IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

CRYSTAL JOHNSON and CORISSA L. BANKS, individually and as the representatives of a class of participants and beneficiaries in the Delta Family Care Savings Plan, *Plaintiffs,* -against- DELTA AIR LINES, INC., ADMINISTRATIVE COMMITTEE OF DELTA AIR LINES, INC., and CHRISTOPHER COLLINS, *Defendants.*	Civil Action No. ________ **JURY TRIAL DEMANDED**

CLASS ACTION COMPLAINT

Plaintiffs Crystal K. Johnson and Corissa L. Banks ("Plaintiffs"), individually and as the representatives of a class of participants and beneficiaries in the Delta Family Care Savings Plan (the "Plan"), by and through counsel, bring this action under 29 U.S.C. § 1132(a)(2) and (3) on behalf of the Plan against Defendants Delta Air Lines, Inc. ("Delta"), Administrative Committee of Delta Air Lines, Inc. and Christopher Collins for breach of fiduciary duties under the Employee Retirement Income Security Act, 29 U.S.C. §§ 1001-1461 ("ERISA"), and allege as follows:

NATURE OF THE ACTION

1. This is a class action brought by participants in one of the 401(k) plans offered by Delta, against Delta as the sponsor of that plan and against the plan's administrators. Under ERISA, the plan administrators owe strict fiduciary duties to the plan's participants. Delta and

its plan's administrators breached those fiduciary duties in numerous ways, to the detriment of Plaintiffs and the Class, as described herein.

2. As it governs, among other things, third-parties' handling of plan participants' hard-earned retirement savings, ERISA imposes the strictest and highest fiduciary duties of skill, care and loyalty on those entrusted with these funds. Not surprisingly, these fiduciary duties require ERISA plan administrators to act solely in the interests of the plan participants so as to maximize the value of their investments.

3. One aspect of maximizing the value of the Plan investments is to minimize the fees charged by the Plan. Given its size and prominent place in the marketplace, the Plan here had and has the ability to demand and obtain lower cost investment options from the providers of those investments who are eager to market their services to plans such as the one at issue here.

4. The Defendants, however, did not provide the participants in the Plan with the lowest cost investment options that easily were available to them. This resulted in a failure of the most fundamental of the Defendants' fiduciary duties to the Plan participants.

5. By way of example, Defendants selected the fund Janus Forty S, with an expense ratio of 1.00, as an investment option, when the equivalent fund Janus Forty I, with an expense ratio of .60, was available; Janus Research T, with an expense ratio of .95, when Janus Research I, with an expense ratio of .78 was available; and PIMCO Low Duration ADM, with an expense ratio of .71, when PIMCO Low Duration D, with an expense ratio of .56 was available.

6. Defendants' conduct thus cost Plaintiffs and the Class millions of dollars needlessly expended on excessive fees and costs.

7. In addition, through their breach of their fiduciary duties to Plaintiffs and the Class, Defendants allowed the Plan to be charged costs and fees for administrative services like

recordkeeping which were far in excess of what the Plan should have paid. This, too, cost Plaintiffs and the Class millions of dollars that could and should have been retained and invested in the participants' retirement accounts.

8. As a result of the substantial damages they suffered, Plaintiffs, individually and as the representatives of a class of participants and beneficiaries of the Plan, bring this action in order to recover these damages from Defendants and thus restore their crucial retirement savings to them.

JURISDICTION AND VENUE

9. This Court has exclusive jurisdiction over the subject matter of this action under 29 U.S.C. § 1132(e)(1) and 28 U.S.C. § 1331, because it is an action arising under 29 U.S.C. § 1132(a)(2) and (3).

10. This District is the proper venue for this action under 29 U.S.C. § 1132(e)(2) and 28 U.S.C. § 1391(b), because it is the district in which the Plan is administered, where at least one of the alleged breaches took place, and where at least one defendant resides.

PARTIES

Delta Family Care Savings Plan

11. The Delta Family Care Savings Plan (the "Plan") is an "employee pension benefit plan" under 29 U.S.C. § 1002(2)(A) and an "individual account plan" (also known as a "defined contribution plan") under 29 U.S.C. § 1002(34).

12. The Plan was established and is maintained under a written document as provided in 29 U.S.C. § 1102(a)(1).

13. The Plan is designed to help provide retirement income for certain employees of Delta Air Lines, Inc. The amount of such retirement income available to a given Plan participant

depends upon contributions each employee may choose to make out of his or her compensation to the Plan, matching contributions by Delta, and performance of the Plan's investment options over time, net of fees and expenses.

14. As of December 31, 2012, the Plan boasted $5,692,497,139 in net assets and 83,012 participants with account balances. As such, it is among the largest defined contribution plans in the country. Such large plans are generally called "jumbo plans."

15. Under the terms of the Plan, participants are eligible to contribute a discretionary amount of their annual compensation to the Plan and Delta makes a matching contribution.

16. The Plan allows participants to designate investment options into which their individual accounts are invested. Defendants exercise exclusive and discretionary authority and control over the investment options that are included in the Plan.

17. Pursuant to the description provided in the Plan audit, the operation and administration of the Plan, except for investment management and control of assets, are vested in the Administration Committee of the Company. The Benefit Funds Investment Committee has authority with respect to all of the investment alternatives offered under the Plan.

18. As it oversees assets of more than $1 billion, the Plan is within the highest percentile, based on total assets, of all defined contribution plans in the nation that filed a Form 5500 with the Department of Labor.

Plaintiffs

19. Crystal K. Johnson resides in Atlanta, Georgia, and is a participant in the Family Plan pursuant to 29 U.S.C. § 1002(7) because she and her beneficiaries are or may become eligible to receive benefits under the Plan.

20. Corissa L. Banks resides in Union City, Georgia, and is a participant in the Family Plan pursuant to 29 U.S.C. § 1002(7) because she and her beneficiaries are or may become eligible to receive benefits under the Plan.

Defendants

21. Defendant Delta Air Lines, Inc. ("Delta") is a corporation organized under Delaware law with its principal place of business in Atlanta, Georgia.

22. Delta is the Plan Sponsor pursuant to 29 U.S.C. § 1002(16)(B)(i), and pursuant to the document that established the Plan.

23. Defendant the Administrative Committee of Delta Air Lines, Inc. ("Administrative Committee") operates in Atlanta, Georgia, and is a named fiduciary with authority to control and manage the operation and administration of the Plan in accordance with 29 U.S.C. § 1102(a). As specifically designated by the terms of the Plan documents, the Administrative Committee is the Plan Administrator for the Plan under 29 U.S.C. § 1002(16)(A)(i). The Plan Administrator is granted all powers necessary to carry out its responsibilities, including the selection and compensation of service providers for the Plan and the selection, monitoring, and, where necessary, removal of the investment options available to Plan participants.

24. The Administrative Committee is a fiduciary to the Plan because it exercised discretionary authority regarding the management of the Plan and the management of its assets, and exercised discretionary authority in the administration of the Plan. *See* 29 U.S.C. § 1002(21)(A)(i) and (iii).

25. On information and belief, Defendant Christopher Collins ("Collins") is a Delta employee serving as Vice President of Global Human Resources Services, and is the chair and/or a member of the Administrative Committee.

FACTS COMMON TO ALL CLAIMS

I. Plan Administrators Have Significant Fiduciary Duties Regarding the Selection of Investment Options for the Plan

A. The Plan, the Plan Sponsor, and the Plan Administrators

26. Like most major corporations, Delta offers so-called 401(k) plans to its employees as a retirement benefit. As is typical of 401(k) plans generally, Delta's plans – including the Plan, as defined above – allow employees to save a portion of each paycheck in an individual account on a pre-tax basis, and to invest those savings. Generally speaking, the tax rules governing these accounts are designed to encourage employees to retain their savings in these accounts until the employees retire.

27. Delta, as the Plan Sponsor, offers the Plan to its employees and matches each employee's contributions to his or her individual account. The employees who participate in the Plan are called "participants." 29 U.S.C. § 1002(7). Participants can designate other people (their surviving spouses, for instance) to receive benefits from the Plan as well, and the people who are designated by participants are called "beneficiaries." 29 U.S.C. § 1002(8). For purposes of simplicity, this Complaint generally refers only to "participants" and intends that term to include "beneficiaries" as well.

28. The Administrative Committee, as the Plan Administrator, manages the Plan. Among its significant responsibilities are deciding what investment options to offer to the Plan participants and performing all administrative functions for the Plan, such as monitoring the Plan's performance, processing all sorts of transactions such as withdrawals and distributions,

recordkeeping, preparing benefit statements and other disclosures for Plan participants, and ensuring compliance with all IRS requirements.

29. The members of the Administrative Committee are employees of Delta, and are appointed by Delta's Executive Vice President of Human Resources. They can be substituted or removed at the sole discretion of the same. Since 2014, Delta's Executive Vice President of Human Resources has been Joanne Smith, a resident of Atlanta, Georgia.

B. ERISA Requires the Plan Administrators to Perform Their Responsibilities in a Manner Consistent with Their Fiduciary Duties

30. The Plan Administrators are required to perform their jobs in a careful and prudent manner, and with the best interests of the participants at heart. Specifically, under ERISA, the Plan Administrators must perform their job responsibilities "solely in the interests of the participants and beneficiaries," for the "exclusive purpose" of providing benefits and minimizing administrative fees, and they must do so "with the care, skill, prudence, and diligence under the circumstances then prevailing that a prudent man . . . would use . . . ." 29 U.S.C. §§ 1104(a)(1)(A) & (B). These fiduciary duties have been referred to as the highest duties known in the law.

31. As fiduciaries of the Plan, Defendants are subject to these stringent fiduciary duties of loyalty and prudence. 29 U.S.C. § 1104(a)(1) provides, in relevant part:

> [A] fiduciary shall discharge his duties with respect to a plan solely in the interest of the participants and beneficiaries and –
>
> (A) for the exclusive purpose of:
>
> (i) providing benefits to participants and their beneficiaries; and
>
> (ii) defraying reasonable expenses of administering the plan; [and]
>
> (B) 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 like character and with like aims.

32. Under 29 U.S.C. § 1103(c)(1), with certain exceptions not relevant here:

> The assets of a plan shall never inure to the benefit of any employer and shall be held for the exclusive purposes of providing benefits to participants in the plan and their beneficiaries and defraying reasonable expenses of administering the plan.

33. ERISA also explicitly provides for liability among co-fiduciaries of the same Plan. Specifically, 29 U.S.C. § 1105(a) establishes a cause of action against a fiduciary for knowingly participating in a breach by another fiduciary, enabling such a breach through his own failure to abide by the duties of loyalty and prudence, or knowingly failing to cure a co-fiduciary's breach of duty. The statute provides, in relevant part:

> In addition to any liability which he may have under any other provisions 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:
>
> > (1) if he participates knowingly in, or knowingly undertakes to conceal, an act or omission of such other fiduciary, knowing such act or omission is a breach;
> >
> > (2) if, by his failure to comply with section 1104(a)(1) of this title 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
> >
> > (3) if he has knowledge of a breach by such other fiduciary, unless he makes reasonable efforts under the circumstances to remedy the breach.

34. ERISA also authorizes plan participants to file a civil action for breach of fiduciary duty by an ERISA fiduciary. 29 U.S.C. § 1132(a)(2) authorizes such actions under 29 U.S.C. § 1109, which provides, in relevant part:

> 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 subchapter 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.

C. The Plan Administrators Must Select Investment Options in a Manner Consistent with Their Fiduciary Duties

35. Under the Plan, the Plan Administrators select a range of possible investment options, and Plan participants can decide, within that range, in which investment options they want their individual accounts to be invested. The Plan Administrators have exclusive control over which investment options are available to participants. Thus, for instance, the Plan Administrators can decide to offer hundreds of options or just a few, and can decide to offer options that are safer or riskier, with higher or lower administrative fees, with better or worse records of performance, and with a range of other features.

36. Typically, Plan Administrators will offer a variety of investment options within each of several different categories. For instance, Plan Administrators may offer a variety of options within the category of "large cap domestic equities," which includes funds investing in U.S.-based companies with large market capitalization. Plan Administrators may offer another variety of options within each of several other categories, such as mid cap domestic equities, small cap domestic equities, international equities, fixed income, money market, real estate, and fixed guaranteed annuity. The specific investment options within each of these categories are often investment products offered by financial firms like mutual fund or insurance companies.

37. Because of their strict fiduciary duties, Plan Administrators cannot select investment options at random or based on outside considerations such as unrelated business interests with the mutual company that is offering the investment options. Instead, Plan Administrators must engage in a rigorous due diligence process and select the best investment options that are available to Plan participants based on a variety of factors, including expected

returns, degree of risk, and administrative costs. This is sometimes a judgment call, but in other instances – such as where two options are both available and are equivalent in all respects except that one of them has much higher administrative fees – a Plan Administrator who is acting prudently and in the best interests of the Plan participants must offer the lower-fee alternative.

38. In addition, consistent with their fiduciary duties, Plan Administrators may not simply make these decisions once and then allow the options they selected to remain in place indefinitely. Instead, under ERISA and the United States Supreme Court's decision in *Tibble v. Edison Int'l*, 135 S. Ct. 1823, 1828 (2015), Plan Administrators' "duty of prudence involves a continuing duty to monitor investments and remove imprudent ones." Thus, the Plan Administrators must review the investment options on an ongoing basis, and if an investment option underperforms the market, the Plan Administrators must remove it from the set of options they offer to participants.

39. Because the set of investment options is controlled exclusively by the Plan Administrators, Plan participants can invest their 401(k) accounts only in investment options which the Plan Administrators have selected. Thus, if the Plan Administrators offer investment options which underperform, which carry excessively high fees, or the like, that directly impacts Plan participants' retirement savings.

D. The Plan Administrators' Duty to Select Investment <u>Options Must Include Careful Consideration of Fees</u>

40. It is exceedingly rare for any investment funds to consistently outperform the market for any length of time after fees are taken into consideration. "A fund that markedly outperforms its peers during a particular time period generally does so because of luck, not because of its manager's stock-picking skill. This luck, however, usually does not persist." Alan

R. Palmiter & Ahmed E. Tata, *Performance Advertisements by Mutual Funds: Fundamentally Misleading?*, Banking & Fin. Services Policy Report, at 15 (Nov. 2012).

41. Even if a particular investment manager or investment fund has consistently beaten the market over a period of time, that high performance does not in any way predict whether the fund will continue to beat the market in the future. *See*, *e.g.*, Ian Ayres & Quinn Curtis, *Beyond Diversification: The Pervasive Problem of Excessive Fees and "Dominated Funds" in 401(k) Plans*, 124 YALE L.J. 1476, 1488 (2015); Ronald T. Wilcox, *Bargain Hunting or Star Gazing? Investors' Preferences for Stock Mutual Funds*, 76 J. BUS. 645, 651 (2003) ("[W]ithin the finance literature there is [only] weak and controversial evidence that past performance has much, if any, predictive ability for future returns."). Indeed, the SEC goes to considerable effort to warn against investing on the basis of past returns. *See* Alan R. Palmiter & Ahmed E. Taha, *Mutual Fund Investors: Divergent Profiles*, 2008 COLUM. BUS. L. REV. 934, 969-70 (2008).

42. Just as importantly, even if a particular investment manager or investment fund has consistently beaten the market over a period of time, the difference in its performance as compared to the market is almost always cancelled out by higher fees and expenses. *See* James Kwak, *Improving Retirement Savings Options for Employees*, 15 U. PA. J. BUS. L. 483, 495 (2013) ("For those who believe in stock picking ability, much, if not all of it, is absorbed by expenses."); *see also* Eugene F. Fama & Kenneth R. French, *Luck Versus Skill in the Cross-Section of Mutual Fund Returns*, 65 J. FIN. 1915, 1915 (2010); ("After costs . . . in terms of net returns to investors, active investment must be a negative sum game.").

43. Strikingly, studies have shown that high expenses are not correlated with superior investment management. To the contrary, funds with high fees perform ***worse*** on average than

similar funds with lower fees, ***even before*** the fees are taken into account. *See* Javier Gil-Bazo & Pablo Ruiz-Verdú, *The Relation Between Price and Performance in the Mutual Fund Industry*, 64 J. FIN. 2153 (2009); *see also* Javier Gil-Bazo & Pablo Ruiz-Verdú, *When Cheaper Is Better: Fee Determination in the Market for Equity Mutual Funds*, 67 J. ECON. BEHAV. & ORG. 871 (2008) (presenting theoretical findings predicting the same empirical result).

44. Excessive fees, especially if they persist over the length of a career, can and do inflict profound damage on employees' retirement assets. The U.S. Department of Labor has calculated that a mere 1% increase in fees over a 35-year period reduces retirement savings by 28% by the end of a participant's career. U.S. Dep't of Labor, *A Look at 401(k) Plan Fees*, at 1-2 (Aug. 2013).[1]

45. Accordingly, funds with higher fees are all but indefensible: they not only empirically fail to beat the market on a consistent basis, they are in fact mathematically unable to do so because the high fees cut into returns significantly, especially over time. Essentially, high fees are apparently more likely to indicate bad funds than good ones.

46. For all these reasons, while consideration of an investment option's historical performance is important, consideration of its fees and costs is equally and sometimes even more important. A Plan Administrator acting consistently with its fiduciary duties must strive to offer investment options with low costs and fees. In particular, if two investment options are essentially equivalent in all relevant respects except that one has higher fees, offering the higher-fee option to Plan participants is careless at best and misleading at worst, and is bound to cause participants to spend significantly more of their hard-earned retirement funds on fees and expenses than they should have.

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[1] Available at http://www.dol.gov/ebsa/pdf/401kfeesemployee.pdf.

E. Administrators of Large Plans Have Significant Bargaining <u>Power Which They Should Use to Obtain Lower-Fee Options</u>

47. This obligation of Plan Administrators – to consider and, absent a compelling alternative, offer to participants lower-cost investment options – is especially true for Administrators of large plans, such as the Plan at issue here. That is because these large plans, commonly known as "jumbo" plans, have tremendous bargaining power. Mutual funds and other companies that offer investment options are eager to obtain such large investments and are willing to offer jumbo plans extra incentives in order to get their products included as investment options for such plans.

48. These extra incentives cannot take the form of payments to the Plan Administrators, since accepting such payments would violate the Plan Administrators' obligation to select investment options based solely on the best interests of the participants. Instead, these extra incentives must take the form of enhancements to the investment products themselves, which will benefit the participants who invest in them. The primary example of such an enhancement is a willingness to offer essentially identical products to large institutions such as jumbo plans at substantially lower rates – that is, with significantly lower fees. Such lower-cost products are often called "institutional" products, as opposed to the "retail" products that are available to smaller investors. Mutual funds, for instance, offer different classes of shares, including both institutional shares and retail shares, in a particular fund.

49. Moreover, if a particular plan's investment in one product is not large enough to qualify for institutional shares, mutual funds and other investment providers that are eager to obtain investments will generally be willing to consider the total size of all the plans offered by a particular Plan Sponsor. For instance, if the Plan invested too little in a fund to be considered "jumbo" by that fund and to obtain institutional shares, Delta's Plan Administrators can request,

and mutual fund managers will often agree, to consider the Plan's investment in conjunction with the investments of Delta's other plans', so that, on an aggregate basis, they will be considered jumbo plans and qualify to obtain institutional shares.

50. For a Plan Administrator not to offer its participants the benefit of these lower costs and fees – either because it failed to exercise its substantial bargaining power or because it did obtain the benefits of that bargaining power but left them on the table rather than passing them along to its participants – is at best careless, and a failure to act prudently in the best interests of those participants. Even if a Plan Administrator offers the institutional option alongside the retail option, doing so is bound to cause confusion and be misleading to the participants, who, after all, are not sophisticated investment professionals. Moreover, because there is no benefit to the retail option over the institutional option, and a significant benefit (lower costs and fees) to the institutional option over the retail option, retaining the retail option even alongside the institutional option is a violation of the Plan Administrator's obligation "to remove imprudent" investment options. *Tibble*, 135 S. Ct. at 1829.

51. For this reason, commentators have concluded that "fiduciaries of large plans with large pools of assets should be judged differently from fiduciaries of small plans . . . . Trustee performance must be judged with due regard for such varying plan characteristics as the nature and size of the plan." J.D. Hutchinson, *The Federal Prudent Man Rule under ERISA*, 22 VILL. L. REV. 15, 42 (1976). Fiduciaries "must consider the size and purchasing power of their plan and select the share classes (or alternative investments) that a fiduciary who is knowledgeable about such matters would select under the circumstances. Fred Reish, *Class-ifying Mutual*

Funds, PlanSponsor (Jan. 2011).[2] Thus, taking advantage of "the size of the plan" is "a part of a prudent decisionmaking process," and failing to do so "could be a costly fiduciary breach." *Id*.

F. Offering Too Many Investment Options Harms Plan Participants

52. As noted above, Plan Administrators who offer both the retail and the institutional version of a particular investment option, or more generally both the high-cost and the lower-cost version of the same investment product, do not satisfy their obligation to select investment options prudently and in the best interests of the Plan participants. This is true for several reasons, and it is no defense to say that Plan participants were not harmed because they could have simply selected other options instead of the inferior ones from the set of investment options that they were offered.

53. First, as explained above, the higher-cost option offers no benefit to the participants, so offering it to them is at best careless and has no rational basis.

54. Second, including investment options that are, at best, unnecessary will likely only serve to mislead and confuse Plan participants, who are generally not sophisticated investment professionals and are not well served by lists of investment options that are overly long and complex. *See*, *e.g.*, Rob Austin, *The Impact of Behavioral Economics on Retirement Plans*, Benefits Quarterly (3rd Quarter 2013) (in the context of defined contribution plans, "[w]hen there are too many choices, analysis paralysis kicks in")[3]; Jodi DiCenzo & Paul Fronstin, *Lessons From the Evolution of 401(k) Retirement Plans for Increased Consumerism in Health Care: An Application of Behavioral Research*, Employee Benefits Research Institute, Issue Brief No. 320 at 5-8 (Aug. 2008) ("From a purely rational standpoint, more choice is generally good. However, when the effect of having more investment option choices in

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[2] Available at http://www.plansponsor.com/MagazineArticle.aspx?id=6442476537.
[3] Available at www.aon.com/attachments/.../Article_BQRetirementBehavioralEconQ32013.pdf.

retirement plans was studied, the results showed that the greater the number of investment options offered, the lower the likelihood of plan participation . . . .”).[4]

55. Third, consolidating investment options once again allows Plan Administrators to take advantage of their significant bargaining power to obtain investment options with lower fees. The more options a plan offers, the more fees it pays, and the more likely it is to forfeit its ability to obtain lower fees.

56. Finally, as discussed in greater detail below, including numerous investment options of the same style (such as, for instance, numerous large cap domestic equities funds) effectively mimics an index fund. But mimicking an index fund is far worse than simply offering an actual index fund, which has much lower fees.

57. A typical 401(k) plan offers roughly fourteen investment options. Ayres & Curtis, *Beyond Diversification: The Pervasive Problem of Excessive Fees and “Dominated Funds” in 401(k) Plans*, at 1485 (citing Ning Tang et al., *The Efficiency of Pension Plan Menus and Individual Pension Investment Portfolios*, 94 J. PUB. ECON. 1073, 1074 (2010)). This is a reasonable number of options, and it provides participants with sufficient options while retaining those plans’ bargaining power and avoiding redundancy and confusion for the participants.

II. Defendants Failed to Satisfy Their Fiduciary Duties Regarding the Selection of Investment Options for the Plan

A. The Plan

58. The Plan is a defined contribution savings and profit sharing plan that covers substantially all Delta’s United States personnel. Participants may elect to contribute to the Plan. Delta contributes a fixed amount per pay period (2% of eligible earnings) as well as a matching contribution based on the amount of an individual participant’s contribution (dollar-for-dollar, up

[4] Available at http://www.ebri.org/pdf/briefspdf/EBRI_IB_08-2008.pdf.

to 5% of a participant's eligible earnings). The Plan had assets of approximately $5.7 billion as of December 31, 2012, covering some 83,000 participants.

B. Defendants Failed to Select the Lowest Cost Investment Options

59. The explanations of Plan Administrators' fiduciary duties set forth in Section I above apply squarely to Defendants, as Plan Sponsor and Plan Administrators of the Plan. First, because the Plan was large enough to qualify as a jumbo plan, it had access to the institutional versions of numerous investment products, which bore significantly lower costs. These lower-cost share classes of the identical mutual funds for the Plan have been available for years, some dating back as far as 2000. Yet Defendants failed to offer these investment options to Plan participants.

60. Investment options which were offered to participants in the Plan despite the availability of cheaper, institutional equivalents include and have included the following:

Plan Option Offered	Expense Ratio	Alternative Option Not Offered	Expense Ratio	Difference
Janus Forty S	1.00	Janus Forty I	0.60	40 basis points
Janus Research T	0.95	Janus Research I	0.78	17 basis points
PIMCO Low Duration ADM	0.71	PIMCO Low Duration P	0.56	15 basis points
Victory RS Small Cap Growth A	1.35	Victory Small Cap Growth Y	1.01	34 basis points
ClearBridge Aggressive Growth A	1.27	ClearBridge Aggressive Growth I	0.85	42 basis points
ClearBridge Large Cap Growth A	1.29	ClearBridge Large Cap Growth I	.81	48 basis points
INVESCO Growth and Income A	1.25	INVESCO Growth and Income I	.65	60 basis points

61. In addition, in other instances, Defendants did offer the lower-cost institutional investment option, but offered that product side-by-side with the higher-cost retail option. Examples include the following:

Fund	Expense Ratio	Similar Fund	Expense Ratio	Difference
INVESCO Mid Cap Core Equity A	1.17	INVESCO Mid Cap Core Equity R5	0.80	37 basis points
Lord Abbett Mid Cap Value P	1.14	Lord Abbett Mid Cap Stock I	0.78	36 basis points
ClearBridge Value FI	1.07	ClearBridge Value I	0.80	27 basis points
Managers Special Equity S	1.35	Managers Special Equity I	1.1	25 basis points
Franklin Mutual Shares A	1.12	Franklin Mutual Shares Z	0.82	30 basis points
Neuberger Berman Genesis Fund Trust Class	1.11	Neuberger Berman Gensis Fund Inst. Class	0.85	26 basis points

62. In addition to the examples displayed in the tables above, the Plan also offered no fewer than ten Morgan Stanley funds, which featured high expense ratios despite the fact that cheaper, institutional share classes were readily available.

63. As explained above, these higher-cost investment options offered Plan participants no benefit over the lower-cost options, but cost the participants significantly more money in fees and expenses. For the reasons explained above, this constitutes a breach of Defendants' fiduciary duties to the Plan participants. These breaches cost participants significant sums of money, the exact amount to be determined at trial but at least in the millions of dollars, in costs and fees which they would not have had to pay if not for Defendants' improper selection of investment options for the Plan.

C. Defendants Selected and Retained a Large Number of Redundant Investment Options

64. Defendants also offered at least 200 investment options in the Plan prior to 2011. Many of these were functionally equivalent or otherwise duplicative and added nothing but confusion to the set of options available to participants. Even within each class of investments, Defendants offered far more investment options than was reasonable.

65. The investment options selected by Defendants covered more than twenty investment styles, as defined by the investment research firm Morningstar (for instance, Large Growth, Small Growth, Small Value, High Yield, Global, Emerging Markets, World Stock, and so on). Further, some investment styles featured more than fifteen different fund alternatives within the Plan.

66. As explained above, providing an overwhelming array of options to Plan participants did not benefit them in any way, and in fact harmed them instead. That is particularly the case with regard to investment options which were duplicative of each other, including the examples listed above. Offering these duplicative investment options constitutes a breach of Defendants' fiduciary duties to the Plan participants. These breaches cost participants an amount to be determined at trial, but at least in the millions of dollars, directly attributable to Defendants' improper selection of investment options for the Plan.

D. Defendants Retained Historically Underperforming Investment Options

67. As noted above, Defendants were required to monitor their investment options on a continuing, ongoing basis, and remove investment options that were imprudent. This includes investment options that historically underperformed the market, since there is no rationale for offering those products to participants.

68. Defendants failed to monitor the investment options they offered, and instead allowed numerous poorly performing investment options to remain in the pool of available options year after year.

69. Investment options which consistently underperformed the market for a sustained period of time were offered in the Plan, and include the following:

Fund	5-Year Return, 2008-2012	Morningstar Benchmark 5-Year Return	Shortfall
Alger MidCap Growth	-20.1%	6.7%	-28.86%
Alger SmallCap Growth	37.9%	54.6%	-16.7%
Calvert Int'l Equity	-30.0%	-18.3%	-11.7%
Dreyfus Mid Cap Growth	-4.1%	6.8%	-10.9%
Loomis Growth	-9.5%	4.6%	-14.1%
RS Value	2.1%	14.4%	-12.2%
USAA Growth Fund	-5.9%	4.6%	-10.5%
WFA Short Term Bond	19.0%	32.5%	-13.5%
WFA Ultra Strategy	7.4%	24.4%	-17.0%

70. All this information was readily available to Defendants, who either did not bother to review it or reviewed it and decided to take no action. This constitutes a breach of Defendants' fiduciary duties to the Plan participants. These breaches cost participants millions of dollars, the precise amount to be determined at trial, directly attributable to Defendants' improper failure to monitor and remove these imprudent investment options from the pool of options available in the Plan.

71. Overall, Defendants offered higher-cost options, duplicative options, and underperforming options to Plan participants. Defendants also failed to leverage the Plan's

massive bargaining power to obtain lower costs and fees for Plan participants. As a direct result of these failures, Defendants drained millions of dollars in fees, expenses, and underperformance from Plan participants' retirement savings.

III. Plan Administrators' Fiduciary Duties Require Them to Attempt to Minimize Administrative and Recordkeeping Fees

72. In addition to selecting investment options, another critical function of Plan Administrators is providing administrative services, such as recordkeeping, for the Plan and its participants. Plan Administrators typically outsource these functions, but in doing so, the Plan Administrators must exercise prudence and act in the best interests of the participants, consistent with their fiduciary duties under ERISA, by carefully considering whom to hire for this work and then monitoring whoever they hire to make sure the job is done well.

73. The market for administrative and recordkeeping services is highly competitive. There are a number of firms that provide such services, and many of these firms are equally capable of providing a high level of service to large defined contribution plans like the Plan. These services are mostly standardized, so – as is the case with mutual funds and other firms offering investment products – recordkeepers typically compete for business by offering the best price. And as is the case in that context, Plan Administrators – especially administrators of jumbo plans like the Plan – have tremendous bargaining power which they can and should use to drive down the price that the Plan pays for administrative and recordkeeping services, so as to save money for the Plan participants.

A. Plan Administrators Should Conduct a Competitive Bidding Process for Recordkeeping Services

74. In selecting which administrative and recordkeeping firm to engage, Plan Administrators should conduct a competitive bidding process on a regular basis such as every

three years. This is a tried and true way of pushing down the pricing which service providers offer. Again, because of the size of jumbo plans like the Plan, service providers are eager to secure their business and will offer the Plan their lowest pricing in such a process.

B. If Plan Administrators Agree to Revenue Sharing, <u>They Must Monitor the Fees Carefully</u>

75. Firms that provide administrative and recordkeeping services typically offer pricing either as a percentage of assets in the plan or as a flat fee per plan participant. In addition, Plan Administrators sometimes agree to an arrangement called revenue sharing. Under this arrangement, mutual funds or other firms whose investment products are offered to Plan participants through the Plan will hire the same recordkeeping service as the Plan, and will pass through some of their fees to the recordkeeping service provider. In theory, this arrangement provides for economies of scale by aligning the Plan's bargaining power with that of the mutual funds. However, in actuality, revenue sharing more often functions as sleight of hand to hide fees from Plan participants, because it enables the mutual funds to present to participants investment options which appear to have especially low fees, even though those fees are generally included on the recordkeeping side instead. Indeed, because the increased recordkeeping fees are generally not the focus of scrutiny, and because they generally provide for compensation based on the total size of the assets rather than a flat fee, as described above, it is likely that revenue sharing actually results in ***higher*** total fees charged to the Plan, even while the participants believe that their fees have been lowered.

76. Revenue sharing can also harm plan participants in other ways. For instance, if revenue sharing is allocated based on the expense ratios of the underlying investments, then participants who choose an investment options with higher expense ratios (e.g., 40 basis points) end up paying more for recordkeeping than participants who choose the equivalent investment

options which have lower expense ratios (e.g., 10 basis points). Thus revenue sharing exacerbates the harm to plan participants that is already caused by inclusion of higher-cost investment options, as described above.

77. Because of these risks associated with revenue sharing, the Plan Administrators, if they agree to a revenue sharing arrangement, should insist, as part of the agreement, that the recordkeeping service provider limit its total compensation to a sum that is reasonable in relation to the services it provides, and return any excess revenue sharing to the Plan. The Plan Administrators must also carefully monitor the total amount of revenue sharing the provider receives to ensure that its total compensation does not exceed the agreed upon limits and/or is returned to the Plan, as agreed. Plan Administrators who fail to do so are not acting prudently in the best interests of the participants.

IV. Defendants' Actions and Omissions Caused Plan Participants to Pay Excessive Administrative and Recordkeeping Fees

78. The explanations above, once again, apply squarely to Defendants, as the Plan Sponsor and Plan Administrators for the Plan. Unfortunately, Defendants failed to abide by their fiduciary duties in this regard.

79. First, Defendants failed to undertake a competitive bidding process.

80. Second, while Defendants paid flat, per participant fees as direct compensation to Fidelity for recordkeeping services, Defendants also paid indirect compensation based on the amount of invested assets from 2010 through 2012. This indirect compensation ranged from 5 basis points to 55 basis points, depending on the mutual fund, with the most common fee being 35 basis points. As described above, this decision resulted in excess and unnecessary fees charged to participants.

81. It appears that the Plan paid approximately $3.5 million to Fidelity in direct compensation. In addition, the Plan also paid Fidelity excessive indirect compensation through revenue sharing. While the precise amount of indirect compensation Defendants paid Fidelity is currently unknown to Plaintiffs, payment of even 5 basis points (the lowest amount of indirect compensation paid for any mutual fund in the Plan, and thus an unrealistically low estimate) on the Plan's assets of approximately $5.7 billion would equate to approximately $2.85 million in indirect compensation. Payment of 35 basis points, the most commonly-used rate for mutual funds in the Plan, would equate to $19.95 million. Payment of 55 basis points, the highest rate of indirect compensation paid for by the Plan, would equate to approximately $31.4 million.

82. All indirect compensation was in addition to the direct compensation paid to Fidelity, which itself constituted a generous fee for the services provided to the Plan. Consequently, the indirect compensation paid to Fidelity was superfluous. Fidelity had already been more than fairly compensated through direct payments, and thus indirect compensation through revenue sharing merely piled excess upon excess, with participants in the Plan bearing the cost.

83. Finally, Defendants agreed to revenue sharing with Fidelity and the recordkeeping firm, but failed to limit and monitor the recordkeeper's compensation. Defendants thus allowed the recordkeeper to earn – and the Plan participants to pay – unreasonable and excessive compensation for recordkeeping services

84. If Defendants had negotiated reasonable recordkeeping fees and monitored to ensure that they were adhered to, the Plan would have paid dramatically less for recordkeeping services.

85. Defendants' failure to minimize administrative and recordkeeping fees in the manner described above constitutes a breach of Defendants' fiduciary duties to the Plan participants. These breaches cost participants massive sums, the amount to be determined at trial but at least in the millions, of their hard-earned retirement dollars. Bringing forward these losses to present value results in an even greater loss.

CLASS ACTION ALLEGATIONS

86. A Plan participant or beneficiary may bring an action individually on behalf of the Plan for breach of fiduciary duty under 29 U.S.C. § 1109(a), pursuant to 29 U.S.C. § 1132(a)(2).

87. Plaintiffs are prepared to act in a representative capacity as authorized by ERISA in order to enhance the due process protections of other participants and beneficiaries of the Plan, and as an alternative to individual participants bringing individual actions on behalf of the Plan under 29 U.S.C. § 1132(a)(2) and (3).

88. Plaintiffs seek to certify, and to be appointed as the representative of, the following class:

> *All participants and beneficiaries of the Plan from December 19, 2010 through the date of judgment, excluding the Defendants and any participant who is a fiduciary to the Plan.*

89. This action is certifiable as a class under Fed. R. Civ. P. 23 for, among others, the following reasons:

a. The Class includes over 83,000 members. This satisfies the numerosity requirement of Fed. R. Civ. P. 23 as the number is sufficiently large that individual joinder of all Class members is impracticable.

b. There are questions of law and fact common to this Class. Defendants owed identical fiduciary duties to the Plan and to each participant and beneficiary, and

Defendants took the actions and omissions alleged herein with respect to the Plan generally, not with respect to any individual participant. Accordingly, the common questions of law and fact include, among other things: the basic facts regarding the Plan; the relationships among Delta as the Plan Sponsor, the Administrative Committee and Collins as Plan Administrators, and the Class members as Plan participants; what are the fiduciary duties ERISA demands of fiduciaries with respect to the actions and omissions alleged herein; whether Defendants in fact took the actions and omissions described herein; whether, and if so, how, those actions and omissions breached the fiduciaries' duties to the Plan; the amount of the losses to the Plan resulting from each breach of fiduciary duty; and what other relief this Court should impose in light of Defendants' breaches of their fiduciary duties.

c. Plaintiffs' claims are typical of the claims of the Class. At all relevant times, Plaintiffs were participants in the Plan, and because Defendants' breaches of fiduciary duty were targeted at and affected the Plan generally, all participants in the Plan, including Plaintiffs, were harmed in identical ways.

d. Plaintiffs will fairly and adequately protect the interests of the Class. Plaintiffs are participants in the Plan, have no personal interest that is in conflict with the Class, are committed to the vigorous representation of the Class, and have retained experienced and competent counsel to represent the Class.

e. Prosecution of separate actions for these breaches of fiduciary duties by individual participants would create the risk of inconsistent judgments that would establish incompatible standards of conduct for Defendants regarding the discharge of their fiduciary duties to the Plan.

f. Prosecution of separate actions for these breaches of fiduciary duties by individual participants would create the risk of adjudications by individual participants regarding these breaches of fiduciary duties that would, as a practical matter, be dispositive of the interests of the other participants, even those who were not parties to the adjudications, or would substantially impair or impede those participants' ability to protect their own interests.

90. For these reasons, this action should be certified as a class action under Fed. R. Civ. P. 23(b)(1)(A) or (B).

91. Questions of law or fact common to Class members, such as those detailed above, predominate over any questions affecting only individual members. Additionally, a class action is the superior method for fairly and efficiently adjudicating this controversy because, among other things, joinder of all participants is impracticable, and the losses suffered by individual participants may in many instances be small enough that it would be impracticable for individual members to enforce their rights through individual actions. Because Defendants' actions and omissions were targeted at and affected the Class generally, no Class member has a personal interest in individually controlling the prosecution of this matter, and Plaintiffs are aware of no difficulties likely to be encountered in the management of this matter as a class action. Plaintiffs are unaware of any litigation concerning this controversy already begun by other Class members, and are unaware of any significant concerns regarding the forum in which this action is heard. Alternatively, then, this action may be certified as a class under Fed. R. Civ. P. 23(b)(3) if it is not certified under Fed. R. Civ. P. 23(b)(1)(A) or (B).

92. Plaintiffs' counsel, Tacopina & Seigel, will fairly and adequately represent the interests of the Class and is best able to represent the interests of the Class under Fed. R. Civ. P. 23(g).

a. Tacopina & Seigel has developed considerable experience in handling complex civil litigation for multiple years.

b. Tacopina & Seigel has multiple attorneys and is able to commit sufficient resources to this action to zealously represent the class.

c. Joseph Tacopina of Tacopina & Seigel has practiced law for approximately twenty-five years and has tried nearly 100 cases to verdict. Joseph Tacopina, the founder and Managing Partner of the Manhattan based law firm Tacopina & Seigel, specializing in criminal, civil, and securities litigation, is widely recognized as one of the "go to" attorneys in the country. Tacopina is included in New York Magazine as New York area's "Top Rated Lawyer," and has garnered prestigious awards including one of the top Trial Lawyers by the National Trial Lawyers Association and one of the 10 Best Client Satisfaction Attorneys. Mr. Tacopina also serves as an adjunct faculty member at Cardozo Law School's Intense Trial Advocacy Program (ITAP) and lectures to audiences nationwide on a variety of legal issues, including speaking before the Saratoga County Bar Association at their Law Day Ceremony. He is a judge for Yale Law School's Mock Trial Association, and earned a top AV rating by his peers in Martindale Hubbell. Mr. Tacopina has been consistently chosen as one of New York's Super Lawyers in The New York Times Magazine and was recognized by the Italian American Bar Association as "Man of the Year" for his outstanding achievements.

Newsweek Magazine recently named him a nationwide leading attorney while Money Magazine featured him in their Leaders in Securities Law Showcase.

d. Matthew G. DeOreo has practiced law for almost two decades and has handled numerous complex civil cases and trials.

COUNT I

Breach of Fiduciary Duty

93. Plaintiffs restate and reallege the allegations in the preceding paragraphs and incorporates them as though fully stated here.

94. ERISA imposes strict fiduciary duties of loyalty and prudence upon Defendants as fiduciaries of the Plan. Defendants must manage the Plan's assets "solely in the interests of the participants and beneficiaries" and "with the care, skill, prudence, and diligence . . . that a prudent man . . . would use." 29 U.S.C. § 1104(a)(1)(A) & (B). As ERISA fiduciaries, Defendants are charged with operating as prudent financial experts. In practice, these responsibilities require Defendants to ensure, in an ongoing and continuous process, that the fees paid by the Plan are not excessive, that Defendants prudently select investment options for participants, and that the Plan's array of investment options remains prudent through elimination or replacement of those that are redundant or that underperform.

95. For years, Defendants selected and retained investment options for the Plan that were both more expensive and more poorly performing than comparable investment options of the same nature that were readily available.

96. First, Defendants selected the higher-cost retail versions of certain investment products either instead of, or alongside, the lower-cost institutional versions of the same products. Since the only difference between the two versions was the cost, offering the higher-

cost retail version was imprudent, even when it was offered in tandem with the lower-cost institutional version. As one example among the multiple examples detailed above, the INVESCO Growth and Income A fund offered by the Plan featured an expense ratio of 1.25, an inexplicable choice when the equivalent INVESCO Growth and Income I fund, roughly half as costly at an expense ratio of .65, was readily available.

97. Second, Defendants only belatedly consolidated the Plan's roughly 200 investment options into a simplified, reliable core lineup in which prudent and appropriate investments were available for each asset class and investment style. While doing so provided participants with a fair and reasonable menu of investment options while minimizing costs, Defendants delayed doing so until 2011. Until then, Defendants retained duplicative and redundant investment options in each asset class, thus diluting the Plan's bargaining power, failing to minimize costs, and increasing complexity and confusion to the participants. There is no justifiable basis, for instance, for Defendants' choice to provide more than 15 different funds within some investment styles. Furthermore, Defendants knew or should have known that their choice to provide numerous investment options in the same class replicated the returns of an index fund, but with far higher fees charged.

98. Third, Defendants selected funds which had worse performance records than alternative investment options which were available, and retained these investment options even as these options continued to underperform year after year. For instance, the Plan offered and maintained the Alger MidCap Growth fund as an investment option, even though it underperformed the benchmark return by nearly 27%.

99. There is no justification for offering or retaining such inferior investment options, and Defendants certainly should have known better than to do so. Consequently, Defendants' conduct constitutes a breach of the duties of loyalty and prudence.

100. Additionally, Defendants failed to engage in a prudent and reasonable process to decide which investment options to select and retain for the Plan. A prudent and reasonable decision making process would not have led to the selection and long-term retention of such inferior funds.

101. Because of Defendants' breaches of loyalty and prudence in selecting and retaining the investment options discussed above, the Plan wasted tens of millions of dollars, Delta employees' hard-won retirement savings, through the payment of unreasonable, excessive, and unnecessary fees, as well as the persistent underperformance of these ill-chosen investments.

102. Defendants' fiduciary responsibilities also obligate them to act prudently and in the participants' best interests in connection with minimizing administrative costs such as fees and expenses paid to administrative and recordkeeping firms. Defendants breached their fiduciary duties in this regard in multiple ways.

103. First, Defendants breached their duties of loyalty and prudence by failing to conduct a competitive bidding process for recordkeeping services. As fiduciaries of the Plan, Defendants are explicitly obligated to minimize administrative fees in carrying out their duties. This necessarily requires Defendants to periodically solicit bids for the Plan's recordkeeping services, in order to ensure the Plan pays a reasonable, market-based rate. Defendants' failure to do so was imprudent, and therefore a breach of their fiduciary obligation to the Plan.

104. Second, Defendants breached their duties of loyalty and prudence by paying excessive fees for recordkeeping services. Not only did Defendants pay flat fees for

recordkeeping for the Plan which far surpassed reasonable compensation, Defendants paid Fidelity indirect compensation on the basis of assets invested. As laid out above, the cost of recordkeeping services is determined by the number of participants, not the total assets within the Plan. Thus, as the Plan's assets grew, Fidelity's indirect compensation grew accordingly while the nature and cost of the recordkeeping services remained the same. This caused the indirect fees to exceed what was reasonable, even without taking into consideration the excessive direct compensation Defendants paid as well. Defendants' failure to detect and remedy these imbalances constitutes a breach of fiduciary duty.

105. Third, Defendants breached their duties of loyalty and prudence by agreeing to a revenue sharing arrangement as part of the recordkeepers' compensation, and by failing to monitor the reasonableness of those fees. ERISA fiduciaries are required to diligently monitor the recordkeeping costs incurred by their plans. *See Tussey v. ABB, Inc.*, 746 F.3d 327, 336 (8th Cir. 2014). As described above, this arrangement increases the revenue to the recordkeepers, at the expense of Plan participants, far beyond what is necessary or appropriate, thus diverting significant funds from participants' retirement accounts.

106. Finally, Defendants' fiduciary responsibilities require them to supervise and monitor the service providers to whom they delegate fiduciary responsibilities.

107. Given that Defendants delegated certain fiduciary responsibilities to other fiduciaries, Defendants bore an ongoing responsibility to make certain that any delegated duties were performed prudently and loyally, consistent with the high standards demanded by ERISA.

108. Defendants breached their duty to monitor by failing to adequately supervise their appointees, oversee the process by which the appointees carried out their fiduciary responsibilities, and ensure that the appointees' performance satisfied ERISA's standard of

prudence. Specifically, Defendants failed to ensure that their appointees conducted a reasonable and prudent process for monitoring and defraying administrative and investment fees; Defendants failed to intervene or take remedial action as the Plan lost tremendous sums of their participants' retirement funds due to their appointees' imprudent actions and omissions; and Defendants failed to replace appointees who had acted imprudently or otherwise enact measures to ensure that similar mismanagement could not happen again.

109. Had Defendants discharged their fiduciary monitoring duties loyally and prudently, as described above, the Plan would not have suffered these losses. Therefore, as a direct result of the breaches of fiduciary duty alleged herein, the Plan, Plaintiffs and the other Class members lost tens of millions of dollars of retirement savings.

110. Plaintiffs will specify total losses to the Plan after discovery in this case provides the necessary information to compute those losses, but the losses are at least in the tens of millions of dollars.

111. Under 29 U.S.C. § 1109(a), Defendants are personally liable to the Plan, and are obligated to compensate the Plan for all losses resulting from the breaches of fiduciary duty alleged in this Count.

COUNT II

Declaratory and Injunctive Relief

112. Plaintiffs restate and reallege the allegations in the preceding paragraphs and incorporates them as though fully stated here.

113. As set forth above, Defendants have materially breached their fiduciary duties under ERISA, to the significant detriment of Plaintiffs and the Class.

114. Injunctive relief is appropriate to ensure that the harm to Plaintiffs and the Class does not recur. Plaintiffs and the Class lack an adequate remedy at law because there is a substantial risk that, absent an injunction, Defendants will breach their fiduciary duties again.

115. Accordingly, Plaintiffs and the Class are entitled to (1) a declaration that Defendants have breached their fiduciary duties, as described above, and that Defendants are personally liable to compensate the Class for all losses resulting from each breach of fiduciary duty; and (2) an injunction prohibiting Defendants from further breaches of their fiduciary duties, reforming the Plan to include only prudent investments, reforming the Plan to obtain bids for recordkeeping and to pay only reasonable recordkeeping expenses, and/or removing the Plan Administrators as fiduciaries for the Class. Defendants are also subject to other equitable or remedial relief that this Court may deem appropriate.

JURY TRIAL DEMAND

116. Pursuant to Fed. R. Civ. P. 38, Plaintiffs respectfully demand a trial by jury.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs, on behalf of the Plan and all similarly situated Plan participants, respectfully request that this Court:

- Certify the Class, appoint Plaintiffs as the class representatives, and appoint Tacopina & Seigel as class counsel;
- On the First Cause of Action, grant judgment to the Class and against Defendants jointly and severally, in an amount to be determined at trial, but at least in the tens of millions of dollars, plus interest;
- On the Second Cause of Action, grant judgment to the Class and against Defendants jointly and severally, (1) declaring that Defendants have breached their fiduciary duties, as described above, and that Defendants are personally liable to compensate the Class for all losses resulting from each breach of fiduciary duty; and (2) enjoining Defendants from further breaches of their fiduciary duties, reforming the Plan to include only prudent investments, reforming the Plan to obtain bids for recordkeeping and to pay only reasonable recordkeeping expenses, and/or removing the Plan Administrators as fiduciaries for the Class;

- Award to Plaintiffs and the Class their attorneys' fees and costs under 29 U.S.C. § 1132(g)(1) and the common fund doctrine;
- Order the payment of interest and of punitive or consequential damages to the extent permitted by law; and
- Grant such other and further relief as the Court deems just and proper.

FRIEDLANDER & GORRIS, P.A.

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