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**IN THE UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF CALIFORNIA
(Western Division)**

CLIFTON W. MARSHALL,
THOMAS W. HALL,
MARIA E. MIDKIFF,
MANUEL A. GONZALEZ,
RICKY L. HENDRICKSON,
PHILLIP B. BROOKS,
AND HAROLD HYLTON,
individually and as representatives of a class
of similarly situated persons on behalf of the
Northrop Grumman Savings Plan,

Plaintiffs,

v.

NORTHROP GRUMMAN
CORPORATION,
NORTHROP GRUMMAN SAVINGS PLAN
ADMINISTRATIVE COMMITTEE,

CIVIL ACTION NO. 16-6794

COMPLAINT CLASS ACTION
DEMAND FOR JURY TRIAL

NORTHROP GRUMMAN SAVINGS PLAN
INVESTMENT COMMITTEE,
DENISE PEPPARD,
IAN ZISKIN,
MICHAEL HARDESTY,
KENNETH L. BEDINGFIELD,
KENNETH N. HEINTZ,
TALHA A. ZOB AIR,
PRABU NATARAJAN,
DANIEL HICKEY,
MARIA T. NORMAN,
STEPHEN C. MOVIUS,
MARK A. CAYLOR,
MARK RABINOWITZ,
SILVA THOMAS,
JOHN DOES 1–10,

Defendants.

1. Plaintiffs Clifton W. Marshall, Thomas W. Hall, Maria E. Midkiff, Manuel A. Gonzalez, Ricky L. Hendrickson, Phillip B. Brooks, and Harold Hylton, individually and as representatives of a class of participants and beneficiaries in the Northrop Grumman Savings Plan (the “Plan”), bring this action under 29 U.S.C. §1132(a)(2) and (3) on behalf of the Plan against Defendants Northrop Grumman (“Northrop”), the Northrop Grumman Savings Plan Administrative Committee, the Northrop Grumman Savings Plan Investment Committee, and the members of both Committees and known delegees thereof for breach of fiduciary duties.

2. As fiduciaries to the Plan, Defendants were obligated to act for the exclusive benefit of participants and beneficiaries without self-interest, while ensuring that the Plan’s fees were reasonable. These duties are the “highest known to the law” and must be performed with “an eye single to the interests of the participants and beneficiaries.” *Donovan v. Bierwirth*, 680 F.2d 263, 271, 272 n.8 (2d Cir. 1982). Rather than complying with their strict fiduciary obligations, Defendants acted to benefit themselves and Northrop by paying Plan assets to

1 Northrop purportedly for administrative services Northrop provided to the Plan,
2 which were not necessary for administration of the Plan or worth the amounts paid.
3 Defendants also caused the Plan to pay unreasonable recordkeeping fees to the
4 Plan's recordkeeper and mismanaged the Plan's Emerging Markets Equity Fund.

5 3. To remedy these fiduciary breaches, Plaintiffs seek to enforce
6 Defendants' personal liability under 29 U.S.C. §1109(a) to make good to the Plan
7 all losses resulting from each breach of fiduciary duty and restore to the Plan any
8 profits made through Defendants' use of the Plan's assets. In addition, Plaintiffs
9 seek to prevent further breaches of ERISA's fiduciary duties and seek such other
10 equitable or remedial relief for the Plan as the Court may deem appropriate.

11 JURISDICTION AND VENUE

12 4. This Court has exclusive jurisdiction over the subject matter of this
13 action under 29 U.S.C. §1132(e)(1) and 28 U.S.C. §1331 because it is an action
14 under 29 U.S.C. §1132(a)(2) and (3), for which federal district courts have
15 exclusive jurisdiction under 29 U.S.C. §1132(e)(1).

16 5. This Court is the proper venue for this action under 29 U.S.C.
17 §1132(e)(2) and 28 U.S.C. §1391(b) because the Plan was administered at
18 Northrop's headquarters in Los Angeles, California, within this district and is
19 where at least one of the alleged breaches took place. A related action, *In re*
20 *Northrop Grumman Corp. ERISA Litig.*, No. 06-6213-AB (C.D. Cal.), is pending in
21 this Court. All Defendants are subject to nationwide service of process under 29
22 U.S.C. §1132(e)(2).

23 PARTIES

24 The Northrop Grumman Savings Plan

25 6. The Plan is a defined contribution, individual account, employee pension
26 benefit plan under 29 U.S.C. §1002(2)(A) and §1002(34) in which certain
27 employees of Northrop may participate. Under the Plan, participants are responsible
28 for investing their individual accounts and will receive in retirement only the

1 current value of that account, which will depend on contributions made on behalf of
2 each employee by his or her employer, deferrals of employee compensation and
3 employer matching contributions, and on the performance of investment options net
4 of fees and expenses. Plan fiduciaries control what investment options are provided
5 in the Plan and the Plan's fees and expenses.

6 7. The Plan is established and maintained under a written document in
7 accordance with 29 U.S.C. §1102(a).

8 8. The assets of the Plan are held in the Northrop Grumman Defined
9 Contribution Master Trust under the terms of a written trust agreement, along with
10 the assets of all of Northrop's other defined contribution retirement plans. The
11 Trustee of the Defined Contribution Master Trust at all relevant times has been and
12 is State Street Bank and Trust Company. Northrop's Board of Directors controls
13 who serves as the Trustee of the Defined Contribution Master Trust. The
14 Administrative Committee and Investment Committee have full authority over the
15 Trustee as to the disposition of Plan assets.

16 9. As of December 31, 2015, the Plan had over \$19 billion in assets and
17 102,565 participants with an account balance.

18 **Plaintiffs**

19 10. Clifton W. Marshall is a retired Logistics Engineer for Northrop. He
20 resides in Las Vegas, Nevada, and is a participant in the Plan under 29 U.S.C.
21 §1002(7) because he and his beneficiaries are or may become eligible to receive
22 benefits under the Plan.

23 11. Thomas W. Hall is a retired Subcontract Administrator for Northrop. He
24 resides in Henderson, Nevada, and is a participant in the Plan under 29 U.S.C.
25 §1002(7) because he and his beneficiaries are or may become eligible to receive
26 benefits under the Plan.

27 12. Maria E. Midkiff is a retired Senior Financial Analyst for Northrop. She
28 resides in Chatsworth, California, and is a participant in the Plan under 29 U.S.C.

1 §1002(7) because she and her beneficiaries are or may become eligible to receive
2 benefits under the Plan.

3 13. Manuel A. Gonzalez is a retired Shipping Coordinator, Senior Lead for
4 Northrop. He resides in Carson, California, and is a participant in the Plan under 29
5 U.S.C. §1002(7) because he and his beneficiaries are or may become eligible to
6 receive benefits under the Plan.

7 14. Ricky L. Hendrickson is a retired Senior Stockroom Clerk for Northrop.
8 He resides in Carson, California, and is a participant in the Plan under 29 U.S.C.
9 §1002(7) because he and his beneficiaries are or may become eligible to receive
10 benefits under the Plan.

11 15. Phillip B. Brooks is a former Asset Management Manager for Northrop.
12 He resides in Oxon Hill, Maryland, and is a participant in the Plan under 29 U.S.C.
13 §1002(7) because he and his beneficiaries are or may become eligible to receive
14 benefits under the Plan.

15 16. Harold Hylton is a former Senior Desktop Support provider for
16 Northrop. He resides in Accokeek, Maryland, and is a participant in the Plan under
17 29 U.S.C. §1002(7) because he and his beneficiaries are or may become eligible to
18 receive benefits under the Plan.

19 **Defendants**

20 **Defendant Northrop Grumman Corporation**

21 17. Northrop is the Plan sponsor under 29 U.S.C. §1002(16). Northrop is
22 also the employer of the Plan's other fiduciaries. As alleged herein, Northrop
23 Grumman exercises discretionary authority or discretionary control respecting
24 management of the Plan, exercises authority or control respecting management or
25 disposition of Plan assets, and/or has discretionary authority or discretionary
26 responsibility in the administration of the Plan and is a fiduciary under 29 U.S.C.
27 §1002(21)(A)(i) & (iii).
28

Defendant Northrop Grumman Savings Plan Administrative Committee

18. The written document that establishes and maintains the Plan under 29 U.S.C. §1102(a)(1), as amended and restated (“Plan document”), has designated and presently designates an “Administrative Committee” and its members to be the plan administrators and named fiduciaries of the Plan under 29 U.S.C. §1102(a)(2) for all purposes other than investment matters.

19. The Plan document calls for at least three individuals to constitute the Administrative Committee and authorized the Compensation Committee of Northrop’s Board of Directors to appoint members of the Administrative Committee to serve at the pleasure of the Compensation Committee. As of October 25, 2011, the Plan document has provided for Northrop’s Chief Executive Officer (CEO) to appoint the members of the Administrative Committee to serve at the pleasure of the CEO. At all times relevant to this complaint, the members of the Administrative Committee have been executive officers and/or directors of Northrop.

20. Despite the provisions of the Plan document, neither Northrop’s Compensation Committee nor its CEO has screened individuals for their qualification and suitability to be an ERISA fiduciary or appointed specific individuals to be members of the Administrative Committee. Instead, Northrop, through its Board of Directors, has provided that whatever individuals occupy the following Northrop offices are to be the members of the Administrative Committee: Northrop’s Corporate Vice President and Chief Human Resources and Administrative Officer; Northrop’s Corporate Vice President, Strategy and Technology; Northrop’s Corporate Vice President and Controller; Northrop’s Vice President, Taxation; Northrop’s Vice President, Trust Administration and Investments; Northrop’s Vice President, Compensation and Benefits; and Northrop’s Corporate Director, Benefits Administration and Services. Those same officers are the administrative committee for all of Northrop’s employee benefit

1 plans. In other words, the members of the fiduciary Administrative Committee are
2 appointed by Northrop regardless of any individual's training, education, or
3 experience in administration, investment management, or fiduciary responsibilities
4 in ERISA-governed plans.

5 21. In addition to being the named fiduciary and plan administrator, the
6 Administrative Committee and its members have entered into contracts on behalf of
7 the Plan and caused the payment of Plan assets to Northrop and third parties, and
8 thus are fiduciaries with respect to the Plan within the meaning of 29 U.S.C.
9 §1002(21)(A).

10 **Defendant Northrop Grumman Savings Plan Investment Committee**

11 22. The Plan document has designated and presently designates an
12 "Investment Committee" and its members to be the named fiduciaries of the Plan
13 under 29 U.S.C. §1102(a)(2) for investment matters.

14 23. The Plan document calls for at least three individuals to constitute the
15 Investment Committee and authorized Northrop's Board of Directors to appoint
16 members of the Investment Committee to serve at the pleasure of the Board. As of
17 October 25, 2011, the Plan document has provided for Northrop's Chief Executive
18 Officer (CEO) to appoint the members of the Investment Committee to serve at the
19 pleasure of the CEO. At all times relevant to this complaint, the members of the
20 Investment Committee have been executive officers of Northrop.

21 24. As with the Administrative Committee, despite the provisions of the
22 Plan document, neither Northrop's Board of Directors nor its CEO has screened
23 individuals for their qualification and suitability to be an ERISA fiduciary or
24 appointed specific individuals to be members of the Investment Committee.
25 Instead, Northrop, through its Board of Directors, has provided that whatever
26 individuals occupy the following Northrop offices are to be the members of the
27 Investment Committee: Northrop's Corporate Vice President and Chief Human
28 Resources and Administrative Officer; Northrop's Corporate Vice President and

1 Treasurer; Northrop's Vice President, Trust Administration and Investments; and
2 Northrop's Corporate Director, Investments and Compliance. Those same officers
3 are the investment committee for all of Northrop's employee benefit plans. In other
4 words, the members of the fiduciary Investment Committee are appointed by
5 Northrop regardless of any individual's training, education, or experience in
6 administration, investment management, or fiduciary responsibilities in ERISA-
7 governed plans.

8 25. Because the Investment Committee selects the investment options
9 available to Plan participants, hires the investment managers and trustees, gives
10 them their investment directives, oversees their performance, and has the authority
11 to change the investment directives and/or investment managers and trustees, it and
12 its members are fiduciaries with respect to the Plan within the meaning of U.S.C.
13 §1002(21)(A). The Investment Committee has the responsibility to periodically
14 review the performance of the investment managers it hires and to report those
15 results to the Northrop Board of Directors for further review and action.

16 26. As a corporation, Northrop can only act through its directors and
17 officers. As alleged herein, Northrop's directors and officers have acted on behalf
18 of Northrop for the purpose of benefitting Northrop, not the Plan or Plan
19 participants. Their actions thus constitute the actions of Northrop itself, meaning
20 that Northrop itself is a fiduciary under 29 U.S.C. 1002(21)(A) and liable for the
21 breach of fiduciary duties alleged herein.

22 27. At all times relevant, Northrop has agreed to indemnify the
23 Administrative Committee and the Investment Committee and its members for any
24 and all expenses, liabilities, or losses arising out of any act or omission relating to
25 the rendition of services for or the management and administration of the Plan,
26 except in instances of gross misconduct.

27 **Individual Defendants**

28 28. Defendant Denise Peppard has been Northrop's Corporate Vice

1 President and Chief Human Resources and Administrative Officer since 2011 and
2 as such was a member of the Administrative Committee and Investment Committee
3 and named fiduciary under 29 U.S.C. §1102(a).

4 29. Defendant Ian Ziskin was Northrop's Corporate Vice President and
5 Chief Human Resources and Administrative Officer and member of the
6 Administrative Committee and Investment Committee until April 2010. Plaintiffs
7 cannot presently determine who held that office and positions from April 2010 until
8 Defendant Peppard and therefore names that individual (or individuals) John Doe 1
9 until that individual (or individuals) can be identified and named as a defendant
10 herein.

11 30. Plaintiffs cannot presently determine who held and presently holds the
12 office of Northrop's Corporate Vice President, Strategy and Technology, who is a
13 member of the Administrative Committee and named fiduciary under 29 U.S.C.
14 §1102(a), from 2010 to present and therefore names that individual (or individuals)
15 John Doe 2 until that individual (or individuals) can be identified and named as a
16 defendant herein.

17 31. Defendant Michael Hardesty has been Northrop's Corporate Vice
18 President and Controller since 2013 and as such was a member of the
19 Administrative Committee and named fiduciary under 29 U.S.C. §1102(a) and a
20 delegatee of fiduciary responsibilities from the Administrative Committee, including
21 unlimited authority to instruct the Plan's Trustee to disburse Plan assets.

22 32. Defendant Kenneth L. Bedingfield was Northrop's Corporate Vice
23 President and Controller in 2011–2013 and as such was a member of the
24 Administrative Committee and named fiduciary under 29 U.S.C. §1102(a) and a
25 delegatee of fiduciary responsibilities from the Administrative Committee. In 2015,
26 Defendant Bedingfield also assumed the responsibility of the Vice President, Trust
27 Administration and Investments on the Administrative Committee and Investment
28 Committee and as the delegatee of the authority over Plan investments by the

1 Administrative Committee.

2 33. Defendant Kenneth N. Heintz was Northrop's Corporate Vice
3 President and Controller in 2009–2011 and as such was a member of the
4 Administrative Committee and named fiduciary under 29 U.S.C. §1102(a) and a
5 delegate of fiduciary responsibilities from the Administrative Committee.

6 34. Defendant Talha A. Zobair has been Northrop's Vice President,
7 Taxation since 2014 and as such was a member of the Administrative Committee
8 and named fiduciary under 29 U.S.C. §1102(a).

9 35. Defendant Prabu Natarajan was Northrop's Vice President, Taxation in
10 2011–2014 and as such was a member of the Administrative Committee and named
11 fiduciary under 29 U.S.C. §1102(a). Defendant Natarajan also served as Northrop's
12 Corporate Vice President and Treasurer in 2013–2014 and as such was a member of
13 the Investment Committee and named fiduciary under 29 U.S.C. §1102(a).

14 36. Plaintiffs cannot presently determine who held the office of Northrop's
15 Vice President, Taxation in 2009–2011, who was a member of the Administrative
16 Committee and named fiduciary under 29 U.S.C. §1102(a), and therefore names
17 that individual (or individuals) John Doe 3 until that individual (or individuals) can
18 be identified and named as a defendant herein. Northrop's Vice President, Taxation
19 also was granted unlimited authority to instruct the Plan's Trustee to disburse Plan
20 assets.

21 37. Plaintiffs cannot presently determine who held the office of Northrop's
22 Vice President, Trust Administration and Investments and as such served as a
23 member of the Administrative Committee and Investment Committee and named
24 fiduciary under 29 U.S.C. §1102(a) apart from Defendant Bedingfield, and
25 therefore names that individual (or individuals) John Doe 4 until that individual (or
26 individuals) can be identified and named as a defendant herein.

27 38. Defendant Daniel Hickey was Northrop's Vice President,
28 Compensation and Benefits in 2013–2016 and as such was a member of the

1 Administrative Committee and named fiduciary under 29 U.S.C. §1102(a) and was
2 delegated fiduciary responsibilities over payments from the Plan by the
3 Administrative Committee, including unlimited authority to instruct the Plan's
4 Trustee to disburse Plan assets.

5 39. Plaintiffs cannot presently determine who held the office of Northrop's
6 Vice President, Compensation and Benefits and as such was a member of the
7 Administrative Committee and named fiduciary under 29 U.S.C. §1102(a) apart
8 from Defendant Hickey, and therefore names that individual (or individuals) John
9 Doe 5 until that individual (or individuals) can be identified and named as a
10 defendant herein.

11 40. Defendant Maria T. Norman is and at all times relevant has been
12 Northrop's Corporate Director, Benefits Administration and Services and as such
13 was a member of the Administrative Committee and named fiduciary under 29
14 U.S.C. §1102(a) and was delegated fiduciary responsibility to approve payments of
15 Plan assets to outside parties by the Administrative Committee, including unlimited
16 authority to instruct the Plan's Trustee to disburse Plan assets.

17 41. Defendant Stephen C. Movius is and since 2014 has been Northrop's
18 Corporate Vice President and Treasurer and as such was a member of the
19 Investment Committee and named fiduciary under 29 U.S.C. §1102(a).

20 42. Defendant Mark A. Caylor was Northrop's Corporate Vice President
21 and Treasurer and as such was a member of the Investment Committee and named
22 fiduciary under 29 U.S.C. §1102(a) in 2011–2012.

23 43. Defendant Mark Rabinowitz was Northrop's Corporate Vice President
24 and Treasurer and as such was a member of the Investment Committee and named
25 fiduciary under 29 U.S.C. §1102(a) in 2009–2011.

26 44. Defendant Silva Thomas is and at all times relevant has been
27 Northrop's Corporate Director, Investments and Compliance and as such was a
28 member of the Investment Committee and named fiduciary under 29 U.S.C.

1 §1102(a).

2 45. Plaintiffs believe that the Investment Committee delegated to
3 Northrop's Vice President, Trust Administration and Investments and Northrop's
4 Director, Research and Trust Compliance fiduciary authority to oversee and direct
5 the day-to-day investment and all other related activities of the Plan.

6 46. Plaintiffs cannot determine who held the office of Northrop's Director
7 of Research and Trust Compliance and as such was a member of the Investment
8 Committee and named fiduciary under 29 U.S.C. §1102(a) and delegee of fiduciary
9 responsibilities over Plan investments by the Investment Committee, and therefore
10 names that individual (or individuals) John Doe 6 until that individual (or
11 individuals) can be identified and named as a defendant herein.

12 47. Plaintiffs cannot determine who held the office of Northrop's
13 Corporate Director, Benefits Accounting and as such was a member of the
14 Investment Committee and named fiduciary under 29 U.S.C. §1102(a) and delegee
15 of fiduciary responsibilities over Plan investments by the Investment Committee,
16 and therefore names that individual (or individuals) John Doe 7 until that individual
17 (or individuals) can be identified and named as a defendant herein. Plaintiffs
18 believe Northrop's Corporate Director, Benefits Accounting also was granted
19 unlimited authority to instruct the Plan's Trustee to disburse Plan assets.

20 48. To the extent that any of the Defendants named herein delegated their
21 fiduciary responsibilities to others, Plaintiffs cannot presently determine who are
22 those individuals and therefore names those individuals John Does 8–10 until those
23 individuals can be identified and named as defendants herein.

24 49. Because the specific action taken by each Defendant is not divulged to
25 Plan participants and is not otherwise publicly known, Plaintiffs cannot fully allege
26 specifically how each Defendant acted as described herein, and therefore refers to
27 Defendants collectively herein, unless otherwise specified.

28 //

FACTS APPLICABLE TO ALL COUNTS**I. Defendants unlawfully caused the Plan to pay Plan assets to Northrop.**

50. The predominant administrative expense for a defined contribution retirement plan is recordkeeping. See ¶64 below. Recordkeeping for the Plan was provided by a third party for millions of dollars, as described below. No additional services were necessary to administer the Plan, or, if any additional services were necessary, they were limited and could have been provided by a third party. Defendants, however, caused the Plan to hire Northrop—that is, for Northrop to hire itself—to provide purported administrative services, which served as a scheme to direct Plan assets to Northrop that were not payments reasonably related to any service the Plan needed or was provided.

51. The Administrative and Investment Committees entered into Administrative Services Agreements (“ASAs”) by which they arranged for paying Plan assets to Northrop purportedly in return for Northrop providing certain administrative and investment-related services to the Plan.

52. Northrop provided these purported services to the Plan through various Northrop corporate departments. The only departments that the ASAs authorized to perform services to the Plan or to receive reimbursement of expenses were: Benefits Administration and Services; Benefits Accounting and Analysis; Benefits Compliance; and Investments and Trust Management.

53. The ASAs required the Administrative Committee to approve the reimbursement of expenses to Northrop’s Benefits Administration and Services, Benefits Accounting and Analysis, and Benefits Compliance departments.

54. The ASAs required the Investment Committee to approve the reimbursement of expenses to Northrop’s Investments and Trust Management department.

55. Although the ASAs contain detailed requirements by which Northrop’s services and payments had to be approved before any services were

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1 provided and again after the service were provided but before payment was made,
2 the Administrative Committee and Investment Committee failed to follow those
3 requirements. They failed to follow the requirements of, among others, obtaining
4 the opinion of an independent consultant that these services were necessary for
5 administration of the Plan and that the charges therefore were reasonable and that
6 the quality of the services and amount of the charges were equivalent to what an
7 independent third party would charge. Instead, in violation of the fiduciary duty to
8 operate the plan solely in the interest of plan participants, on Northrop's instruction,
9 the Administrative Committee and Investment Committee allowed the heads of the
10 very departments that were to be paid from Plan assets the authority to authorize
11 payment of Plan assets to those departments. In addition, the Investment Committee
12 allowed Northrop's Vice President, Trust Administration and Investments and
13 Director of Research and Trust Compliance to oversee and direct the day-to-day
14 investment and all other related activities of the Plan and the Trust. In other words,
15 Northrop effectively exercised unfettered control over its payment from Plan assets,
16 including payments to departments not authorized by the ASAs and payments for
17 services that were not authorized by the ASAs or authorized under ERISA.

18 56. Moreover, Northrop sought to maximize the amounts charged to the
19 Plan for expenses incurred by Northrop's corporate departments regardless of
20 whether those expenses were reasonable and necessary for the services provided or
21 directly incurred in the operation and administration of the Plan. Northrop
22 employees were motivated to, and did, charge time and expenses to the Plan which
23 were impermissible in nature, unreasonable, and unnecessary.

24 57. The payments to Northrop were collected through asset-based charges
25 imposed on each of the Plan's investment options.

26 58. Defendants never determined whether the services provided by
27 Northrop were even necessary for the administration of the Plan or in the exclusive
28 interest of Plan participants, whether any such services as were necessary for Plan

1 administration should have been outsourced, or whether the charges for such
2 services were reasonable expenses of administering the Plan. Defendants also did
3 not put the services purportedly provided by Northrop out for competitive bidding
4 to determine the market rate for such services for the Plan, which would have
5 shown that, if they were necessary, other parties could have performed the same
6 services at substantially lower cost to the Plan. Consequently, the Committees,
7 acting for Northrop, allowed Northrop to receive Plan assets in the guise of
8 compensation that was not reasonable or necessary for the administration of the
9 Plan.

10 59. Defendants were repeatedly informed that the payments they made to
11 Northrop from Plan assets were excessive when compared to market rates.

12 60. From 2009 through 2013, Northrop received \$1.7 million to \$2.1
13 million per year from the Plan. Through 2015, Northrop has taken nearly \$10
14 million from the Plan. That has caused Plan losses of over \$13 million, accounting
15 for the lost investment gains on those assets.

16 61. Defendants failed to loyally and prudently monitor this purported
17 compensation to ensure that only reasonable and necessary expenses were charged
18 for services actually provided to the Plan.

19 62. Had Defendants performed their fiduciary duties, the Plan would not
20 have suffered over \$13 million dollars in losses from mid-2009 through 2015.

21 **II. Defendants caused the Plan to pay unreasonable recordkeeping fees to**
22 **the Plan's recordkeeper.**

23 63. From January 1, 2007 to April 1, 2016, Hewitt Associates LLC has
24 been the Plan's recordkeeper, providing recordkeeping services to the Plan.
25 Effective April 1, 2016, Fidelity Investments replaced Hewitt as the Plan's
26 recordkeeper.

27 64. Recordkeeping is a service necessary for every defined contribution
28 plan. The market for recordkeeping services is highly competitive. There are

1 numerous recordkeepers in the marketplace who are capable of providing a high
2 level of service to a jumbo defined contribution plan, like the Plan, and will readily
3 respond to a request for proposal. These recordkeepers primarily differentiate
4 themselves based on price, and vigorously compete for business by offering the
5 best price. The cost of recordkeeping services depends on the number of
6 participants (or participant accounts), not on the amount of assets in the
7 participant's account. Thus, the cost of providing recordkeeping services to a
8 participant with a \$100,000 account balance is the same for a participant with
9 \$1,000 in her retirement account. Plans with large numbers of participants can take
10 advantage of economies of scale: a plan with 100,000 participants can negotiate a
11 much lower per participant fee for recordkeeping services than a plan with 1,000
12 participants.

13 65. Because recordkeeping costs are not affected by account size, prudent
14 fiduciaries of defined contribution plans negotiate recordkeeping fees on the basis
15 of a fixed dollar amount per participant in the plan rather than as a percentage of
16 plan assets. Otherwise, as plan assets increase, such as through participant
17 contributions or investment gains, the recordkeeping compensation increases
18 without any change in the recordkeeping and administrative services, leading to
19 unreasonable fees.

20 66. To ensure that plan administrative and recordkeeping expenses are and
21 remain reasonable for the services provided, prudent fiduciaries of large defined
22 contribution plans put the plan's recordkeeping and administrative services out for
23 competitive bidding at regular intervals of approximately three years, and monitor
24 recordkeeping costs regularly within that period.

25 67. In order to make an informed assessment as to whether a recordkeeper
26 is receiving no more than reasonable compensation for the services provided to a
27 plan, the responsible fiduciary must identify *all* fees, including recordkeeping fees
28 and other sources of compensation, paid to the service provider.

1 68. From 2010 to 2016, Hewitt was compensated for recordkeeping
2 services at a fixed rate of \$500,000 per month plus transaction-specific payments,
3 or a rate of \$39.47 per participant per year on the basis of 152,000 participants in all
4 Northrop defined contribution plans, with that rate reduced to \$37 per participant
5 per year when the plans had over 152,000 participants. At the same time, Hewitt
6 provided recordkeeping services to Northrop's health and welfare plans, defined
7 benefit plans, and non-qualified plans for highly compensated executives.

8 69. However, the payment set forth above was not the only payment made
9 to Hewitt. Beginning in 2012, Hewitt also received indirect compensation from
10 another Plan service provider—Financial Engines. Financial Engines provides
11 individualized investment advice to Plan participants to assist them with investing
12 their retirement assets in the Plan. Financial Engines receives a fee based on the
13 percentage of assets in the participant's 401(k) account. Financial Engines shares or
14 kicks back to Hewitt 25% of the asset-based advice fee and 35% of the asset-based
15 professional management fees that Plan participants pay to Financial Engines for
16 advice, yet Hewitt provides no advice. Hewitt provides no service to Financial
17 Engines or the Plan participant to justify this payment to Hewitt from participants'
18 Plan assets.

19 70. Thus, since Financial Engines provided its advice services for less than
20 the fee that was being charged to participants who paid it, participants paid
21 Financial Engines excessive fees for the services Financial Engines provided to
22 them.

23 71. Defendants failed to properly monitor Hewitt's total compensation
24 from all sources in light of the services Hewitt provided and thus caused the Plan to
25 pay unreasonable administrative expenses to Hewitt.

26 72. From 2009 through 2015, the number of participants, and in turn
27 401(k) accounts, Hewitt was required to recordkeep declined by over 31,000 (23%),
28 from 134,000 to 103,000. However, Hewitt's flat compensation was not reduced.

1 This caused Hewitt's total recordkeeping compensation to increase by over 54% on
2 a per-participant basis to \$73 per participant per year, even though Hewitt's
3 recordkeeping services remained the same or declined.

4 73. The amount of asset-based compensation Hewitt received from
5 Financial Engines skyrocketed nearly ten-fold, increasing from approximately
6 \$258,120 in 2013 to over \$2.3 million in 2015,¹ even though the recordkeeping
7 services provided by Hewitt to the Plan remained the same or declined.

8 74. Based on the Plan's features, the nature of the administrative services
9 provided by Hewitt, the Plan's number of participants (100,000–130,000), and the
10 recordkeeping market, the outside limit of a reasonable recordkeeping fee for the
11 Plan in the time frame of 2010 through 2015 would have been \$2.5–\$3.3 million
12 per year (or at most \$25 per participant with an account balance).

13 75. The Plan paid \$5.9–\$7.5 million (or approximately \$48 to \$73 per
14 participant) per year from 2010 to 2015 for recordkeeping services, nearly triple a
15 reasonable fee for these services, resulting in millions of dollars in unreasonable
16 recordkeeping fees each year, all of which was paid from Plan assets, meaning from
17 participants' retirement investments.

18 76. Upon information and belief, since January 1, 2007, Defendants did
19 not engage an independent third party to benchmark the reasonableness of the direct
20 and indirect compensation received by Hewitt to ensure that only reasonable fees
21 were charged to Plan participants for recordkeeping services and advice.

22 77. Upon information and belief, Defendants also failed to conduct a
23 competitive bidding process for the Plan's recordkeeping services in 2010,
24 approximately three years after Hewitt was first hired as the Plan's recordkeeper, or
25

26 ¹ Because Defendants did not disclose in their annual reports to the U.S.
27 Department of Labor (except for one year—2013) the total compensation Hewitt
28 received from Financial Engines, Plaintiffs must estimate that compensation based
on the information available to them.

1 until the end of Hewitt's recordkeeping contract. A competitive bidding process for
2 the Plan's recordkeeping services would have produced a reasonable recordkeeping
3 fee for the Plan. That is particularly so because recordkeeping fees for large plans
4 such as the Plan have been declining since Defendants last put the Plan's
5 recordkeeping services out to competitive bid. By failing to engage in a competitive
6 bidding process for Plan recordkeeping fees, Defendants caused the Plan to pay
7 excessive recordkeeping fees.

8 78. Had Defendants ensured that participants were charged only
9 reasonable fees for recordkeeping services, Plan participants would not have lost in
10 excess of \$30 million in their retirement savings through unreasonable
11 recordkeeping fees and lost returns.

12 **III. The Emerging Markets Equity Fund.**

13 79. Since at least 2010, Defendants have provided the Emerging Markets
14 Equity Fund as a Plan investment option. The Fund invests in securities issued by
15 companies in developing countries. The Fund held over \$1.3 billion as of December
16 31, 2010, before declining to \$496 million as of December 31, 2015.

17 80. Before November 2014, Defendants directed the use of an active
18 investment strategy for the Fund and employed active managers to invest Fund
19 assets. Effective November 2014, Defendants changed the investment strategy to a
20 passive investment strategy and removed the Fund's active managers for passive
21 managers.

22 81. In an active investment strategy, the investment manager uses her
23 judgment in buying and selling individual securities (e.g., stocks, bonds, etc.) in an
24 attempt to generate investment returns that surpass a benchmark index, net of fees
25 that are higher in actively managed than passively managed funds. In a passive
26 investment strategy, the investment manager attempts to match the performance of
27 a given benchmark index by holding a representative sample of securities in that
28 index. Because no stock selection or research is necessary for the manager to track

1 the index and trading is limited, passively managed investments charge
2 significantly lower fees for investment management services.

3 82. Prudent fiduciaries of large defined contribution plans analyze whether
4 actively managed funds are likely to outperform their benchmarks net of fees.
5 Prudent fiduciaries must make a reasoned decision as to whether it is in the
6 participants' interest to offer an actively managed option for the particular
7 investment style and asset class, considering expected returns relative to passive
8 options net of fees.

9 83. Upon information and belief, during 2010, Defendants determined that
10 an active investment strategy for the Plan's equity and fixed income investment
11 options was no longer prudent or in the Plan participants' best interest. Effective
12 December 2010 and January 2011, Defendants changed the investment strategy for
13 the U.S. Fixed Income Fund, the Balanced Fund, the U.S. Equity Fund, the
14 International Equity Fund, and the Small Cap Fund, from an active investment
15 strategy to a passive investment strategy. However, for the Emerging Markets
16 Equity Fund, Defendants took no action and continued to mandate an active
17 investment strategy for that Fund.

18 84. As of 2010, the Emerging Markets Equity Fund was the most
19 expensive investment option in the Plan, charging an asset-based fee of 57 bps of
20 the value of the Fund.² The Emerging Markets Equity Fund also had consistently
21 and dramatically underperformed its benchmark index, the Morgan Stanley Capital
22 International Emerging Markets Index (MSCI Emerging Markets Index). As of
23 year-end 2009, the fund underperformed by 586 *bps* over one year, underperformed
24 by 97 *bps* over three years, underperformed by 30 *bps* over five years, and
25 underperformed by 151 *bps* over seven years.

26 85. Even though the actively managed U.S. Fixed Income Fund and the
27

28 ² One basis point (bps) equal one-tenth of one percent.

1 U.S. Equity Fund *did not* underperform their benchmark indices for one-, three-,
 2 five-, seven-, and ten-year periods as of December 31, 2009, Defendants
 3 nonetheless moved those funds to a passive investment strategy as of December
 4 2010 and January 2011, respectively.

5 86. In contrast, despite the Emerging Markets Equity Fund's consistently
 6 tremendous underperformance, high fees, and inability to generate returns above its
 7 benchmark, Defendants failed to engage in a prudent process to determine whether
 8 maintaining the fund's active strategy was likely to result in the fund outperforming
 9 its benchmark, net of fees, after dramatically underperforming for one-, three-,
 10 five-, and seven-year periods. Defendants also failed to make a reasoned decision
 11 that maintaining the actively managed strategy was in the best interest of Plan
 12 participants or prudent, particularly when Defendants changed the Plan's other
 13 equity and fixed income investment funds to a passive investment strategy.

14 87. Since 2010, the Fund has continued to underperform its benchmark.
 15 At the end of 2013 it underperformed the MSCI Emerging Markets Index by *50 bps*
 16 over the preceding one and three years, *130 bps* over the preceding five years, and
 17 *70 bps* over the preceding ten years. The Fund continued to underperform in 2014.
 18 At no point during this time, however, did Defendants as part of their monitoring of
 19 this Fund, determine whether it was prudent and in the best interest of the
 20 participants to continue their active investment strategy for this Fund.

21 88. The Emerging Markets Equity Fund also underperformed lower-cost
 22 passively managed alternatives that were available to the Plan, such as the
 23 Vanguard Emerging Markets Stock Index Fund.³ The Vanguard Emerging Markets
 24 Stock Index Fund charged investment fees as low as 10 bps, but the Defendants'

25
 26 ³ The institutional share class (VEMIX), with an inception date of June 22, 2000,
 27 was used for comparison purposes for 2010, and the institutional plus share class
 28 (VEMRX), with an inception date of December 15, 2010, was used for subsequent
 years.

1 Emerging Markets Equity Fund charged 57 bps—570% more. On average, between
2 2010 and 2014, the Emerging Markets Equity Fund underperformed the Vanguard
3 Emerging Markets Stock Index Fund by approximately *115 bps* per year.

4 89. When Defendants finally converted the Emerging Markets Equity
5 Fund to a passive investment strategy in 2014, the Fund's investment management
6 fee at that time had been 47 bps, almost 400% of the 12 bps fee that was charged
7 after that change. Had Defendants made this change in 2010, as they should have,
8 Plan participants would have saved over \$5 million in investment management
9 expenses in 2011 alone, and millions of dollars of their retirement savings and lost
10 earnings each year from 2012 to 2014.

11 90. Had Defendants replaced the Emerging Markets Equity Fund's active
12 investment strategy with a passive investment strategy and employed proper
13 managers as of December 2010, Plan participants would have avoided in excess of
14 \$30 million in performance losses compared to the investment returns of the Fund's
15 benchmark index and lower-cost passively managed emerging markets equity
16 funds, such as the Vanguard Emerging Markets Stock Index Fund. Plan participants
17 would also have avoided over \$12 million in unreasonable investment management
18 fees compared to lower-cost passively managed alternatives that were available to
19 the Plan, such as the Vanguard Emerging Markets Stock Index Fund.⁴

20 **DEFENDANTS' FIDUCIARY DUTIES**

21 91. ERISA imposes strict fiduciary duties of loyalty and prudence upon
22 the Defendants as fiduciaries of the Plan. 29 U.S.C. §1104(a), states, in relevant
23 part, that:

24 a fiduciary shall discharge his duties with respect to a plan solely in the
25 interest of the participants and beneficiaries and—

26 _____
27 ⁴ Plan losses have been brought forward to the present value using the investment
28 returns of the Vanguard Emerging Markets Stock Index Fund to compensate
participants who have not been reimbursed for their losses.

1 (A) for the exclusive purpose of (i) providing benefits to participants
2 and their beneficiaries; and (ii) defraying reasonable expenses of
3 administering the plan; [and]

4 (B) with the care, skill, prudence, and diligence under the circumstances
5 then prevailing that a prudent man acting in a like capacity and familiar
6 with such matters would use in the conduct of an enterprise of like
7 character and with like aims.

8 92. These duties are the “highest known to the law,” *Bierwirth*, 690 F.2d
9 at 272 n.8, and require that fiduciaries make decisions “with an eye single to the
10 interests of the participants and beneficiaries,” which, “in turn, imposes a duty on
11 the trustees to avoid placing themselves in a position where their acts as officers or
12 directors of the corporation will prevent their functioning with the complete loyalty
13 to participants demanded of them as trustees of a pension plan”, *id.* at 271.

14 93. Defendants’ fiduciary obligations under ERISA require that they
15 ensure, at all times, that Plan assets are *never* used for the benefit of the employer,
16 e.g., Northrop. Under 29 U.S.C. 1103(c)(1), with certain exceptions not relevant
17 here,

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

22 94. Defendants’ fiduciary obligations under ERISA require them to
23 scrupulously avoid any transaction in which Plan assets would be used by, or inure
24 to the benefit of, a party in interest in connection with the Plan, including Northrop.

25 95. The general duties of loyalty and prudence imposed by 29 U.S.C.
26 §1104 are supplemented by a list of transactions that are expressly prohibited by 29
27 U.S.C. §1106, as *per se* violations. Section 1106(a)(1) states, in pertinent part, that:

28 [A] fiduciary with respect to a plan shall not cause the plan to engage in a

1 transaction, if he knows or should know that such transaction constitutes a
2 direct or indirect –

- 3 (A) sale or exchange, or leasing, of any property between the plan
4 and a party in interest; ...
5 (C) furnishing of goods, services, or facilities between the plan and
6 a party in interest;
7 (D) transfer to, or use by or for the benefit of a party in interest, of
8 any assets of the plan[.]

9 Section 1106(b) provides, in pertinent part, that:

10 [A] fiduciary with respect to the plan shall not –

- 11 (1) deal with the assets of the plan in his own interest or for his own
12 account,
13 (2) in his individual or in any other capacity act in a transaction
14 involving the plan on behalf of a party (or represent a party)
15 whose interests are adverse to the interest of the plan or the
16 interest of its participants or beneficiaries, or
17 (3) receive any consideration for his own personal account from any
18 party dealing with such plan in connection with a transaction
19 involving the assets of the plan.

20 96. Under 29 U.S.C. §1105(a), a fiduciary is liable for the breach of a
21 cofiduciary:

- 22 (1) if he participates knowingly in, or knowingly undertakes to conceal, an
23 act or omission of such other fiduciary, knowing such act or omission
24 is a breach; or
25 (2) if, by his failure to comply with section 404(a)(1) in the administration
26 of his specific responsibilities which give risk to his status as a
27 fiduciary, he has enabled such other fiduciary to commit a breach; or
28 (3) if he has knowledge of a breach by such other fiduciary, unless he

1 makes reasonable efforts under the circumstances to remedy the
2 breach.

3 97. 29 U.S.C. §1132(a)(2) authorizes a plan participant to bring a civil
4 action to enforce a breaching fiduciary's liability to the plan under 29 U.S.C.
5 §1109. Section 1109(a) provides in relevant part:

6 Any person who is a fiduciary with respect to a plan who breaches any of
7 the responsibilities, obligations, or duties imposed upon fiduciaries by this
8 subchapter shall be personally liable to make good to such plan any losses
9 to the plan resulting from each such breach, and to restore to such plan
10 any profits of such fiduciary which have been made through use of assets
11 of the plan by the fiduciary, and shall be subject to such other equitable or
12 remedial relief as the court may deem appropriate, including removal of
13 such fiduciary.

14 98. 29 U.S.C. §1132(a)(3) provides a cause of action against a non-
15 fiduciary "party in interest" who knowingly participates in prohibited transactions
16 or knowingly receives payments made in breach of a fiduciary's duty, and
17 authorizes "appropriate equitable relief" such as restitution or disgorgement to
18 recover ill-gotten proceeds from the non-fiduciary.

19 **CLASS ACTION ALLEGATIONS**

20 99. In acting as representatives on behalf of the Plan and to enhance the
21 due process protections of unnamed participants and beneficiaries of the Plan, as an
22 alternative to direct individual actions on behalf of the Plan under 29 U.S.C.
23 §1132(a)(2) and (3), Plaintiffs seek to certify this action as a class action on behalf
24 of all participants and beneficiaries of the Plan. Plaintiffs seek to certify, and to be
25 appointed as representatives of, the following class:

26 All persons, excluding defendants and/or other individuals who are liable
27 for the conduct described in the complaint, who are, or since May 11,
28 2009 were, participants or beneficiaries of the Northrop Grumman

1 Savings Plan are were affected by the conduct set forth in this Complaint,
2 as well as those who will become participants or beneficiaries Northrop
3 Grumman Savings Plan.

4 100. This action meets the requirements of Federal Rule of Civil Procedure
5 23 and is certifiable as a class action for the following reasons:

6 A. The Class includes over 100,000 members and is so large that
7 joinder of all its members is impracticable.

8 B. There are questions of law and fact common to the Class
9 because Defendants owed fiduciary duties to the Plan and to all
10 participants and beneficiaries and took the actions and omissions alleged
11 herein as to the Plan and not as to any individual participant. Thus,
12 common questions of law and fact include the following, without
13 limitation: who are the fiduciaries liable for the remedies provided by 29
14 U.S.C. §1109(a); whether the fiduciaries of the Plan breached their
15 fiduciary duties to the Plan; what are the losses to the Plan resulting from
16 each breach of fiduciary duty; and what Plan-wide equitable and other
17 relief the court should impose in light of Defendants' breach of duty.

18 C. Plaintiffs' claims are typical of the claims of the Class because
19 each Plaintiff was a participant during the time period at issue in this
20 action and all participants in the Plan were harmed by Defendants'
21 misconduct.

22 D. Plaintiffs are adequate representatives of the Class because they
23 were participants in the Plan during the Class period, have no interest that
24 is in conflict with the Class, are committed to the vigorous representation
25 of the Class, and have engaged experienced and competent attorneys to
26 represent the Class.

27 E. Prosecution of separate actions for these breaches of fiduciary
28 duties by individual participants and beneficiaries would create the risk of

1 (A) inconsistent or varying adjudications that would establish
2 incompatible standards of conduct for Defendants in respect to the
3 discharge of their fiduciary duties to the Plan and personal liability to the
4 Plan under 29 U.S.C. §1109(a), and (B) adjudications by individual
5 participants and beneficiaries regarding these breaches of fiduciary duties
6 and remedies for the Plan would, as a practical matter, be dispositive of
7 the interests of the participants and beneficiaries not parties to the
8 adjudication or would substantially impair or impede those participants'
9 and beneficiaries' ability to protect their interests. Therefore, this action
10 should be certified as a class action under Rule 23(b)(1)(A) or (B). For
11 these reasons, a similar class action was certified in the related case *In re*
12 *Northrop Grumman Corp. ERISA Litig.*, No. 06-6213-AB (JCx), Doc. 421
13 (C.D.Cal. Mar. 29, 2011).

14 101. The court in *In re Northrop Grumman* recently ruled that it would not
15 allow the plaintiffs in that case to obtain discovery to support the class' claims for
16 the period after May 11, 2009. Doc. 652. Prior to that order, the class putatively
17 sought recovery of all amounts paid to Northrop through the date of judgment.
18 Plaintiffs in this case are members of that class. Accordingly, the pendency of *In re*
19 *Northrop Grumman* tolled the statute of limitations on these claims.

20 102. A class action is the superior method for the fair and efficient
21 adjudication of this controversy because joinder of all participants and beneficiaries
22 is impracticable, the losses suffered by individual participants and beneficiaries
23 may be small and impracticable for individual members to enforce their rights
24 through individual actions, and the common questions of law and fact predominate
25 over individual questions. Given the nature of the allegations, no class member has
26 an interest in individually controlling the prosecution of this matter, and Plaintiffs
27 are aware of no difficulties likely to be encountered in the management of this
28 matter as a class action. Alternatively, then, this action may be certified as a class

1 under Rule 23(b)(3) if it is not certified under Rule 23(b)(1)(A) or (B). The class
2 action in the related case *In re Northrop Grumman Corp. ERISA Litig.*, No. 06-
3 6213-AB (JCx), Doc. 421 (C.D. Cal. Mar. 29, 2011), was certified under Rule
4 23(b)(1).

5 103. Plaintiffs' counsel, Schlichter, Bogard & Denton LLP, will fairly and
6 adequately represent the interests of the Class and is best able to represent the
7 interests of the Class under Rule 23(g).

8 a. Schlichter, Bogard & Denton has been appointed as class
9 counsel in 15 other ERISA class actions regarding excessive fees in large
10 defined contribution plans, including in the related case *In re Northrop*
11 *Grumman Corp. ERISA Litig.*, No. 06-6213-AB (JCx), Doc. 421 (C.D.
12 Cal. Mar. 29, 2011). As a district court in one of those cases recently
13 observed: "the firm of Schlichter, Bogard & Denton ha[s] demonstrated
14 its well-earned reputation as a pioneer and the leader in the field." *Abbott*
15 *v. Lockheed Martin Corp.*, No. 06-701, 2015 U.S.Dist.LEXIS 93206 at 4
16 (S.D. Ill. July 17, 2015). Other courts have made similar findings: "It is
17 clear to the Court that the firm of Schlichter, Bogard & Denton is
18 preeminent in the field" "and is the only firm which has invested such
19 massive resources in this area." *George v. Kraft Foods Global, Inc.*, No.
20 08-3799, 2012 U.S.Dist.LEXIS 166816 at 8 (N.D.Ill. June 26, 2012). "As
21 the preeminent firm in 401(k) fee litigation, Schlichter, Bogard & Denton
22 has achieved unparalleled results on behalf of its clients." *Nolte v. Cigna*
23 *Corp.*, No. 07-2046, 2013 U.S.Dist.LEXIS 184622 at 8 (C.D.Ill. Oct. 15,
24 2013). "Litigating this case against formidable defendants and their
25 sophisticated attorneys required Class Counsel to demonstrate
26 extraordinary skill and determination." *Beesley v. Int'l Paper Co.*, No. 06-
27 703, 2014 U.S.Dist.LEXIS 12037 at 8 (S.D. Ill. Jan. 31, 2014).

28 b. The U.S. District Court Judge G. Patrick Murphy recognized the

1 work of Schlichter, Bogard & Denton as exceptional:

2 Schlichter, Bogard & Denton's work throughout this litigation illustrates
3 an exceptional example of a private attorney general risking large sums of
4 money and investing many thousands of hours for the benefit of
5 employees and retirees. No case had previously been brought by either the
6 Department of Labor or private attorneys against large employers for
7 excessive fees in a 401(k) plan. Class Counsel performed substantial
8 work..., investigating the facts, examining documents, and consulting and
9 paying experts to determine whether it was viable. This case has been
10 pending since September 11, 2006. Litigating the case required Class
11 Counsel to be of the highest caliber and committed to the interests of the
12 participants and beneficiaries of the General Dynamics 401(k) Plans.

13 *Will v. General Dynamics Corp.*, No. 06-698, 2010 U.S.Dist.LEXIS 123349 at
14 8–9 (S.D. Ill. Nov. 22, 2010).

15 c. Schlichter, Bogard & Denton handled the only full trial of an
16 ERISA excessive fee case, resulting in a \$36.9 million judgment for the
17 plaintiffs that was affirmed in part by the Eighth Circuit. *Tussey v. ABB,*
18 *Inc.*, 746 F.3d 327 (8th Cir. 2014). In awarding attorney's fees after trial,
19 the district court concluded that "Plaintiffs' attorneys are clearly experts
20 in ERISA litigation." *Tussey v. ABB, Inc.*, No. 06-4305, 2012 U.S.Dist.
21 LEXIS 157428 at 10 (W.D.Mo. Nov. 2, 2012). Following remand, the
22 district court again awarded Plaintiffs' attorney's fees, emphasizing the
23 significant contribution Plaintiffs' attorneys have made to ERISA
24 litigation, including educating the Department of Labor and courts about
25 the importance of monitoring fees in retirement plans.

26 Of special importance is the significant, national contribution made by the
27 Plaintiffs whose litigation clarified ERISA standards in the context of
28 investment fees. The litigation educated plan administrators, the

1 Department of Labor, the courts and retirement plan participants about the
2 importance of monitoring recordkeeping fees and separating a fiduciary's
3 corporate interest from its fiduciary obligations.

4 *Tussey v. ABB, Inc.*, 2015 U.S.Dist.LEXIS 164818 at 7–8 (W.D.Mo. Dec. 9,
5 2015).

6 d. Schlichter, Bogard & Denton is also class counsel in and
7 handled *Tibble v. Edison Int'l*, in which the Supreme Court held in a
8 unanimous 9–0 decision that ERISA fiduciaries have “a continuing duty
9 to monitor investments and remove imprudent ones[.]” 135 S.Ct. 1823,
10 1829 (2015). Schlichter, Bogard & Denton successfully petitioned for a
11 writ of certiorari, and obtained amicus support from the United States
12 Solicitor General and AARP, among others. Given the Court's broad
13 recognition of an ongoing fiduciary duty, the *Tibble* decision will affect
14 all ERISA defined contribution plans.

15 e. The firm's work in ERISA excessive fee class actions has been
16 featured in the New York Times, Wall Street Journal, NPR, Reuters, and
17 Bloomberg, among other media outlets. See, e.g., Anne Tergesen, *401(k)*
18 *Fees, Already Low, Are Heading Lower*, WALL ST. J. (May 15, 2016);
19 Gretchen Morgenson, *A Lone Ranger of the 401(k)'s*, N.Y. TIMES (Mar.
20 29, 2014); Liz Moyer, *High Court Spotlight Put on 401(k) Plans*, WALL
21 ST. J. (Feb. 23, 2015); Floyd Norris, *What a 401(k) Plan Really Owes*
22 *Employees*, N.Y. TIMES (Oct. 16, 2014); Sara Randazzo, *Plaintiffs'*
23 *Lawyer Takes on Retirement Plans*, WALL ST. J. (Aug. 25, 2015); Jess
24 Bravin and Liz Moyer, *High Court Ruling Adds Protections for Investors*
25 *in 401(k) Plans*, WALL ST. J. (May 18, 2015); Jim Zarroli, *Lockheed*
26 *Martin Case Puts 401(k) Plans on Trial*, NPR (Dec. 15, 2014); Mark
27 Miller, *Are 401(k) Fees Too High? The High-Court May Have an*
28 *Opinion*, REUTERS (May 1, 2014); Greg Stohr, *401(k) Fees at Issue as*

1 *Court Takes Edison Worker Appeal*, BLOOMBERG (Oct. 2, 2014).

2 104. To the extent the Court does not certify any claim asserted herein as a
3 class action, each Plaintiff is entitled to pursue that claim directly on behalf of the
4 Plan under 29 U.S.C. §1132(a)(2).

5 **COUNT I**

6 **Breach of Fiduciary Duties of Loyalty and Prudence —** 7 **Payments to Northrop**

8 105. Plaintiffs restate and incorporate the allegations contained in the
9 preceding paragraphs.

10 106. If a defined contribution plan overpays for recordkeeping services due
11 to the fiduciaries' failure to solicit bids from other recordkeepers, the fiduciaries
12 have breached their duty of prudence. See *George v. Kraft Foods Global, Inc.*, 641
13 F.3d 786, 798–99 (7th Cir. 2011). Similarly, “us[ing] revenue sharing to benefit
14 [the plan sponsor and recordkeeper] at the Plan’s expense” while “failing to
15 monitor and control recordkeeping fees” and “paying excessive revenue sharing” is
16 a breach of fiduciary duties. *Tussey v. ABB, Inc.*, 746 F.3d 327, 336 (8th Cir. 2014).

17 107. Defendants caused the Plan to pay improper and unreasonable
18 administrative fees to Northrop by failing to engage in a prudent and loyal process
19 for the selection and retention of Northrop to provide in-house administrative
20 services to the Plan or through the payment of Plan assets to Northrop despite
21 Northrop having provided no valuable services, or services of only limited value, to
22 the Plan. Because of the conflicted internal process to maximize expenses charged
23 to the Plan to cover the expense of Northrop’s employee benefits departments,
24 Defendants failed to engage in a competitive bidding process for the services
25 provided by Northrop employees, or consider outsourcing such services to an
26 independent third party, to ensure that only reasonable and necessary expenses were
27 incurred in the operation and administration of the Plan.

28 108. As a direct result of Defendants’ breach, Defendants caused the Plan to

1 suffer losses in the amount of Plan assets paid to Northrop and the amount those
2 assets would have gained had they remained in the Plan.

3 109. Each Defendant is personally liable under 29 U.S.C. §1109(a) to make
4 good to the Plan any losses to the Plan resulting from the breaches of fiduciary
5 duties alleged in this Count and to restore to the Plan any profits through their use
6 of Plan assets, and is subject to other equitable or remedial relief as appropriate.

7 110. Each Defendant also knowingly participated in the breach of the other
8 Defendants, knowing that such acts were a breach, enabled the other Defendants to
9 commit a breach by failing to lawfully discharge its own fiduciary duties, and knew
10 of the breach by the other Defendants and failed to make any reasonable effort
11 under the circumstances to remedy the breach, and thus each Defendant is liable for
12 the losses caused by the breach of its co-fiduciary under 29 U.S.C. §1105(a).

13 **COUNT II**

14 **Breach of Fiduciary Duties of Loyalty and Prudence—**

15 **Unreasonable Administrative and Recordkeeping Fees**

16 111. Plaintiffs restate and incorporate the allegations contained in the
17 preceding paragraphs.

18 112. Defendants caused the Plan to pay unreasonable recordkeeping fees to
19 the Plan's recordkeeper, Hewitt. Defendants failed to engage in a prudent and loyal
20 process for the ongoing retention of Hewitt. Defendants failed to monitor Hewitt's
21 compensation, particularly as the number of participants with account balances
22 declined between 2009 and 2015, and after Hewitt began receiving additional
23 compensation through revenue sharing payments from Financial Engines from
24 2012 through 2015. Defendants failed to put the Plan's recordkeeping services out
25 for competitive bidding on a regular basis, at least every three years, to ensure that
26 the Plan's recordkeeper only received reasonable compensation for the services
27 provided.

28 113. To the extent that Financial Engines paid Hewitt a portion of its asset-

1 based fees for no apparent services by Hewitt, that portion of Financial Engines'
2 fees from the Plan were unreasonable expenses of administering the Plan.

3 114. Defendants therefore breached their duties of loyalty and prudence
4 under 29 U.S.C. §1104(a)(1)(A) and (B), as a direct result of which the Plan and
5 Plan participants suffered losses from the reduction of Plan assets by the amount of
6 the excessive fees and the lost investment returns on those retirement assets.

7 115. Each Defendant is personally liable under 29 U.S.C. §1109(a) to make
8 good to the Plan any losses to the Plan resulting from the breaches of fiduciary
9 duties alleged in this Count and is subject to other equitable or remedial relief as
10 appropriate.

11 116. Each Defendant also knowingly participated in the breach of the other
12 Defendants, knowing that such acts were a breach, enabled the other Defendants to
13 commit a breach by failing to lawfully discharge its own fiduciary duties, and knew
14 of the breach by the other Defendants and failed to make any reasonable effort
15 under the circumstances to remedy the breach, and thus each Defendant is liable for
16 the losses caused by the breach of its co-fiduciary under 29 U.S.C. §1105(a).

17 **COUNT III**

18 **Breach of Fiduciary Duties of Loyalty and Prudence—**

19 **Emerging Markets Equity Fund**

20 117. Plaintiffs restate and incorporate the allegations contained in the
21 preceding paragraphs.

22 118. Defendants breached their duties of loyalty and prudence under 29
23 U.S.C. §1104(a)(1)(A) and (B) by failing, until November 2014, to remove
24 underperforming managers and move the Emerging Markets Equity Fund's assets
25 to passive-investing managers who were expected not to underperform the Fund's
26 index when the Fund and its prior managers and investments had a history of
27 pervasive, very substantial underperformance compared to its benchmark index and
28 Defendants had determined that actively managed investment was imprudent and

1 not in the interest of Plan participants for the Plan's other fixed income and equity
2 investment options. Defendants' actions caused the Plan to incur significant
3 performance losses and unreasonable investment management expenses.

4 119. Total Plan losses will be determined at trial after complete discovery in
5 this case and are continuing.

6 120. Each Defendant is personally liable under 29 U.S.C. §1109(a) to make
7 good to the Plan any losses to the Plan resulting from the breaches of fiduciary
8 duties alleged in this Count and is subject to other equitable or remedial relief as
9 appropriate.

10 121. Each Defendant also knowingly participated in the breach of the other
11 Defendants, knowing that such acts were a breach, enabled the other Defendants to
12 commit a breach by failing to lawfully discharge its own fiduciary duties, and knew
13 of the breach by the other Defendants and failed to make any reasonable effort
14 under the circumstances to remedy the breach, and thus each Defendant is liable for
15 the losses caused by the breach of its co-fiduciary under 29 U.S.C. §1105(a).

16 **COUNT IV**

17 **29 U.S.C. §1106(a) Prohibited Transactions**

18 **Between the Plan and Northrop as a Party in Interest**

19 122. Plaintiffs restate and incorporate the allegations contained in the
20 preceding paragraphs.

21 123. Northrop is a party in interest because it is a Plan fiduciary, an entity
22 providing services to the Plan, and an employer whose employees are covered by
23 the Plan.

24 124. Defendants caused Northrop to provide non-recordkeeping
25 administrative services to the Plan and caused the Plan to pay Plan assets to
26 Northrop.

27 125. By causing the Plan to pay Plan assets to Northrop, Defendants caused
28 the Plan to engage in a transaction that they knew or should have known constituted

1 an exchange of property between the Plan and a party in interest in violation of 29
2 U.S.C. §1106(a)(1)(A).

3 126. By causing the Plan to use Northrop to provide purported services to
4 the Plan and causing the Plan to pay Plan assets to Northrop, Defendants caused the
5 Plan to engage in a transaction they knew or should have known constituted the
6 furnishing of services between the Plan and a party in interest in violation of 29
7 U.S.C. §1106(a)(1)(C).

8 127. By causing the Plan to pay Plan assets to Northrop, Defendants caused
9 the Plan to engage in a transaction they knew or should have known constituted a
10 transfer of Plan assets to a party in interest in violation of 29 U.S.C.
11 §1106(a)(1)(D).

12 128. As a direct result of these prohibited transactions, Defendants caused
13 the Plan to suffer losses in the reduction of Plan assets in amount of the payments to
14 Northrop and the lost investment returns on those assets.

15 129. Each Defendant is personally liable under 29 U.S.C. §1109(a) to make
16 good to the Plan any losses to the Plan resulting from the breaches of fiduciary
17 duties and prohibited transactions alleged in this Count and to restore to the Plan all
18 profits through their use of Plan assets, and is subject to other equitable or remedial
19 relief as appropriate, including removal as a Plan fiduciary.

20 **COUNT V**

21 **29 U.S.C. §1106(b) Prohibited Transactions**

22 **Between the Plan and Northrop**

23 130. Plaintiffs restate and incorporate the allegations contained in the
24 preceding paragraphs.

25 131. In causing the Plan to pay Plan assets to Northrop, Defendants, as
26 executive officers and directors of Northrop, dealt with the assets of the Plan in
27 their own interest or for their own account, in violation of 29 U.S.C. §1106(b)(1).

28 132. In causing the Plan to use Northrop to provide putative services to the

1 Plan and causing the Plan to pay Plan assets to Northrop, Defendants acted in a
2 transaction involving the Plan on behalf of a party whose interests were adverse to
3 the interests of the Plan, its participants and beneficiaries, in violation of 29 U.S.C.
4 §1106(b)(2).

5 133. In causing the Plan to pay Plan assets to Northrop, Defendant Northrop
6 received consideration for its own personal account from parties dealing with the
7 Plan in connection with transactions involving the assets of the Plan, in violation of
8 29 U.S.C. §1106(b)(3).

9 134. Each Defendant is personally liable under 29 U.S.C. §1109(a) to make
10 good to the Plan any losses to the Plan resulting from the breaches of fiduciary
11 duties alleged in this Count and to restore to the Plan all profits they made through
12 the use of Plan assets, and is subject to other equitable or remedial relief as
13 appropriate, including removal as a fiduciary of the Plan.

14 **COUNT VI**

15 **29 U.S.C. §1106(a) Prohibited Transactions**

16 **Between the Plan and its Service Providers**

17 135. Plaintiffs restate and incorporate the allegations contained in the
18 preceding paragraphs.

19 136. Defendants' hiring of Hewitt, Financial Engines, and the actively
20 investing managers of the Emerging Markets Equity Fund and the payment of fees
21 to same constitute prohibited transactions under 29 U.S.C. §1106(a).

22 137. By causing the Plan to deliver Plan assets to Hewitt, Financial
23 Engines, and the actively investing managers of the Emerging Markets Equity
24 Fund, Defendants caused the Plan to engage in a transaction that they knew or
25 should have known constituted an exchange of property between the Plan and a
26 party in interest in violation of 29 U.S.C. §1106(a)(1)(A).

27 138. By causing the Plan to use Hewitt, Financial Engines, and the actively
28 investing managers of the Emerging Markets Equity Fund to provide services to the

1 Plan and causing the Plan to pay Plan assets to Hewitt, Financial Engines, and the
2 actively investing managers of the Emerging Markets Equity Fund, Defendants
3 caused the Plan to engage in transactions they knew or should have known
4 constituted the furnishing of services between the Plan and a party in interest in
5 violation of 29 U.S.C. §1106(a)(1)(C).

6 139. By causing the Plan to deliver Plan assets to Hewitt, Financial
7 Engines, and the actively investing managers of the Emerging Markets Equity
8 Fund, Defendants caused the Plan to engage in a transaction they knew or should
9 have known constituted a transfer of Plan assets to a party in interest in violation of
10 29 U.S.C. §1106(a)(1)(D).

11 140. As a direct result of these prohibited transactions, Defendants caused
12 the Plan to suffer losses in the reduction of Plan assets and the lost investment
13 returns on those assets.

14 141. Each Defendant is personally liable under 29 U.S.C. §1109(a) to make
15 good to the Plan any losses to the Plan resulting from the breaches of fiduciary
16 duties and prohibited transactions alleged in this Count and to restore to the Plan all
17 profits through their use of Plan assets, and is subject to other equitable or remedial
18 relief as appropriate, including removal as a Plan fiduciary.

19 **COUNT VII**

20 **Failure to Monitor**

21 142. Plaintiffs restate and incorporate the allegations contained in the
22 preceding paragraphs.

23 143. Northrop, acting through its Board of Directors, is authorized to
24 appoint members of the Administrative and Investment Committees and therefore
25 had a duty to monitor the performance by those appointees of their fiduciary duties.
26 Each Committee and fiduciary likewise had a duty to monitor the performance of
27 each individual to whom it delegated any fiduciary responsibilities.

28 144. A monitoring fiduciary must ensure that the monitored fiduciaries are

1 performing their fiduciary obligations, including those with respect to the
2 investment and holding of plan assets, and must take prompt and effective action to
3 protect the plan and participants when they are not.

4 145. To the extent any of Northrop's fiduciary responsibilities were
5 delegated to another fiduciary, Northrop's monitoring duty included an obligation
6 to ensure that any delegated tasks were being performed prudently and loyally.

7 146. Northrop breached its fiduciary monitoring duties by, among other
8 things:

9 a. failing to monitor its appointees, to evaluate their performance, or to
10 have a system in place for doing so, and standing idly by as the Plan
11 suffered enormous losses as a result of its appointees' imprudent actions
12 and omissions with respect to the Plan;

13 b. failing to monitor its appointees' fiduciary process, which would
14 have alerted any prudent fiduciary to the potential breach because of the
15 unreasonable administrative fees and imprudent investment options in
16 violation of ERISA;

17 c. failing to ensure that the monitored fiduciaries had a prudent process
18 in place for evaluating the Plan's administrative fees and ensuring that the
19 fees were competitive, including a process to identify and determine the
20 amount of all sources of compensation to the Plan's recordkeeper and the
21 amount of any revenue sharing payments and kickbacks; a process to
22 prevent the recordkeeper Hewitt from receiving revenue sharing that
23 would increase the recordkeeper's compensation to unreasonable levels
24 even though the services provided remained the same; a process to avoid
25 paying unreasonable fees to Financial Engines for advice; a process to
26 periodically obtain competitive bids to determine the market rate for the
27 services provided to the Plan; a process to determine whether maintaining
28 particular investment strategy was in participants' interest; and a process

1 to ensure the fiduciaries monitored the Emerging Markets Equity Fund's
2 investment management fees and investment returns; and

3 d. failing to remove appointees whose performance was inadequate in
4 that they continued to allow improper and unreasonable administrative
5 expenses to be charged to Plan participants and imprudent investment
6 options to remain in the Plan, all to the detriment of Plan participants'
7 retirement savings.

8 147. Each fiduciary who delegated its fiduciary responsibilities to another
9 fiduciary likewise breached its fiduciary monitoring duty by, among other things:

10 a. failing to monitor its appointees, to evaluate their performance, or to
11 have a system in place for doing so, and standing idly by as the Plan
12 suffered enormous losses as a result of its appointees' imprudent actions
13 and omissions with respect to the Plan;

14 b. failing to monitor its appointees' fiduciary process, which would
15 have alerted any prudent fiduciary to the potential breach because of the
16 unreasonable administrative fees and imprudent investment options in
17 violation of ERISA;

18 c. failing to ensure that the monitored fiduciaries had a prudent process
19 in place for evaluating the Plan's administrative fees and ensuring that the
20 fees were competitive, including a process to identify and determine the
21 amount of all sources of compensation to the Plan's recordkeeper and the
22 amount of any revenue sharing payments and kickbacks; a process to
23 prevent the recordkeeper Hewitt from receiving revenue sharing that
24 would increase the recordkeeper's compensation to unreasonable levels
25 even though the services provided remained the same; a process to avoid
26 paying unreasonable fees to Financial Engines for advice; a process to
27 periodically obtain competitive bids to determine the market rate for the
28 services provided to the Plan; a process to determine whether maintaining

1 particular investment strategy was in participants' interest; and a process
 2 to ensure the fiduciaries monitored the Emerging Markets Equity Fund's
 3 investment management fees and investment returns; and

4 d. failing to remove appointees whose performance was inadequate in
 5 that they continued to allow improper and unreasonable administrative
 6 expenses to be charged to Plan participants and imprudent investment
 7 options to remain in the Plan, all to the detriment of Plan participants'
 8 retirement savings.

9 148. As a direct result of these breaches of the fiduciary duty to monitor,
 10 the Plan suffered substantial losses. Had Northrop and the other delegating
 11 fiduciaries discharged their fiduciary monitoring duties prudently as described
 12 above, the Plan would not have suffered these losses.

13 **COUNT VIII**

14 **29 U.S.C. §1132(a)(3)**

15 **Other Remedies against Northrop**

16 149. Plaintiffs restate and incorporate the allegations in the preceding
 17 paragraphs.

18 150. Under 29 U.S.C. §1132(a)(3), a court may award "other appropriate
 19 equitable relief" to redress "any act or practice" that violates ERISA. A defendant
 20 may be liable under that section regardless of whether it is a fiduciary. A
 21 nonfiduciary transferee of proceeds from a breach of a fiduciary duty or prohibited
 22 transaction is subject to equitable relief if it had actual or constructive knowledge of
 23 the circumstances that rendered the transaction or payment unlawful.

24 151. By virtue of the roles and responsibilities of Northrop's Board of
 25 Directors in appointing and monitoring the Plans' named fiduciary committee
 26 members and of other Northrop officers who served as committee members and
 27 controlled the payments to Northrop, Northrop knew or should have known that
 28 Northrop employees were providing purported services to the Plan and that

1 Northrop was receiving payments of Plan assets, which were the circumstances
 2 constituting the prohibited transactions as alleged in Counts IV and V and the
 3 inuring of Plan assets to the benefit of an employer in violation of 29 U.S.C.
 4 §1103(c)(1).

5 152. To the extent any proceeds from those transactions and the profits
 6 Northrop made through its use of Plan assets are not recovered under the above
 7 Counts, the Court should order restitution and disgorgement under 29 U.S.C.
 8 §1132(a)(3) to restore these funds to the Plan.

9 153. On information and belief, Northrop has not dissipated the entirety of
 10 the proceeds on nontraceable items, and the proceeds can be traced to particular
 11 funds or property in Northrop's possession.

12 **DEMAND FOR JURY TRIAL**

13 154. Plaintiffs demand a trial by jury under Fed.R.Civ.P. 38 and the
 14 Constitution of the United States.

15 **PRAYER FOR RELIEF**

16 Plaintiffs, on behalf of the Plans and all similarly situated participants and
 17 beneficiaries of the Plans, respectfully request that the Court:

- 18 • find and declare that the Defendants breached their fiduciary duties as
- 19 described above;
- 20 • find and adjudge that Defendants are personally liable to make good to
- 21 the Plan all losses to the Plan resulting from each breach of fiduciary
- 22 duties and prohibited transaction and to restore the Plan to the position it
- 23 would have occupied but for the breaches of fiduciary duty;
- 24 • order Defendants to restore to the Plan all profits they made through the
- 25 use of Plan assets;
- 26 • order the disgorgement of all amounts paid by the Plan to Northrop;
- 27 • determine the method by which Plan losses under 29 U.S.C. §1109(a)
- 28 should be calculated;

- order Defendants to provide all accountings necessary to determine the amounts Defendants must make good the Plan under §1109(a);
- remove the fiduciaries who have breached their fiduciary duties and enjoin them from future ERISA violations;
- reform the Plan to render it compliant with ERISA;
- surcharge against Defendants and in favor of the Plan all amounts involved in any transactions which such accounting reveals were improper, excessive, or in violation of ERISA;
- certify the Class, appoint each of the Plaintiffs as a class representative, and appoint Schlichter, Bogard & Denton LLP as Class Counsel;
- award to the Plaintiffs and the Class their attorney's fees and costs under 29 U.S.C. §1132(g)(1) and the common fund doctrine;
- order the payment of interest to the extent it is allowed by law; and grant other equitable or remedial relief as the Court deems appropriate.

1 September 9, 2016

2 Respectfully submitted,

3 s/ Jerome J. Schlichter

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