularly to the monitoring fiduciaries. The monitoring fiduciaries must then review, understand, and approve the conduct of the hand-on fiduciaries.

217. Under ERISA, a monitoring fiduciary must ensure that the monitored fiduciaries are performing their fiduciary obligations, including those with respect to the investment of a plan's assets, and must take prompt and effective action to protect a plan and its participants when they are not. In addition, a monitoring fiduciary must provide the monitored fiduciaries with complete and accurate information in their possession that they know and reasonably should know that the monitored fiduciaries must have in order to prudently manage a plan and a plan's assets.

218. The Defendants breached their fiduciary monitoring duties by, among other things, (a) failing to explicitly disclose the conflict of interest that existed between Edward Jones and the affiliated funds, (b) failing to monitor and evaluate the performance of affiliated funds such that the Plan lost millions of dollars to excessive fees, (c) failing to monitor the processes and policies by which the Plan's investments were selected, allowing the Plan's assets to remain in the high-fee affiliated fund share classes rather than in lower fee share classes of the identical funds and failing to remove high fee funds for similarly performing low fee funds or other investment alternatives such as collective trusts, (d) failing to remove the affiliated funds as

investment options due to their imprudence and unreasonable expense, and (e) failing to remove the fiduciaries who had maintained the affiliated funds as investment options despite the conflict of interest, the excessive expense, and the poor performance of the Funds.

219. Defendants are 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.

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

221. 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.

CAUSATION

222. The Plan suffered millions of dollars in losses because substantial assets of the Plan were imprudently invested, or allowed to be invested by Defendants, in affiliated funds during the Class Period, in breach of Defendants' fiduciary duties, as reflected in the diminished account balances of the Plan's participants.

223. Had Defendants properly discharged their fiduciary and/or co-fiduciary duties, the Plan and its participants would have avoided a substantial portion of the losses that they suffered through the Plan's continued investment in the affiliated funds.

REMEDY FOR BREACHES OF FIDUCIARY DUTY

224. As noted above, as a consequence of Defendants' breaches, the Plan suffered significant losses.

225. ERISA § 502(a), 29 U.S.C. § 1132(a) 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 …"

226. With request to calculation of the losses to a plan, breaches of fiduciary duty result in a presumption that, but for the breaches of fiduciary duty, the participants and beneficiaries in the Plan would not have made or maintained its investments in the challenged investment and, where alternative investments were available, that the investments made or maintained in the challenged investment would have instead been made in the most profitable alternative investment available. In this way, the remedy restores the values of the Plan's assets to which they would have been if the Plan had been properly administered.

227. Plaintiffs, the Plan, and the Class are therefore entitled to relief from Defendants in the form of: (1) 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); (2) injunctive and other appropriate equitable relief to remedy the breaches alleged above, as provided by ERISA §§ 409(a) and 502(a), 29 U.S.C. §§ 1109(a) and 1132(a); (3) 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; (4) taxable costs; (5) interest on these amounts, as provided by law; and (6) such other legal or equitable relief as may be just and proper.

228. Each Defendant is jointly liable for the acts of the other Defendants as co-fiduciary.

JURY DEMAND

229. Plaintiffs demand a jury.

PRAYER FOR RELIEF

230. WHEREFORE, Plaintiffs pray that judgment be entered against Defendants on all claims and requests that the Court awards the following relief:

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

B. A Declaration that the Defendants, collectively and separately, are not entitled to the protection of ERISA § 404(c)(1)(B), 29 U.S.C. § 1104(c)(1)(B);

C. 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 a result of breaches of fiduciary duty;

E. 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;

F. An Order that Defendants allocate the Plan's recoveries to the accounts of all participants who had any portion of their account balances invested in the proprietary funds maintained by the Plan in proportion to the accounts' losses attributable to excessive fees and underperformance of the proprietary investments;

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

H. An Order awarding attorneys' fees pursuant to 29 U.S.C. § 1132(g) and the common fund doctrine; and

I. An Order for equitable restitution and other appropriate equitable monetary relief against the Defendants.

Dated: November 11, 2016

Respectfully submitted,

By: /s/ *Matthew H. Armstrong*

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