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IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA
PHILADELPHIA DIVISION

JENNIFER SWEDA, BENJAMIN A. WIGGINS, ROBERT L. YOUNG, FAITH PICKERING, PUSHKAR SOHONI, AND REBECCA N. TONER, individually and as representatives of a class of participants and beneficiaries on behalf of the University of Pennsylvania Matching Plan,

Plaintiffs,

v.

THE UNIVERSITY OF PENNSYLVANIA AND JACK HEUER,

Defendants.

16 4329

Civil Action No.

COMPLAINT—CLASS ACTION

JURY TRIAL DEMANDED

1. Plaintiffs Jennifer Sweda, Benjamin A. Wiggins, Robert L. Young, Faith Pickering, Pushkar Sohoni, and Rebecca N. Toner, individually and as representatives of a class of participants and beneficiaries in the University of Pennsylvania Matching Plan ("Plan"), bring this action under 29 U.S.C. §1132(a)(2) and (3) on behalf of the Plan against Defendants University of Pennsylvania and Jack Heuer for breach of fiduciary duties under ERISA.[1]

2. The duties of loyalty and prudence are the "highest known to the law" and require fiduciaries to have "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). As fiduciaries to the Plan, Defendants are obligated to act for the exclusive benefit of

[1] The Employee Retirement Income Security Act, 29 U.S.C. §§1001–1461.

participants and beneficiaries and to ensure that Plan expenses are reasonable and the Plan's investments are prudent. The marketplace for retirement plan services is established and competitive. Billion-dollar-defined contribution plans, like the Plan, have significant bargaining power to demand low-cost administrative and investment management services. Instead of using the Plan's bargaining power to benefit participants and beneficiaries, Defendants allowed unreasonable expenses to be charged to participants for administration of the Plan and retained high-cost and poor-performing investments compared to available alternatives.

3. To remedy these fiduciary breaches, Plaintiffs, individually and as representatives of a class of participants and beneficiaries of the Plan, bring this action on behalf of the Plan under 29 U.S.C. §1132(a)(2) and (3) to enforce Defendants' personal liability under 29 U.S.C. §1109(a) to make good to the Plan all losses resulting from each breach of fiduciary duty and to restore to the Plan any profits made through Defendants' use of Plan assets. In addition, Plaintiffs seek such other equitable or remedial relief for the Plan as the Court may deem appropriate.

JURISDICTION AND VENUE

4. 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 under 29 U.S.C. §1132(a)(2) and (3).

5. 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 subject

Plan is administered, where at least one of the alleged breaches took place, and where at least one defendant resides.

PARTIES

The University of Pennsylvania Matching Plan

6. The Plan is a defined contribution, individual account, employee pension benefit plan under 29 U.S.C. §1002(2)(A) and §1002(34).

7. The Plan is established and maintained under a written document in accordance with 29 U.S.C. §1102(a)(1).

8. The Plan provides for retirement income for certain employees of the University of Pennsylvania. That retirement income depends upon contributions made on behalf of each employee by his or her employer, deferrals of employee compensation and employer matching contributions, and performance of investment options net of fees and expenses exclusively controlled by the fiduciaries of the Plan.

9. As of December 31, 2014, the Plan had $3.8 billion in net assets and 26,904 participants with account balances. As such, it is one of the largest defined contribution plans in the United States, ranking in the top 1% of all defined contribution plans that filed a Form 5500 with the Department of Labor based on total plan assets. Plans of such great size are commonly referred to as "jumbo plans."

Plaintiffs

10. Jennifer Sweda resides in Philadelphia, Pennsylvania, and is a participant in the Plan under 29 U.S.C. §1002(7) because she and her beneficiaries are or may become eligible to receive benefits under the Plan.

11. Benjamin A. Wiggins resides in Pittsburgh, Pennsylvania, and is a participant in the Plan under 29 U.S.C. §1002(7) because he and his beneficiaries are or may become eligible to receive benefits under the Plan.

12. Robert L. Young resides in Upper Darby, Pennsylvania, and is a participant in the Plan under 29 U.S.C. §1002(7) because he and his beneficiaries are or may become eligible to receive benefits under the Plan.

13. Faith Pickering resides in Exton, Pennsylvania, and is a participant in the Plan under 29 U.S.C. §1002(7) because she and her beneficiaries are or may become eligible to receive benefits under the Plan.

14. Pushkar Sohoni resides in Philadelphia, Pennsylvania, and is a participant in the Plan under 29 U.S.C. §1002(7) because he and his beneficiaries are or may become eligible to receive benefits under the Plan.

15. Rebecca N. Toner resides in Philadelphia, Pennsylvania, and is a participant in the Plan under 29 U.S.C. §1002(7) because she and her beneficiaries are or may become eligible to receive benefits under the Plan.

Defendants

16. The University of Pennsylvania, incorporated as the Trustees of the University of Pennsylvania, is a non-profit corporation organized under Pennsylvania law with its principal place of business in Philadelphia, Pennsylvania. The University of Pennsylvania is the fiduciary responsible for the control, management and administration of the Plan, in accordance with 29 U.S.C. §1102(a). Upon information and belief, the University of Pennsylvania has exclusive responsibility and complete discretionary authority to control the operation,

management and administration of the Plan, with all powers necessary to enable the University to properly carry out such responsibilities, including the selection and compensation of the providers of administrative services to the Plan and the selection, monitoring, and removal of the investment options made available to participants for the investment of their contributions and provision of their retirement income.

17. The University of Pennsylvania is a fiduciary to the Plan because it exercised discretionary authority or discretionary control respecting the management of the Plan or exercised authority or control respecting the management or disposition of its assets, and has discretionary authority or discretionary responsibility in the administration of the Plan. 29 U.S.C. §1002(21)(A)(i) and (iii).

18. The University of Pennsylvania appointed the Vice President of Human Resources of the University of Pennsylvania to serve as the Plan Administrator under 29 U.S.C. §1002(16)(A)(i). The Plan Administrator is responsible for all matters relating to the Plan, including, but not limited to: interpreting the Plan's provisions, resolving questions about eligibility to participate in the Plan, making decisions about claims for benefits, and establishing rules and procedures for the Plan's operation. The Plan Administrator may delegate responsibility for any aspect of the Plan's administration to other individuals or entities.

19. Jack Heuer is the current Vice President of Human Resources of the University of Pennsylvania and serves as the Plan Administrator.

20. The Vice President of Human Resources is a fiduciary to the Plan because he exercised discretionary authority or discretionary control respecting the management of the Plan or exercised authority or control respecting the management or disposition of its assets, and has discretionary authority or discretionary responsibility in the administration of the Plan. 29 U.S.C. §1002(21)(A)(i) and (iii).

21. Because Jack Heuer and any delegates described above have acted as alleged herein as the agents of the University of Pennsylvania, all defendants are collectively referred to hereafter as Defendants.

FACTS APPLICABLE TO ALL COUNTS

I. Plan investments

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

23. Defendants exercise exclusive and discretionary authority and control over the investment options that are included in the Plan.

24. Defendants have provided as Plan investment options mutual funds and insurance company variable annuity products offered by the Teachers Insurance and Annuity Association of America and College Retirement Equities Fund ("TIAA-CREF") and the Vanguard Group, Inc. ("Vanguard"). Defendants

select investment options into which participants' investments are directed, and decide which investment options to remove from the Plan.

25. As of December 31, 2014, Defendants selected a total of 78 investment options to provide to Plan participants. Among the available investments, 30 were TIAA-CREF investments, and 48 were Vanguard investments. These investments included mutual funds, an insurance separate account, variable annuity options, and a fixed annuity option. The mutual funds included *retail* share class mutual funds, despite the mammoth size of the Plan. These retail share class mutual funds are designed for small individual investors and are identical in every respect to institutional share class funds, except for much higher fees.

26. These investments are designated by the University of Pennsylvania as available investment alternatives offered under the Plan.

27. The TIAA Traditional Annuity offered in the Plan is a fixed annuity contract that guarantees principal and a contractually specified minimum interest rate. Assets invested in the TIAA Traditional Annuity are held in the general account of Teachers Insurance and Annuity Association of America and are backed by the claims-paying ability of Teachers Insurance and Annuity Association of America.

28. The TIAA Traditional Annuity has severe restrictions and penalties for withdrawal if participants wish to change their investments in the Plan. For example, some participants who invest in the TIAA Traditional Annuity may withdraw or change their investment in a single lump sum within 120 days of

termination of employment, but, to do so, such participants must pay a 2.5% surrender charge. Rather than being available to participants if they wish to liquidate their funds earlier, the only way for participants to withdraw or change their TIAA Traditional Annuity investment is to spread withdrawal over a *ten-year period,* unless a substantial penalty is paid. Thus, participants who wish to withdraw their investment without penalty can only do so over ten years.

29. The Plan's CREF Stock Account, CREF Global Equities Account, CREF Equity Index Account, CREF Growth Account, CREF Social Choice Account, CREF Money Market Account, and CREF Bond Market Account are variable annuities, which invest in underlying securities for a given investment mandate. The value of each participant's investment in the variable annuity changes over time based on investment performance and expenses of the account.

30. The expense ratio of the CREF variable annuity accounts is made up of multiple layers of expense charges called:

a. "administrative expense" charge (24 bps);[2]

b. "distribution expense" charge (9.5 bps);

c. "mortality and expense risk" charge (0.5 bps); and

d. "investment advisory expense" charge (ranging from 4 bps to 12.5 bps).

31. The TIAA Real Estate Account is an insurance separate account maintained by TIAA-CREF. An insurance separate account is an investment vehicle that aggregates assets from more than one retirement plan for a given investment

[2] One basis point is equal to 1/100th of one percent (or 0.01%). Expenses are as of May 1, 2014.

strategy, but those assets are segregated from the insurance company's general account assets. Similar to the CREF variable annuity accounts, the expense ratio of the TIAA Real Estate Account is made up of multiple layers of expense charges. As of May 1, 2013, these charges were called:

a. "administrative expense" charge (26.5 bps);

b. "distribution expense" charge (8 bps);

c. "mortality and expense risk" charge (0.5 bps);

d. "liquidity guarantee" (18 bps); and

e. "investment management expense" charge (36.5 bps).

32. The remaining TIAA-CREF funds are registered investment companies under the Investment Company Act of 1940, known as mutual funds. The TIAA-CREF mutual funds charge varying amounts for investment management, but also charge distribution, marketing, and other expenses, depending on the investment at issue and share class.

33. The Vanguard investment options offered to Plan participants are exclusively mutual funds that charge varying amounts for investment management, but also charge for distribution, marketing, and other expenses, depending on the investment at issue and share class.

34. Mutual funds have shareholders who are not participants in the Plan, or any retirement plan, and who purchase shares as a result of marketing the fund. However, all shareholders in mutual funds, including Plan participants, pay the expenses set forth in ¶¶32–33.

35. As of December 31, 2014, of the Plan's $3.8 billion in net assets, TIAA-CREF investments accounted for $2.5 billion, and Vanguard investments accounted for $1.3 billion.

II. Defendants' actions caused Plan participants to pay excessive administrative and recordkeeping fees in violation of ERISA's requirement that fees be reasonable.

36. Recordkeeping is a service necessary for every defined contribution plan. The market for recordkeeping services is highly competitive. There are numerous recordkeepers in the marketplace who are equally capable of providing a high level of service to a large defined contribution plan like the Plan. These recordkeepers primarily differentiate themselves based on price and vigorously compete for business by offering the best price.

37. To ensure that plan administrative and recordkeeping expenses are and remain reasonable for the services provided, prudent fiduciaries of large defined contribution plans put the plan's recordkeeping and administrative services out for competitive bidding at regular intervals of approximately three years.

38. The cost of recordkeeping services depends on the number of participants, not on the amount of assets in the participant's account. Thus, the cost of providing recordkeeping services to a participant with a $100,000 account balance is the same for a participant with $1,000 in her retirement account. For this reason, prudent fiduciaries of defined contribution plans negotiate recordkeeping fees on the basis of a fixed dollar amount for each participant in the plan rather than as a percentage of plan assets. Otherwise, as plan assets increase through

participant contributions or investment gains, the recordkeeping expense increases without any change in the recordkeeping and administrative services.

39. Jumbo defined contribution plans, like the Plan, experience economies of scale for recordkeeping and administrative services. As the number of participants in the plan increases, the per-participant fee charged for recordkeeping and administrative services declines. These lower administrative expenses are readily available for plans with a great number of participants, such as the Plan.

40. Some investments engage in a practice known as revenue sharing. In a revenue sharing arrangement, a mutual fund or other investment vehicle directs a portion of the expense ratio—the asset-based fees it charges to investors—to the plan's recordkeeper, putatively for providing recordkeeping and administrative services for the investment. Because revenue sharing arrangements provide asset-based fees, prudent fiduciaries, if they use asset-based charges to pay for recordkeeping at all, monitor the total amount of revenue sharing a recordkeeper receives to ensure that the recordkeeper is not receiving unreasonable compensation. A prudent fiduciary must ensure that the recordkeeper rebates to the plan all revenue sharing payments that exceed a reasonable recordkeeping fee. Because revenue sharing payments are asset-based, they often bear no relation to a reasonable recordkeeping fee and can provide excessive compensation, or may be used as kickbacks to induce recordkeepers to have their high priced funds included as plan investment options.

41. Prudent fiduciaries of similarly sized defined contribution plans use a single recordkeeper rather than hiring multiple recordkeepers and custodians or trustees. This leverages plan assets to ensure that plan participants pay only reasonable recordkeeping fees, while also simplifying personnel and payroll data feeds, reducing electronic fund transfers, and avoiding duplication of services when more than one recordkeeper is used.

42. According to a 2013 survey of 403(b) plans, more than *90%* of plans use a single recordkeeper rather than multiple recordkeepers to provide administrative and recordkeeping services to participants. See LIMRA Retirement Research, *403(b) Plan Sponsor Research* (2013).[3]

43. It is well known in the defined contribution plan industry that plans with dozens of choices and multiple recordkeepers "fail" as a model based on two primary flaws:

> **1. The choices are overwhelming**. Numerous studies have demonstrated that when people are given too many choices of anything, they lose confidence or make no decision.
> **2. The multi-recordkeeper platform is inefficient**. It does not allow sponsors to leverage total plan assets and receive appropriate pricing based on aggregate assets.

The Standard Retirement Services, Inc., *Fixing Your 403(b) Plan: Adopting a Best Practices Approach*, at 2 (Nov. 2009)(emphasis in original).[4]

44. The benefits of using a single recordkeeper are clear.

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[3] Available at http://www.limra.com/uploadedFiles/limracom/LIMRA_Root/Secure_Retirement_Institute/News_Center/Reports/130329-01exec.pdf.

[4] Available at https://www.standard.com/pensions/publications/14883_1109.pdf.

> By selecting a single recordkeeper, plan sponsors can enhance their purchasing power and negotiate lower, transparent investment fees for participants. Participants will benefit from a more manageable number of institutional-quality investment options to choose from. Participants will also benefit from customized and consistent enrollment, education and ongoing communication materials.[5]

45. In a study titled "How 403(b) Plans Are Wasting Nearly $10 Billion Annually, and What Can Be Done to Fix It", AonHewitt, an independent investment consultant, similarly recognized:

> 403(b) plan sponsors can dramatically reduce participant-borne costs while improving employees' retirement readiness by:
>
> – Reducing the number of investment options, utilizing an "open architecture" investment menu, and packaging the options within a "tiered" structure.
>
> – Consolidating recordkeepers to improve efficiencies and reduce compliance-related risks.
>
> – Leveraging aggregate plan size and scale to negotiate competitive pricing.[6]

46. Another independent investment consultant, Towers Watson, also recognized that using multiple recordkeepers has caused:

> high investment and administrative costs, and complex choices for plan participants in terms of the number of vendors and the array of investment options. Additionally, this complexity has made it difficult for employers to monitor available choices and provide ongoing oversight…Such designs typically are expensive and fail to leverage plan size. They can also be confusing to the average plan participant,

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[5] *Id.*

[6] AonHewitt, *How 403(b) Plans Are Wasting Nearly $10 Billion Annually, and What Can Be Done to Fix It* (Jan. 2016), available at https://retirementandinvestmentblog.aon.com/getattachment/36ff81a4-db35-4bc0-aac1-1685d2a64078/How_403(b)_Plans_are_Wasting_Nearly_$10_Billion_Annually_Whitepaper_FINAL.pdf.aspx.

who is likely to fall short of achieving retirement readiness and would benefit from more guidance.

Peter Grant and Gary Kilpatrick, *Higher Education's Response to a New Defined Contribution Environment*, TOWERS WATSON VIEWPOINTS, at 2 (2012).[7]

47. Other industry literature makes the same points. See, e.g., Kristen Heinzinger, *Paring Down Providers: A 403(b) Sponsor's Experience,* PLANSPONSOR (Dec. 6, 2012)("One advantage of consolidating to a single provider was an overall drop in administrative fees and expenses. Recordkeeping basis points returned to the plan sponsors rather than to the vendor. All plan money aggregated into a single platform, and participants were able to save on fee structure. This also eliminated the complications and confusion of having three different recordkeepers.");[8] Paul B. Lasiter, *Single Provider, Multiple Choices*, BUSINESS OFFICER (Mar. 2010)(identifying, among other things, the key disadvantages of maintaining a multi-provider platform including the fact that it is "cumbersome and costly to continue overseeing multiple vendors").[9]

48. Use of a single recordkeeper is also less confusing to participants and results in their avoiding paying excessive recordkeeping fees. *Vendor Consolidation in Higher Education: Getting More from Less*, PLANSPONSOR (July 29,

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[7] Available at https://www.towerswatson.com/DownloadMedia.aspx?media=%7B08A2F366-14E3-4C52-BB78-8930F598FD26%7D.

[8] Available at http://www.plansponsor.com/paring-down-providers-a-403b-sponsors-experience/?fullstory=true.

[9] Available at http://www.nacubo.org/Business_Officer_Magazine/Magazine_Archives/March_2010/Single_Provider_Multiple_Choices.html.

2010)(recognizing the following benefits, among others: "The plan participant experience is better" because "employees are benefiting from less confusion as a result of fewer vendors in the mix"; "Administrative burden is lessened" by "bringing new efficiencies to the payroll"; and "Costs can be reduced" because "[w]ith a reduced number of vendors in the equation, plan sponsors are better able to negotiate fees" and many are "reporting lower overall cost resulting in an improved cost-per-participant ratio").[10]

49. Despite the long-recognized benefits of a single recordkeeper for a defined contribution plan, Defendants selected and retained two recordkeepers (TIAA-CREF and Vanguard) to provide such services. This inefficient and costly structure has caused Plan participants to pay excessive and unreasonable fees for Plan recordkeeping and administrative services.

50. The Plan's recordkeepers receive compensation for providing administrative and recordkeeping services through per-participant fees and revenue sharing payments from the Plan's investments.

51. Upon information and belief and industry experts, the amount of revenue sharing kicked back to the TIAA-CREF recordkeeping entity for the Plan's TIAA-CREF investments is set forth below.

TIAA-CREF Investment	**Revenue Share**
CREF variable annuity contracts	24 bps

[10] Available at http://www.plansponsor.com/vendor-consolidation-in-higher-education/?fullstory=true.

TIAA-CREF Investment	Revenue Share
Premier share class of TIAA-CREF mutual funds	15 bps
Retirement share class of TIAA-CREF mutual funds	25 bps
TIAA Real Estate Account	24–26.5 bps
TIAA Traditional Annuity	15 bps

52. Upon information and belief, Vanguard is compensated for recordkeeping services based on internal revenue sharing it receives from the Vanguard Investor share mutual funds, a higher-priced share class than institutional rates readily available to a jumbo plan such as the Plan.

53. In addition, TIAA-CREF and Vanguard receive additional indirect compensation, including float, revenue derived from securities lending, distribution fees, mortality and expense charges, surrender charges, spread, and redemption fees.

54. Based on the Plan's features, the nature of the administrative services provided by Vanguard and TIAA-CREF, the Plan's participant level (roughly 20,000), and the recordkeeping market, the outside limit of a reasonable recordkeeping fee for the Plan would have been $700,000 to $750,000 (or $35 per participant with an account balance).

55. Based on the direct and indirect compensation levels shown on the Plan's publicly available Form 5500s filed with the Department of Labor, and the internal revenue share allocated to each of the Plan's recordkeepers, the Plan paid between $4.4 million and $5.5 million (or approximately $220 to $250 per

participant) per year from 2010 to 2014, over 614% higher than a reasonable fee for these services, resulting in millions of dollars in excessive recordkeeping fees each year.

56. The impact of excessive fees on employees' and retirees' retirement assets is dramatic. The U.S. Department of Labor has noted that a 1% higher level of fees over a 35-year period makes a 28% difference in retirement assets at 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).[11]

57. Defendants failed to prudently monitor and control the compensation paid for recordkeeping and administrative services, particularly the asset-based revenue sharing received by TIAA-CREF and Vanguard as Plan assets grew. From the beginning of 2009 to the end of 2014, the Plan's assets increased from $2.2 billion to over $3.8 billion, an increase of *73%*. Because revenue sharing payments are asset-based, the already excessive compensation paid to the Plan's recordkeepers became even more excessive as the Plan's assets grew, even though the administrative services provided to the Plan remained the same. Defendants could have capped the amount of revenue sharing to ensure that any excessive amounts were returned to the Plan, but failed to do so.

58. Upon information and belief, Defendants also failed to conduct a competitive bidding process for the Plan's recordkeeping services. A competitive bidding process for the Plan's recordkeeping services would have produced a

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

reasonable recordkeeping fee for the Plan. This competitive bidding process would have enabled Defendants to select a single recordkeeper charging reasonable fees, to negotiate a reduction in recordkeeping fees, and to rebate any excess expenses paid by participants for recordkeeping services.

59. Defendants failed to prudently monitor and control TIAA-CREF's and Vanguard's recordkeeping compensation to ensure that only reasonable fees were charged for recordkeeping and administrative services. Had Defendants monitored the compensation paid to the Plan's recordkeepers and ensured that participants were only charged reasonable fees for administrative and recordkeeping services, Plan participants would not have lost in excess of $26 million of their retirement savings through unreasonable recordkeeping fees.[12]

III. Defendants failed to prudently consider dramatically lower-cost investments that were available to the Plan, including identical mutual funds in lower-cost share classes.

60. Nobel Prize winners in economics have concluded that virtually no investment manager consistently beats the market over time after fees are taken into account. "Properly measured, the average actively managed dollar must underperform the average passively managed dollar, net of costs." William F. Sharpe, *The Arithmetic of Active Management,* 47 FIN. ANALYSTS J. 7, 8 (Jan./Feb. 1991);[13] 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

[12] Plan losses have been brought forward to the present value using the investment returns of the S&P 500 index to compensate participants who have not been reimbursed for their losses. This is because the excessive fees participants paid would have remained in Plan investments growing with the market.

[13] Available at http://www.cfapubs.org/doi/pdf/10.2469/faj.v47.n1.7.

terms of net returns to investors, active investment must be a negative sum game.").

61. To the extent managers show any sustainable ability to beat the market, the outperformance is nearly always dwarfed by mutual fund expenses. Fama & French, *Luck Versus Skill in the Cross-Section of Mutual Fund Returns*, at 1931–34; see also Russ Wermers, *Mutual Fund Performance: An Empirical Decomposition into Stock-Picking Talent, Style, Transaction Costs, and Expenses*, 55 J. FIN. 1655, 1690 (2000)("on a net-return level, the funds underperform broad market indexes by one percent per year").

62. If an individual high-cost mutual fund exhibits market-beating performance over a short period of time, studies demonstrate that outperformance during a particular period is not predictive of whether a mutual fund will perform well in the future. Laurent Barras et al., *False Discoveries in Mutual Fund Performance: Measuring Luck in Estimated Alphas*, 65 J. FIN. 179, 181 (2010); Mark M. Carhart, *On Persistence in Mutual Fund Performance*, 52 J. FIN. 57, 57, 59 (1997)(measuring thirty-one years of mutual fund returns and concluding that "persistent differences in mutual fund expenses and transaction costs explain almost all of the predictability in mutual fund returns"). However, the *worst-performing* mutual funds show a strong, persistent tendency to continue their poor performance. Carhart, *On Persistence in Mutual Fund Performance*, at 57.

63. Accordingly, investment costs are of paramount importance to prudent investment selection, and a prudent fiduciary will not select higher-cost actively

managed funds without a documented process to realistically conclude that the fund is likely to be that extremely rare exception, if one even exists, that will outperform its benchmark index over time, net of investment expenses.

64. Moreover, large retirement plans have substantial bargaining power to negotiate low fees for investment management services.

> The fiduciaries also 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. In other words, the "prevailing circumstances"—such as the size of the plan—are a part of a prudent decisionmaking process. The failure to understand the concepts and to know about the alternatives could be a costly fiduciary breach.

Fred Reish, *Class–ifying Mutual Funds*, PLANSPONSOR (Jan. 2011).[14]

65. Apart from the fact that a prudent fiduciary will carefully weigh whether an actively managed fund is likely to outperform an index over time, net of fees, academic and financial industry literature demonstrates that high expenses are not correlated with superior investment management. Indeed, funds with high fees on average perform worse than less expensive funds even on a *pre-fee basis.* Javier Gil-Bazo & Pablo Ruiz-Verdu, *When Cheaper is Better: Fee Determination in the Market for Equity Mutual Funds*, 67 J. ECON. BEHAV. & ORG. 871, 873 (2008); see also Jill E. Fisch, *Rethinking the Regulation of Securities Intermediaries*, 158 U. PA. L. REV. 1961, 1993 (2010)(summarizing numerous studies showing that "the most consistent predictor of a fund's return to investors is the fund's expense ratio").

> [T]he empirical evidence implies that superior management is not priced through higher expense ratios. On the contrary, it appears that the effect of

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[14] Available at http://www.plansponsor.com/MagazineArticle.aspx?id=6442476537.

> expenses on after-expense performance (even after controlling for funds' observable characteristics) is more than one-to-one, which would imply that low-quality funds charge higher fees. Price and quality thus seem to be inversely related in the market for actively managed mutual funds.

Gil-Bazo & Ruiz-Verdu, *When Cheaper is Better*, at 883.

66. Lower-cost institutional share classes of mutual funds, as compared to retail shares are available to institutional investors, and far lower-cost share classes are available to jumbo investors like the Plan. In addition, insurance company pooled separate accounts are available that can significantly reduce investment fees charged on mutual fund investments to defined contribution plans.

67. Minimum investment thresholds for institutional share classes are routinely waived by the investment provider if not reached by a single fund based on the retirement plan's total investment in the provider's platform. Therefore, it is commonly understood by investment managers of large pools of assets that, for a retirement plan of the Plan's size, if requested, the investment provider would make available lower-cost share classes for the Plan, if there were any fund that did not individually reach the threshold.

68. Despite these lower-cost options, Defendants selected and continue to use Plan investment options with far higher costs than were and are available for the Plan based on its size. Moreover, for the *exact same mutual fund option*, the Plan has selected and continues to provide far higher-cost share classes of mutual funds, identical in every respect except fees, to funds readily available to the Plan.

69. Lower-cost share class *identical* alternatives to the Plan's mutual funds included:

Plan Mutual Fund	Plan Fee	Identical Lower-Cost Mutual Fund	Identical Lower-Cost Mutual Fund Fee	Plan's Excess Cost
Vanguard 500 Index Fund (Signal) (VIFSX)	7 bps	Vanguard Institutional Index (Instl Pl) (VIIIX)	2 bps	250%
Vanguard Asset Allocation Fund (Inv) (VAAPX)	27 bps	Vanguard Asset Allocation Fund (Adm) (VAARX)	19 bps	42%
Vanguard Balanced Index Fund (Inv) (VBINX)	26 bps	Vanguard Balanced Index Fund (Instl) (VBAIX)	8 bps	225%
Vanguard Capital Opportunity Fund (Inv) (VHCOX)	48 bps	Vanguard Capital Opportunity Fund (Adm) (VHCAX)	41 bps	17%
Vanguard Developed Markets Index Fund (Inv) (VDMIX)	22 bps	Vanguard Developed Markets Index Fund (Instl Pl) (VDMPX)	6 bps	267%
Vanguard Emerging Markets Stock Index Fund (Signal) (VERSX)	22 bps	Vanguard Emerging Markets Stock Index Fund (Instl) (VEMIX)	15 bps	47%
Vanguard Emerging Markets Stock Index Fund (Signal) (VERSX)	20 bps	Vanguard Emerging Markets Stock Index Fund (Instl Pl) (VEMRX)	10 bps	100%
Vanguard Emerging Markets Stock Index Fund (Instl) (VEMIX)	12 bps	Vanguard Emerging Markets Stock Index Fund (Instl Pl) (VEMRX)	10 bps	20%

Plan Mutual Fund	Plan Fee	Identical Lower-Cost Mutual Fund	Identical Lower-Cost Mutual Fund Fee	Plan's Excess Cost
Vanguard Energy Fund (Inv) (VGENX)	38 bps	Vanguard Energy Fund (Adm) (VGELX)	31 bps	23%
Vanguard Equity Income Fund (Inv) (VEIPX)	31 bps	Vanguard Equity Income Fund (Adm) (VEIRX)	22 bps	41%
Vanguard European Stock Index Fund (Inv) (VEURX)	26 bps	Vanguard European Stock Index Fund (Instl) (VESIX)	10 bps	160%
Vanguard Explorer Fund (Inv) (VEXPX)	49 bps	Vanguard Explorer Fund (Adm) (VEXRX)	32 bps	53%
Vanguard Extended Market Index Fund (Inv) (VEXMX)	26 bps	Vanguard Extended Market Index Fund (Instl) (VIEIX)	8 bps	225%
Vanguard Extended Market Index Fund (Inv) (VEXMX)	24 bps	Vanguard Extended Market Index Fund (Instl Pl) (VEMPX)	6 bps	300%
Vanguard GNMA Fund (Inv) (VFIIX)	23 bps	Vanguard GNMA Fund (Adm) (VFIJX)	13 bps	77%
Vanguard Growth and Income Fund (Inv) (VQNPX)	32 bps	Vanguard Growth and Income Fund (Adm) (VGIAX)	21 bps	52%
Vanguard Growth Index Fund (Signal) (VIGSX)	12 bps	Vanguard Growth Index Fund (Instl) (VIGIX)	8 bps	50%
Vanguard Health Care Fund (Inv) (VGHCX)	36 bps	Vanguard Health Care Fund (Adm) (VGHAX)	29 bps	24%

Plan Mutual Fund	Plan Fee	Identical Lower-Cost Mutual Fund	Identical Lower-Cost Mutual Fund Fee	Plan's Excess Cost
Vanguard High-Yield Corporate Fund (Inv) (VWEHX)	28 bps	Vanguard High-Yield Corporate Fund (Adm) (VWEAX)	15 bps	87%
Vanguard Inflation-Protected Securities Fund (Inv) (VIPSX)	22 bps	Vanguard Inflation-Protected Securities Fund (Instl) (VIPIX)	7 bps	214%
Vanguard Institutional Index Fund (Instl) (VINIX)	4 bps	Vanguard Institutional Index Fund (Instl Pl) (VIIIX)	2 bps	100%
Vanguard Intermediate-Term Bond Index Fund (Inv) (VBIIX)	22 bps	Vanguard Intermediate-Term Bond Index Fund (Instl) (VBIMX)	7 bps	214%
Vanguard Intermediate-Term Bond Index Fund (Inv) (VBIIX)	20 bps	Vanguard Intermediate-Term Bond Index Fund (Instl Pl) (VBIUX)	5 bps	300%
Vanguard Intermediate-Term Investment Grade Fund (Inv) (VFICX)	24 bps	Vanguard Intermediate-Term Investment Grade Fund (Adm) (VFIDX)	11 bps	118%
Vanguard Intermediate-Term Treasury Fund (Inv) (VFITX)	25 bps	Vanguard Intermediate-Term Treasury Fund (Adm) (VFIUX)	12 bps	108%

Plan Mutual Fund	Plan Fee	Identical Lower-Cost Mutual Fund	Identical Lower-Cost Mutual Fund Fee	Plan's Excess Cost
Vanguard International Growth Fund (Inv) (VWIGX)	49 bps	Vanguard International Growth Fund (Adm) (VWILX)	33 bps	48%
Vanguard Large-Cap Index Fund (Inv) (VLACX)	26 bps	Vanguard Large-Cap Index Fund (Instl) (VLISX)	8 bps	225%
Vanguard Long-Term Bond Index Fund (Inv) (VBLTX)	22 bps	Vanguard Long-Term Bond Index Fund (Instl) (VBLLX)	7 bps	214%
Vanguard Long-Term Bond Index Fund (Inv) (VBLTX)	20 bps	Vanguard Long-Term Bond Index Fund (Instl Pl) (VBLIX)	5 bps	300%
Vanguard Long-Term Investment Grade Bond (Inv) (VWESX)	26 bps	Vanguard Long-Term Investment Grade Bond (Adm) (VWETX)	13 bps	100%
Vanguard Long-Term Treasury Fund (Inv) (VUSTX)	25 bps	Vanguard Long-Term Treasury Fund (Adm) (VUSUX)	12 bps	108%
Vanguard Mid-Cap Index Fund (Inv) (VIMSX)	26 bps	Vanguard Mid-Cap Index Fund (Instl) (VMCIX)	8 bps	225%
Vanguard Mid-Cap Index Fund (Inv) (VIMSX)	24 bps	Vanguard Mid-Cap Index Fund (Instl Pl) (VMCPX)	6 bps	300%
Vanguard Morgan Growth Fund (Inv) (VMRGX)	43 bps	Vanguard Morgan Growth Fund (Adm) (VMRAX)	29 bps	48%

Plan Mutual Fund	Plan Fee	Identical Lower-Cost Mutual Fund	Identical Lower-Cost Mutual Fund Fee	Plan's Excess Cost
Vanguard Pacific Stock Index Fund (Inv) (VPACX)	26 bps	Vanguard Pacific Stock Index Fund (Instl) (VPKIX)	10 bps	160%
Vanguard PRIMECAP Fund (Inv) (VPMCX)	45 bps	Vanguard PRIMECAP Fund (Adm) (VPMAX)	36 bps	25%
Vanguard Prime Money Market Fund (Inv) (VMMXX)	23 bps	Vanguard Prime Money Market Fund (Adm) (VMRXX)	9 bps	156%
Vanguard REIT Index Fund (Inv) (VGSIX)	26 bps	Vanguard REIT Index Fund (Instl) (VGSNX)	9 bps	189%
Vanguard Short-Term Bond Index Fund (Inv) (VBISX)	22 bps	Vanguard Short-Term Bond Index Fund (Adm) (VBIRX)	11 bps	100%
Vanguard Short-Term Federal Fund (Inv) (VSGBX)	22 bps	Vanguard Short-Term Federal Fund (Adm) (VSGDX)	12 bps	83%
Vanguard Short-Term Investment Grade Fund (Inv) (VFSTX)	24 bps	Vanguard Short-Term Investment Grade Fund (Instl) (VFSIX)	9 bps	167%
Vanguard Short-Term Treasury Fund (Inv) (VFISX)	22 bps	Vanguard Short-Term Treasury Fund (Adm) (VFIRX)	12 bps	83%
Vanguard Small-Cap Growth Index Fund (Inv) (VISGX)	26 bps	Vanguard Small-Cap Growth Index Fund (Instl) (VSGIX)	8 bps	225%

Plan Mutual Fund	Plan Fee	Identical Lower-Cost Mutual Fund	Identical Lower-Cost Mutual Fund Fee	Plan's Excess Cost
Vanguard Small-Cap Index Fund (Inv) (NAESX)	26 bps	Vanguard Small-Cap Index Fund (Instl) (VSCIX)	8 bps	225%
Vanguard Small-Cap Index Fund (Inv) (NAESX)	24 bps	Vanguard Small-Cap Index Fund (Instl Pl) (VSCPX)	6 bps	300%
Vanguard Small-Cap Value Index Fund (Inv) (VISVX)	26 bps	Vanguard Small-Cap Value Index Fund (Instl) (VSIIX)	8 bps	225%
Vanguard Total Bond Market Index Fund (Signal) (VBTSX)	12 bps	Vanguard Total Bond Market Index Fund (Instl) (VBTIX)	7 bps	71%
Vanguard Total Bond Market Index Fund (Signal) (VBTSX)	11 bps	Vanguard Total Bond Market Index Fund (Instl Pl) (VBMPX)	5 bps	120%
Vanguard Total Bond Market Index Fund (Instl) (VBTIX)	7 bps	Vanguard Total Bond Market Index Fund (Instl Pl) (VBMPX)	5 bps	40%
Vanguard Total International Stock Index Fund (Inv) (VGTSX)	22 bps	Vanguard Total International Stock Index Fund (Instl Pl) (VTPSX)	10 bps	120%
Vanguard Total Stock Market Index Fund (Signal) (VTSSX)	6 bps	Vanguard Institutional Total Stock Market Index Fund (Instl Pl) (VITPX)	2 bps	200%

Plan Mutual Fund	Plan Fee	Identical Lower-Cost Mutual Fund	Identical Lower-Cost Mutual Fund Fee	Plan's Excess Cost
Vanguard Total Stock Market Index Fund (Instl) (VITSX)	4 bps	Vanguard Institutional Total Stock Market Index Fund (Instl Pl) (VITPX)	2 bps	100%
Vanguard U.S. Growth Fund (Inv) (VWUSX)	45 bps	Vanguard U.S. Growth Fund (Adm) (VWUAX)	29 bps	55%
Vanguard Value Index Fund (Inv) (VIVAX)	26 bps	Vanguard Value Index Fund (Instl) (VIVIX)	8 bps	225%
Vanguard Wellesley Income Fund (Inv) (VWINX)	28 bps	Vanguard Wellesley Income Fund (Adm) (VWIAX)	21 bps	33%
Vanguard Wellington Fund (Inv) (VWELX)	30 bps	Vanguard Wellington Fund (Adm) (VWENX)	22 bps	36%
Vanguard Windsor Fund (Inv) (VWNDX)	33 bps	Vanguard Windsor Fund (Adm) (VWNEX)	22 bps	50%
Vanguard Windsor II Fund (Inv) (VWNFX)	35 bps	Vanguard Windsor II Fund (Adm) (VWNAX)	27 bps	30%
TIAA-CREF Bond Index Fund (Prem) (TBIPX)	28 bps	TIAA-CREF Bond Index Fund (Instl) (TBIIX)	13 bps	115%
TIAA-CREF High-Yield Fund (Prem) (TIHPX)	54 bps	TIAA-CREF High-Yield Fund (Instl) (TIHYX)	39 bps	38%
TIAA-CREF International Equity Fund (Prem) (TREPX)	68 bps	TIAA-CREF International Equity Fund (Instl) (TIIEX)	57 bps	19%

Plan Mutual Fund	Plan Fee	Identical Lower-Cost Mutual Fund	Identical Lower-Cost Mutual Fund Fee	Plan's Excess Cost
TIAA-CREF International Equity Fund (Ret) (TRERX)	78 bps	TIAA-CREF International Equity Fund (Instl) (TIIEX)	57 bps	37%
TIAA-CREF International Equity Index Fund (Prem) (TRIPX)	23 bps	TIAA-CREF International Equity Index Fund (Instl) (TCIEX)	8 bps	188%
TIAA-CREF Large-Cap Value (Prem) (TRCPX)	64 bps	TIAA-CREF Large-Cap Value (Instl) (TRLIX)	49 bps	31%
TIAA-CREF Large-Cap Value (Ret) (TRLCX)	74 bps	TIAA-CREF Large-Cap Value (Instl) (TRLIX)	49 bps	51%
TIAA-CREF Mid-Cap Growth Fund (Prem) (TRGPX)	67 bps	TIAA-CREF Mid-Cap Growth Fund (Instl) (TRPWX)	52 bps	29%
TIAA-CREF Mid-Cap Growth Fund (Ret) (TRGMX)	77 bps	TIAA-CREF Mid-Cap Growth Fund (Instl) (TRPWX)	52 bps	48%
TIAA-CREF Mid-Cap Value Fund (Prem) (TRVPX)	64 bps	TIAA-CREF Mid-Cap Value Fund (Instl) (TIMVX)	49 bps	31%
TIAA-CREF Mid-Cap Value Fund (Ret) (TRVRX)	74 bps	TIAA-CREF Mid-Cap Value Fund (Instl) (TIMVX)	49 bps	51%
TIAA-CREF Small-Cap Equity (Prem) (TSRPX)	70 bps	TIAA-CREF Small-Cap Equity (Instl) (TISEX)	55 bps	27%
TIAA-CREF Small-Cap Equity (Ret) (TRSEX)	80 bps	TIAA-CREF Small-Cap Equity (Instl) (TISEX)	55 bps	45%

70. These lower-cost share classes of the identical mutual funds for the Plan have been available for years, some dating back to the early 2000s or before.

71. The failure to select lower-cost share classes for the Plan's mutual fund options *identical in all respects* (portfolio manager, underlying investments, and asset allocation) *except for cost* demonstrates that Defendants failed to consider the size and purchasing power of the Plan when selecting share classes and failed to engage in a prudent process in the selection, monitoring, and retention of those mutual funds.

72. Had the amounts invested in the higher-cost share class mutual fund options instead been invested in the readily available lower-cost share class mutual fund options, Plan participants would not have lost millions of dollars of their retirement savings.

IV. Defendants selected and retained a large number of duplicative investment options, diluting the Plan's ability to pay lower fees and confusing participants.

73. Defendants provided a dizzying array of duplicative funds in the same investment style, thereby depriving the Plan of its bargaining power associated with offering a single option in each investment style, which significantly reduces investment fees, and leading to "decision paralysis" for participants. Over 75 investment options were offered and continue to be offered to participants for the following asset classes: target date and asset allocation funds, large-cap domestic equities, mid-cap domestic equities, small-cap domestic equities, international equities, fixed income, money market, real estate, and fixed guaranteed annuity.

74. In comparison, according to Callan Investments Institute's 2015 Defined Contribution Trends survey, defined contribution plans in 2014 had on average 15 investment options, excluding target date funds. See Callan Investments Institute, *2015 Defined Contribution Trends,* at 28 (2015).[15] This provides choice of investment style to participants while maintaining a larger pool of assets in each investment style.

75. A larger pool of assets in each investment style significantly reduces fees paid by participants. By consolidating duplicative investments of the same investment style into a single investment option, the Plan would then have the ability to command lower-cost investments, such as low-cost institutional share class of the selected mutual fund option.

76. Prudent fiduciaries of large defined contribution plans engage in a detailed due diligence process to select and retain investments for a plan based on the risk, investment return, and expenses of available investment alternatives. Overall, the investment lineup should provide participants with the ability to diversify their portfolio appropriately while benefiting from the size of the pooled assets of other employees and retirees.

77. Within each asset class and investment style deemed appropriate for the participant-directed retirement plan, prudent fiduciaries make a reasoned determination and select a prudent investment option. Unlike Defendants, prudent fiduciaries do not select and retain numerous investment options for a single asset

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[15]Available at https://www.callan.com/research/files/990.pdf.

class and investment style. When many investment options in a single investment style are plan options, fiduciaries lose the bargaining power to get lower investment management expenses for that style.

78. In addition, providing multiple options in a single investment style adds unnecessary complexity to the investment lineup and leads to participant confusion. See The Standard, *Fixing Your 403(b) Plan: Adopting a Best Practices Approach,* at 2 ("Numerous studies have demonstrated that when people are given too many choices of anything, they lose confidence or make no decision."); Michael Liersch, *Choice in Retirement Plans: How Participant Behavior Differs in Plans Offering Advice, Managed Accounts, and Target-Date Investments,* T. ROWE PRICE RETIREMENT RESEARCH, at 2 (Apr. 2009)("Offering too many choices to consumers can lead to decision paralysis, preventing consumers from making decisions.").[16]

79. Moreover, having numerous actively managed funds in the Plan within the same investment style results in the Plan effectively having an index fund return, while paying much higher fees for active management than the fees charged by a passive index fund, which has much lower fees because there is no need in an index fund for active management and its higher fees.

80. From 2010 to the present, the Plan offered a proliferation of duplicative investments in every major asset class and investment style, including balanced/asset allocation (3–10 options), fixed income and high yield bond (14–18

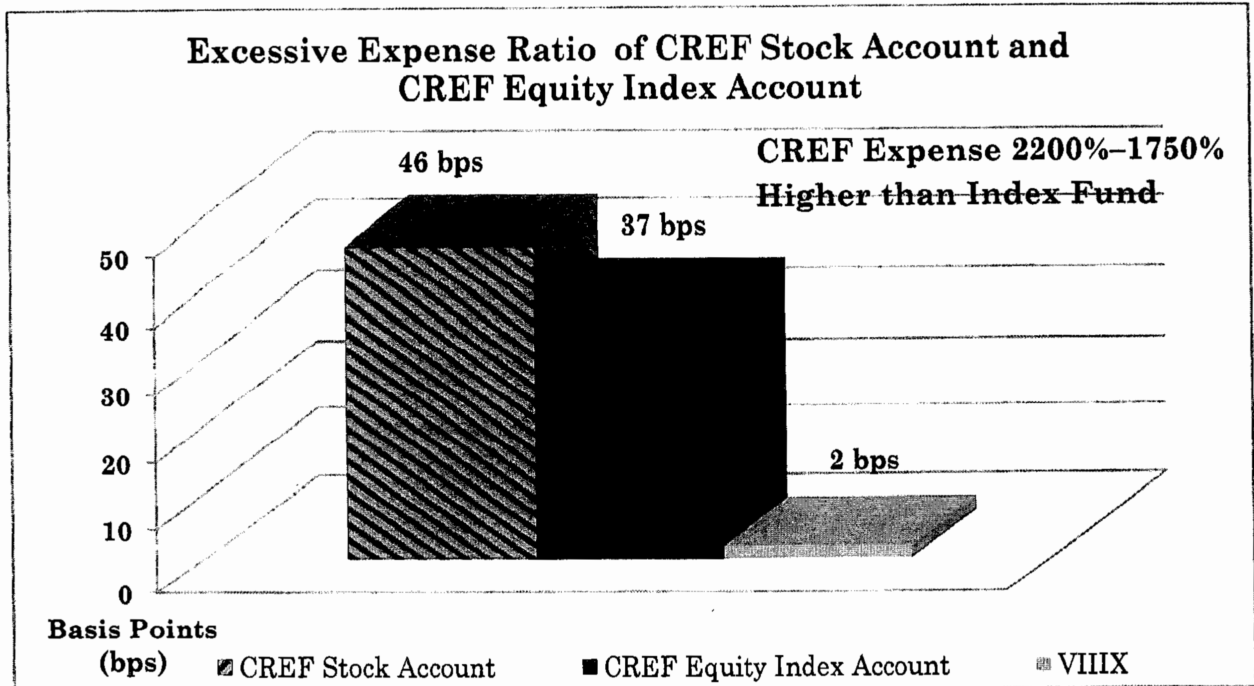
[16] Available at http://www.behavioralresearch.com/Publications/Choice_in_Retirement_Plans_April_2009.pdf.

options), international (8–15 options), large cap domestic equities (14–27 options), mid cap domestic equities (6–11 options), small cap domestic equities (5–7 options), real estate (2 options), money market (2–4 options), and target date investments (2 fund families). Such a dizzying array of duplicative funds in a single investment style violates the well-recognized industry principle that too many choices harm participants and are paralyzing.

81. For illustration purposes, the Plan's four large cap domestic blend investments as of December 31, 2014, are summarized below and compared to a single lower-cost alternative that was available to the Plan: the large cap blend Vanguard Institutional Index Fund-Instl. Plus (VIIIX), which mirrors the market and has an expense ratio of 2 bps.

Large Cap Blend Investments	Assets	Plan Fee	Lower-Cost Alternative Fee	Plan's Excess Cost
CREF Stock Account	$753,152,128	46 bps	2 bps	2200%
CREF Equity Index Account	$86,587,630	37 bps	2 bps	1750%
Vanguard Institutional Index Fund-Instl (VINIX)	$120,459,283	4 bps	2 bps	100%
Vanguard Total Stock Market Index Fund-Instl (VITSX)	$64,508,300	4 bps	2 bps	100%
Total	**$1,024,707,341**			

82. With over *$800 million* held in the CREF Stock Account and the CREF Equity Index Account, these large cap blend options were *23 and 18 times* more expensive than the lower-cost Vanguard option with an expense ratio of 2 bps, respectively.



83. Many other large cap index funds are also available at massively lower costs than the Plan's large cap funds. Had the amounts invested in the Plan's large cap blend options been consolidated into a single large cap blend investment, such as the Vanguard Institutional Index Fund-Instl. Plus, Plan participants would have avoided paying in excess of $3 million in fees for 2014 alone, and many more millions since 2010.

84. Similarly, the Plan offers *eleven* different fixed income investments as of December 31, 2014. These funds are summarized below and compared to a far lower-cost readily available alternative, the Vanguard Total Bond Market Index Fund-Instl Plus (VBMPX) with an expense ratio of 5 bps.

Fixed Income Investments	Assets	Plan Fee	Lower-Cost Alternative Fee	Plan's Excess Cost
CREF Bond Market Fund	$67,681,000	44 bps	5 bps	780%

Fixed Income Investments	Assets	Plan Fee	Lower-Cost Alternative Fee	Plan's Excess Cost
CREF Inflation-Linked Bond Fund	$35,735,301	39 bps	5 bps	680%
TIAA-CREF Bond Index Fund-Prem (TBIPX)	$8,211,935	27 bps	5 bps	440%
Vanguard Inflation-Protected Securities Fund-Inv (VIPSX)	$15,501,746	20 bps	5 bps	300%
Vanguard Intermediate-Term Bond Index Fund-Inv (VBIIX)	$12,358,006	20 bps	5 bps	300%
Vanguard Intermediate-Term Treasury Fund-Inv (VFITX)	$6,384,162	20 bps	5 bps	300%
Vanguard Long-Term Bond Index Fund-Inv (VBLTX)	$5,581,631	20 bps	5 bps	300%
Vanguard Long-Term Investment Grade Bond-Inv (VWESX)	$8,805,651	22 bps	5 bps	340%
Vanguard Short-Term Investment Grade Fund-Inv (VFSTX)	$19,461,893	20 bps	5 bps	300%
Vanguard Total Bond Market Index Fund-Instl (VBTIX)	$41,086,928	6 bps	5 bps	20%
Vanguard Long-Term Treasury Fund-Inv (VUSTX)	$6,569,316	20 bps	5 bps	300%
Total	**$227,377,569**			

85. Had the amounts in the Plan's fixed income investments instead been consolidated into a single fixed income investment, such as the Vanguard Total Bond Market Index Fund-Instl Plus, Plan participants would have saved

substantial amounts of their retirement savings, instead of paying excessive and wholly unnecessary fees. Prudent fiduciaries would not have allowed this.

86. In addition, Defendants have selected and continue to retain multiple passively managed index options in the same investment style. Rather than a fund whose investment manager actively selects stocks or bonds to beat an index benchmark, passively managed index funds hold a representative sample of securities in a specific index, such as the S&P 500 index. The sole investment strategy of an index fund is to track the performance of a specific market benchmark. No stock selection or research is needed, unlike investing in actively managed funds. Thus, index fund fees are substantially lower.

87. For example, in the large cap blend investment style, Defendants have included up to five separate index funds to mimic the return of the U.S. equity market. Similarly, for fixed income or the intermediate-term bond investment style, as another example, Defendants have included up to four separate index funds.

88. Since index funds merely hold the same securities in the same proportions as the index,[17] having multiple index funds in the Plan provides no benefit to participants. Instead, it hurts participants by diluting the Plan's ability to obtain lower rates for a single index fund of that style because the amount of assets in any one such fund is smaller than the aggregate would be in that investment style. Moreover, multiple managers holding stocks that mimic the S&P 500 or a similar index would pick the same stocks in the same proportions as the index.

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[17] Another example of an index is the Dow Jones Industrial Average.

Thus, there is no value in offering separate index funds in the same investment style.

89. Had Defendants combined hundreds of millions of dollars in Plan assets from duplicative index funds into a single index fund, the Plan would have generated higher investment returns, net of fees, and participants would not have lost significant retirement assets.

90. Overall, Defendants failed to pool the assets invested in duplicative funds into a single investment option, as set forth in ¶80, which caused Plan participants to pay millions of dollars in unreasonable investment expenses, thereby depleting their retirement assets.

V. Defendants imprudently retained historically underperforming Plan investments.

91. Given the overlap of investment options in asset classes and investment styles based on Defendants' failure to conduct appropriate due diligence in selecting and retaining the Plan investments, numerous investment options underperformed lower-cost alternatives that were available to the Plan.

A. CREF Stock Account

92. The CREF Stock Account is one of the largest, by asset size, investment options in the Plan with over $750 million in assets, and has been included in the Plan from 2010 to date. In its fund fact sheets and participant disclosures, TIAA-CREF classifies the CREF Stock Account as a domestic equity investment in the large cap blend Morningstar category. This option has

underperformed and continues to underperform its benchmark and lower-cost actively and passively managed investments that were available to the Plan.

93. TIAA-CREF imposed restrictive provisions on the specific annuities that *must* be provided in the Plan. Under these terms, TIAA-CREF required that the CREF Stock Account be offered to Plan participants, in addition to the TIAA Traditional and the CREF Money Market Account. Plan fiduciaries provided these mandatory offerings in the Plan without a prudent process to determine whether they were prudent alternatives and in the exclusive best interest of Plan participants and beneficiaries. TIAA-CREF required the CREF Stock Account to be included in the Plan to drive very substantial amounts of revenue sharing payments to TIAA-CREF for recordkeeping services. The CREF Stock Account paid 24 bps for revenue sharing, which exceeded other TIAA-CREF investments by over 50% (15 bps).

94. As is generally understood in the investment community, passively managed investment options should be used or, at a minimum, thoroughly analyzed and considered, in efficient markets such as large capitalization U.S. stocks. This is because it is difficult and extremely unlikely to find actively managed mutual funds that outperform a passive index, net of fees, particularly on a persistent basis, as set forth in ¶¶62–65. This unlikelihood is even greater in the large cap market because such big companies are the subject of many analysts' coverage, unlike smaller stocks which are not covered by many analysts leading to potential inefficiencies in pricing.

95. The efficiencies of the large cap market hinder an active manager's ability to achieve excess returns for investors.

> In conclusion, this study of mutual funds does not provide any reason to abandon a belief that securities markets are remarkably efficient. Most investors would be considerably better off by purchasing a low expense index fund, than by trying to select an active fund manager who appears to possess a "hot hand." Since active management generally fails to provide excess returns and tends to generate greater tax burdens for investors, the advantage of passive management holds, a fortiori.

Burton G. Malkiel, *Returns from Investing in Equity Mutual Funds 1971 to 1991*, 50 J. FIN. 549, 571 (1995).[18]

96. Academic literature overwhelmingly concludes that active managers consistently underperform the S&P 500 index.

> Active managers themselves provide perhaps the most persuasive case for passive investing. Dozens of studies have examined the performance of mutual funds and other professional-managed assets, and virtually all of them have concluded that, on average, active managers underperform passive benchmarks....The median active fund underperformed the passive index in 12 out of 18 years [for the large-cap fund universe]...The bottom line is that, over most periods, the majority of mutual fund investors would have been better off investing in an S&P 500 Index fund.
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> Most of the dismal comparisons for active managers are for large-cap domestic managers versus the S&P 500 Index.

Robert C. Jones, *The Active Versus Passive Debate: Perspectives of an Active Quant*, ACTIVE EQUITY PORTFOLIO MANAGEMENT, at 37, 40, 53 (Frank J. Fabozzi ed., 1998).

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[18] Available at http://indeksirahastot.fi/resource/malkiel.pdf.

97. Prudent fiduciaries of large defined contribution plans conduct an analysis to determine whether actively managed funds, particularly large cap, will outperform their benchmark net of fees. Prudent fiduciaries then make a reasoned decision as to whether it would be in the participants' best interest to offer an actively managed large cap option, with its much higher fees, for the particular investment style and asset class.

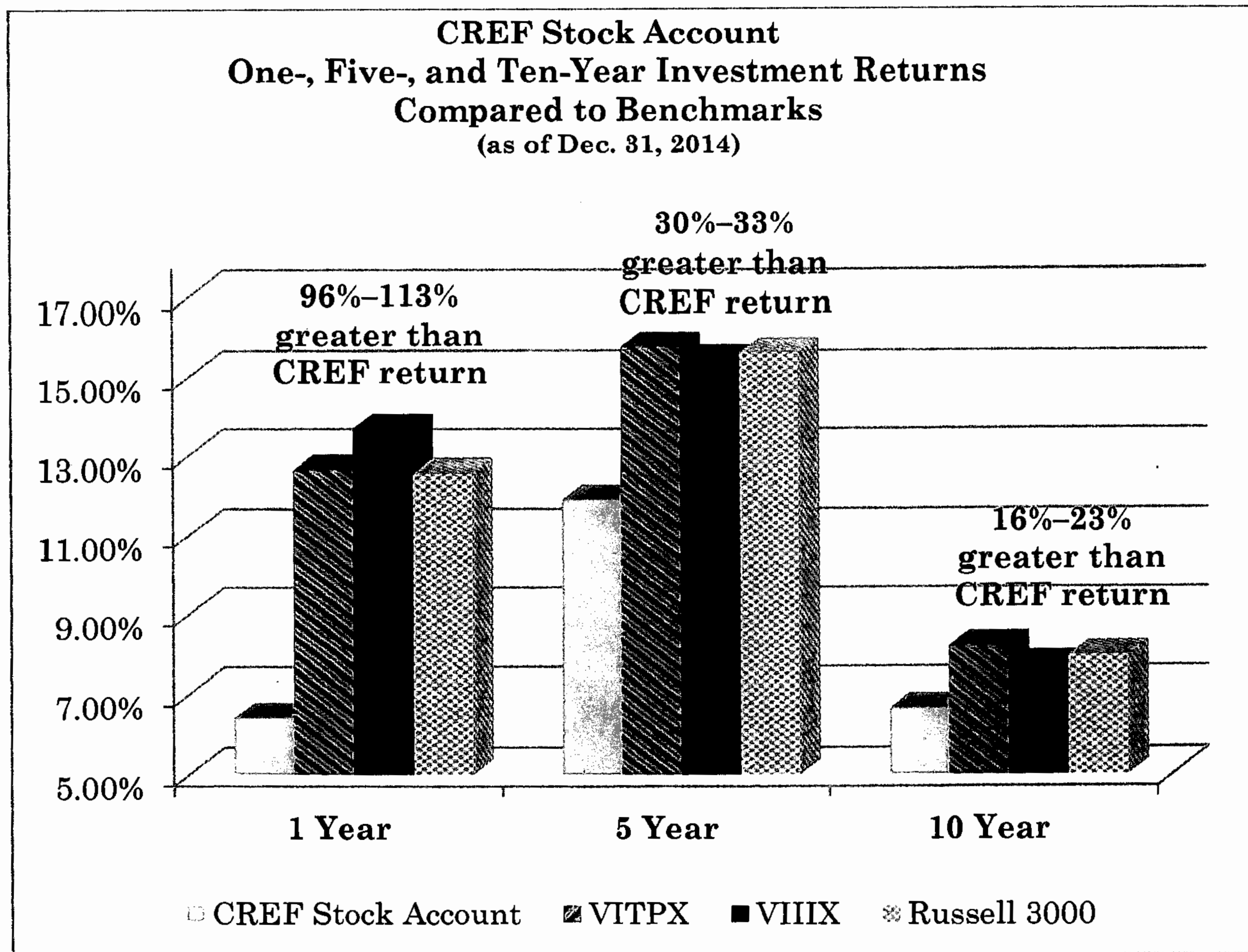
98. Defendants failed to undertake such analysis when they selected and retained the actively managed CREF Stock Account, particularly due to TIAA-CREF's requirement that the CREF Stock Account be provided in the Plan in order to drive revenue to TIAA-CREF. Defendants also provided the fund option without conducting a prudent analysis despite the acceptance within the investment industry that the large cap domestic equity market is the most efficient market, and that active managers do not outperform passive managers, net of fees, in this investment style.

99. Had such an analysis been conducted by Defendants, they would have determined that the CREF Stock Account would not be expected to outperform the large cap index after fees. That is in fact what occurred.

100. Rather than poor performance in a single year or two, historical performance of the CREF Stock Account has been persistently poor for many years compared to both available lower-cost index funds and the index benchmark. In participant communications, Defendants and TIAA-CREF identified the Russell 3000 index as the appropriate benchmark to evaluate the fund's investment results.

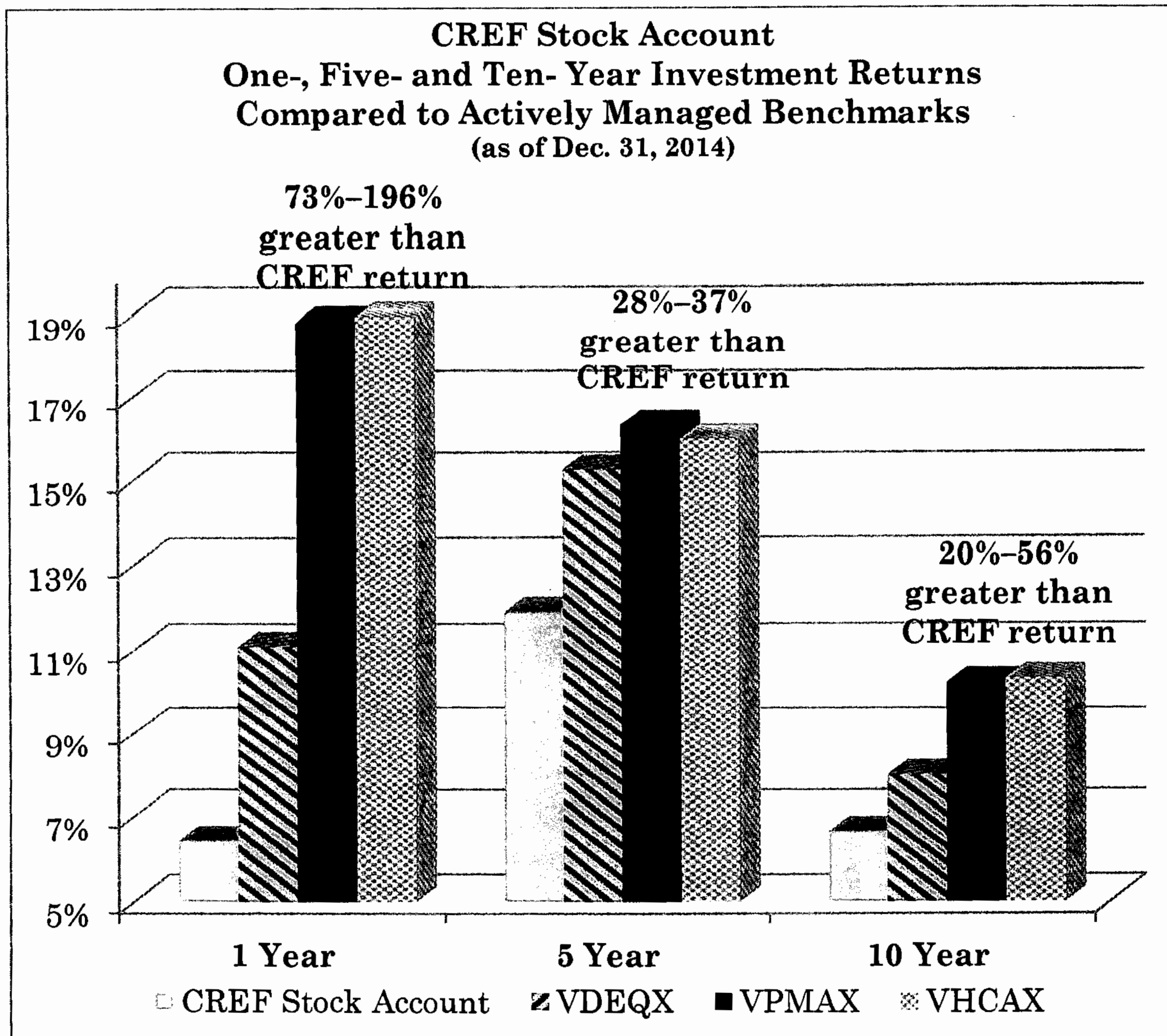
The following performance chart compares the investment returns of the CREF Stock Account to its benchmark and two other passively managed index funds in the same investment style for the one-, five-, and ten-year periods ending December 31, 2014.[19] For each comparison, the CREF Stock Account dramatically underperformed the benchmark and index alternatives. The passively managed index funds used for comparison purposes are the Vanguard Total Stock Market Index Fund-Instl Plus (VITPX) and the Vanguard Institutional Index-Instl Plus (VIIIX). Like the CREF Stock Account, these options are large cap blend investments.

[19] Performance data provided as of December 31, 2014 to correspond to the most recent filing of the Plan's Form 5500 with the Department of Labor.



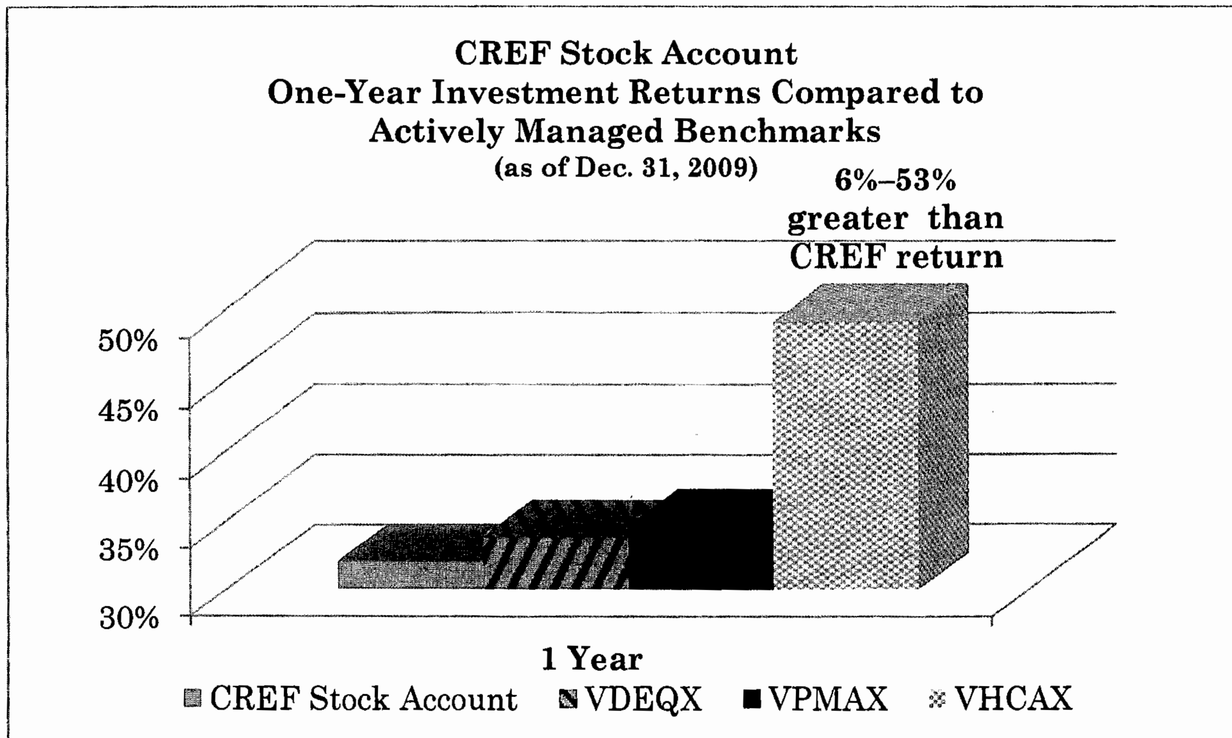
101. The CREF Stock Account, with an expense ratio of 46 bps, as of December 31, 2014, was and is dramatically more expensive than better performing index alternatives: the Vanguard Total Stock Market Index Fund-Instl Plus (2 bps) and the Vanguard Institutional Index-Instl Plus (2 bps).

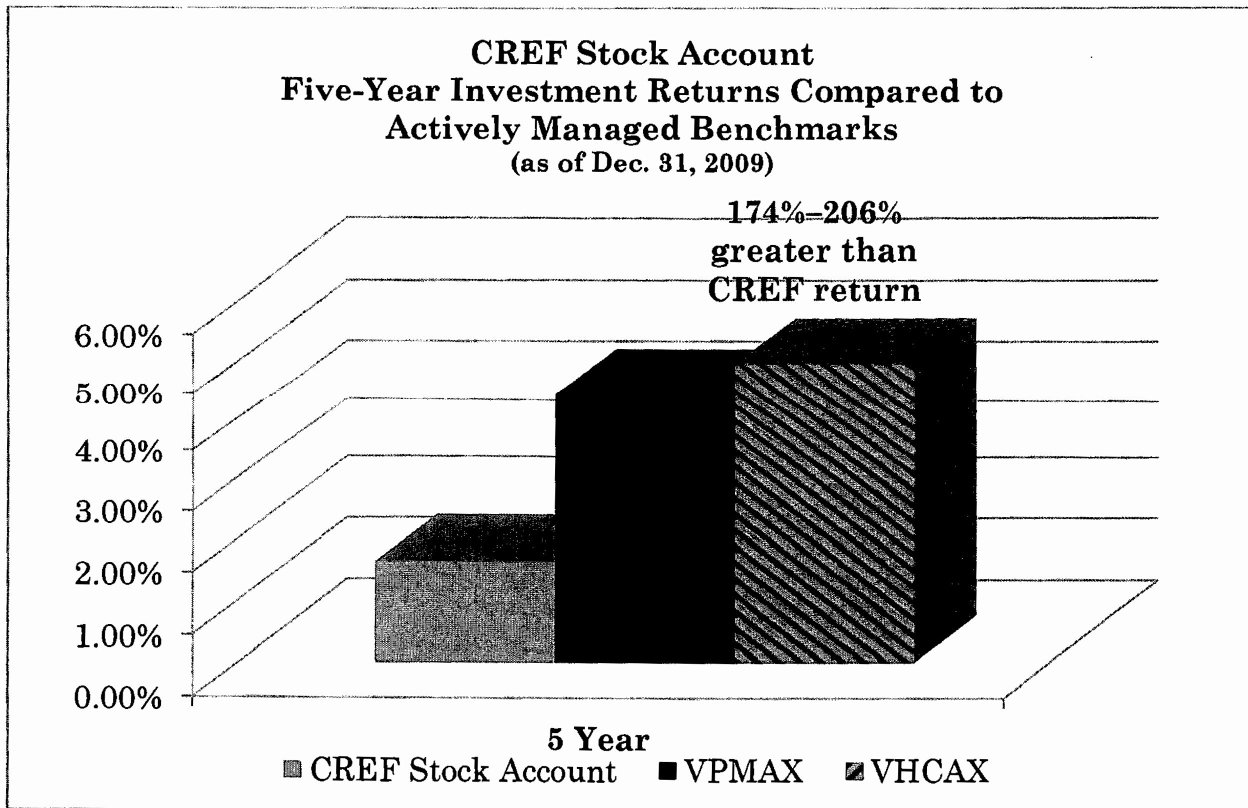
102. Apart from underperforming passively managed index funds, the fund also significantly underperformed comparable actively managed funds over the one-, five- and ten-year periods ending December 31, 2014. These large cap alternatives with similar underlying asset allocations to the CREF Stock Account include the Vanguard Diversified Equity (VDEQX), the Vanguard PRIMECAP-Adm (VPMAX), and the Vanguard Capital Opp.-Adm (VHCAX).

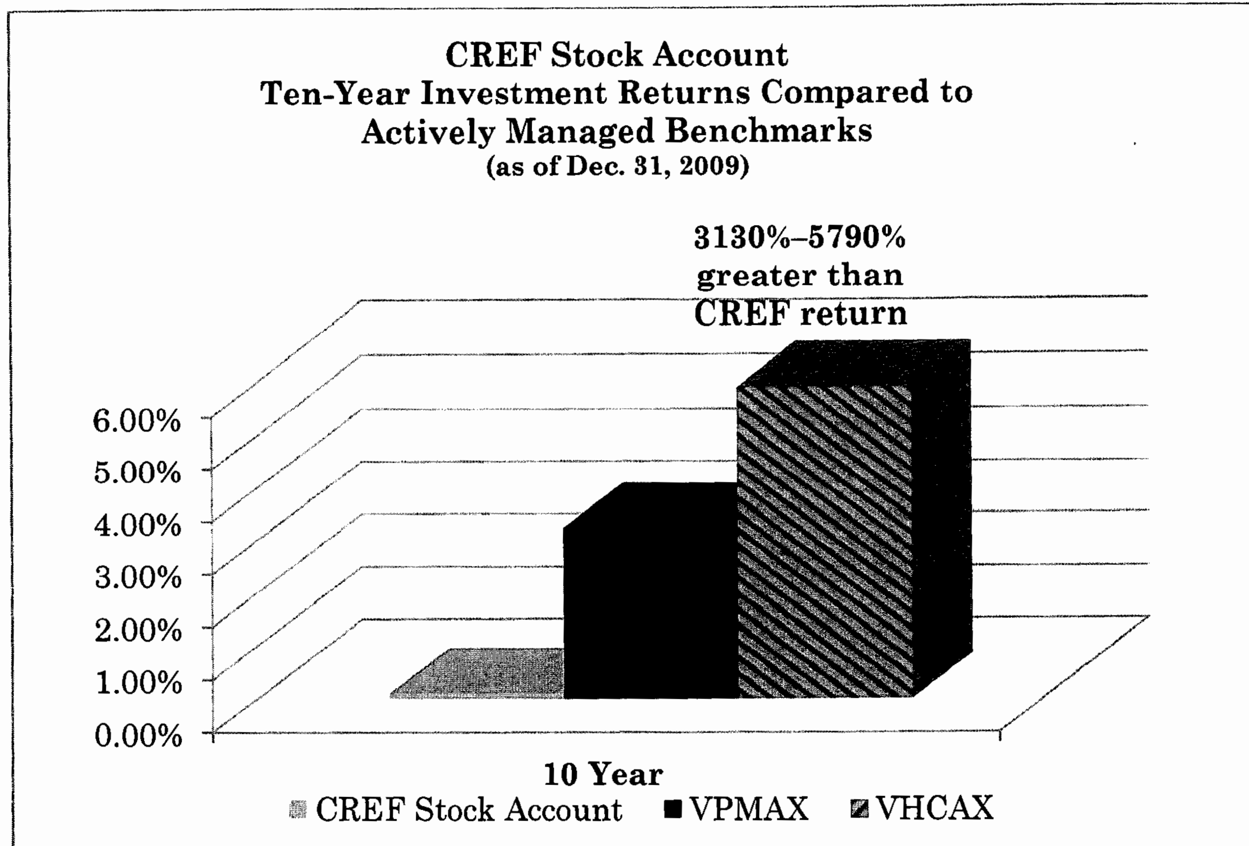


103. The CREF Stock Account also had a long history of substantial underperformance compared to these actively managed alternatives over the one-, five-, and ten-year periods ending December 31, 2009.[20]

[20] Because the Vanguard Diversified Equity Fund's inception date was June 10, 2006, it was excluded from the five- and ten-year periods. For the Vanguard PRIMECAP-Adm and Vanguard Capital Opportunity Fund-Adm, the investment returns of the investor share class for ten-year performance were used because the admiral share class for each of these funds was not offered until November 12, 2001. The return since inception for the Vanguard PRIMECAP-Adm was 3.23%, and for the Vanguard Capital Opportunity Fund-Adm, 5.89%.


CREF Stock Account
One-Year Investment Returns Compared to
Actively Managed Benchmarks
(as of Dec. 31, 2009)
6%–53%
greater than
CREF return
50%
45%
40%
35%
30%
1 Year
CREF Stock Account
VDEQX
VPMAX
VHCAX


CREF Stock Account
Five-Year Investment Returns Compared to
Actively Managed Benchmarks
(as of Dec. 31, 2009)
174%–206%
greater than
CREF return
6.00%
5.00%
4.00%
3.00%
2.00%
1.00%
0.00%
5 Year
CREF Stock Account
VPMAX
VHCAX



104. Despite the consistent underperformance, the CREF Stock Account, with an expense ratio of 46 bps as of December 31, 2014, was more expensive than better performing actively managed alternatives: the Vanguard Diversified Equity-Inv (40 bps), the Vanguard PRIMECAP-Adm (35 bps), and the Vanguard Capital Opp.-Adm (40 bps).

105. Apart from this abysmal long-term underperformance of the CREF Stock Account compared to both index funds and actively managed funds, the fund was recognized as imprudent in the industry. In March 2012, an independent investment consultant, AonHewitt, recognized the imprudence of the CREF Stock Account and recommended to its clients that they remove this fund from their retirement plan. AonHewitt, *TIAA-CREF Asset Management*, INBRIEF, at 3 (July

2012).[21] This recommendation was made due to numerous factors, including the historical underperformance, high turnover of asset management executives and portfolio managers, and the fact that the fund had over 60 separate underlying investment strategies, greatly reducing the fund's ability to generate excess returns over any substantial length of time. *Id.* at 4–5.

106. The Supreme Court has recently and unanimously ruled that ERISA fiduciaries have "a continuing duty to monitor investments and remove imprudent ones[.]" *Tibble v. Edison Int'l,* 135 S. Ct. 1823, 1829 (2015). In contrast, Defendants failed to conduct such a process and continue to retain the CREF Stock Account despite its continuing to underperform lower-cost investment alternatives that were available to the Plan.

107. Prudent fiduciaries of defined contribution plans continuously monitor the investment performance of plan options against applicable benchmarks and peer groups to identify underperforming investments. Based on this process, prudent fiduciaries replace those imprudent investments with better performing and reasonably priced options. Under the standards used by prudent independent fiduciaries, the CREF Stock Account would have been removed from the Plan.

108. Had Defendants removed the CREF Stock Account and the amounts been invested in any of the actively managed lower-cost alternatives identified in ¶102, or the passively managed lower-cost alternatives identified in ¶101, Plan

[21] Available at http://system.nevada.edu/Nshe/?LinkServID=82B25D1E-9128-6E45-1094320FC2037740.

participants would not have lost in excess of $170 million from the fund being retained in the Plan.[22]

B. TIAA Real Estate Account

109. Defendants selected and continue to offer the TIAA Real Estate Account as one of the real estate investment options in the Plan. The fund has far greater fees than are reasonable, has historically underperformed, and continues to consistently underperform comparable real estate investment alternatives, including the Vanguard REIT Index I (VGSNX).

110. With an expense ratio of 87 bps as of December 31, 2014, the TIAA Real Estate Account is also over *10 times more* expensive than the Vanguard REIT Index I with an expense ratio of 8 bps.

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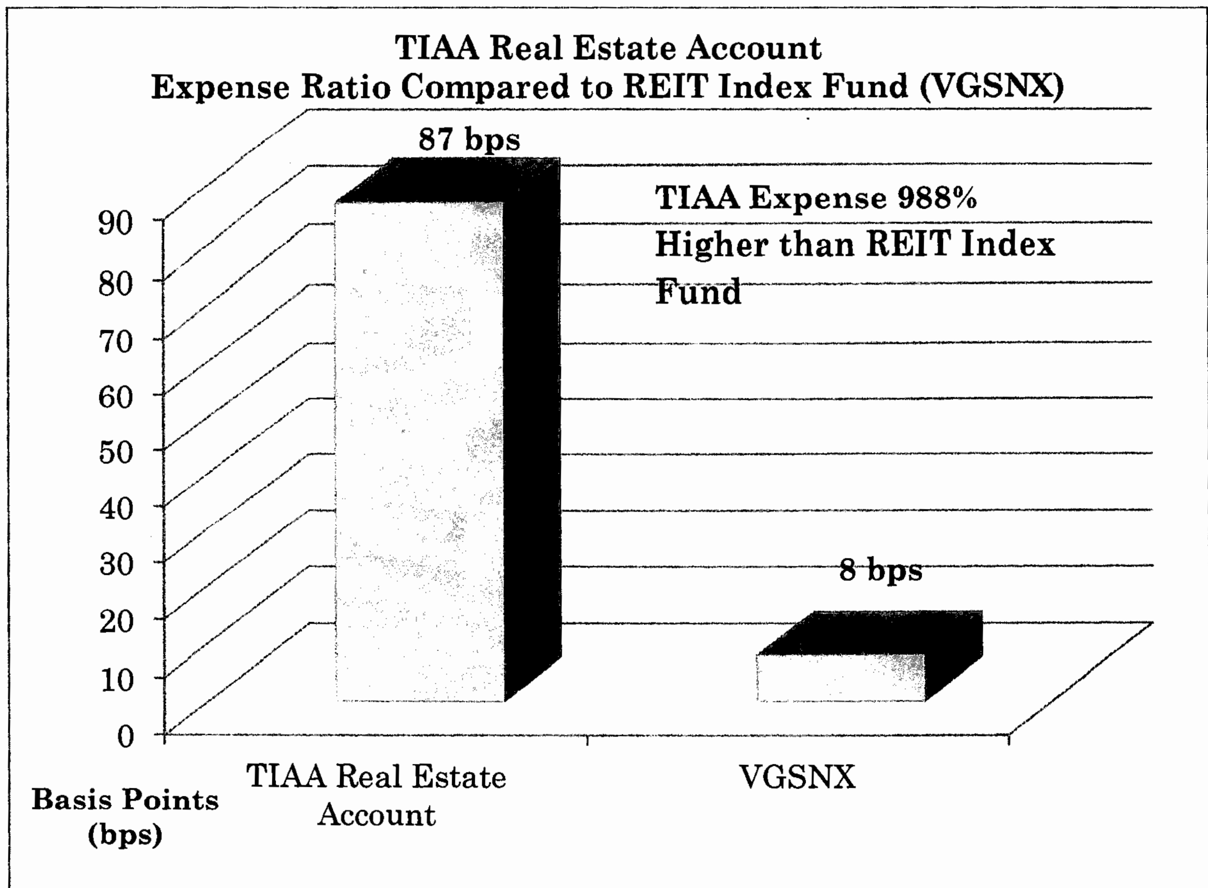
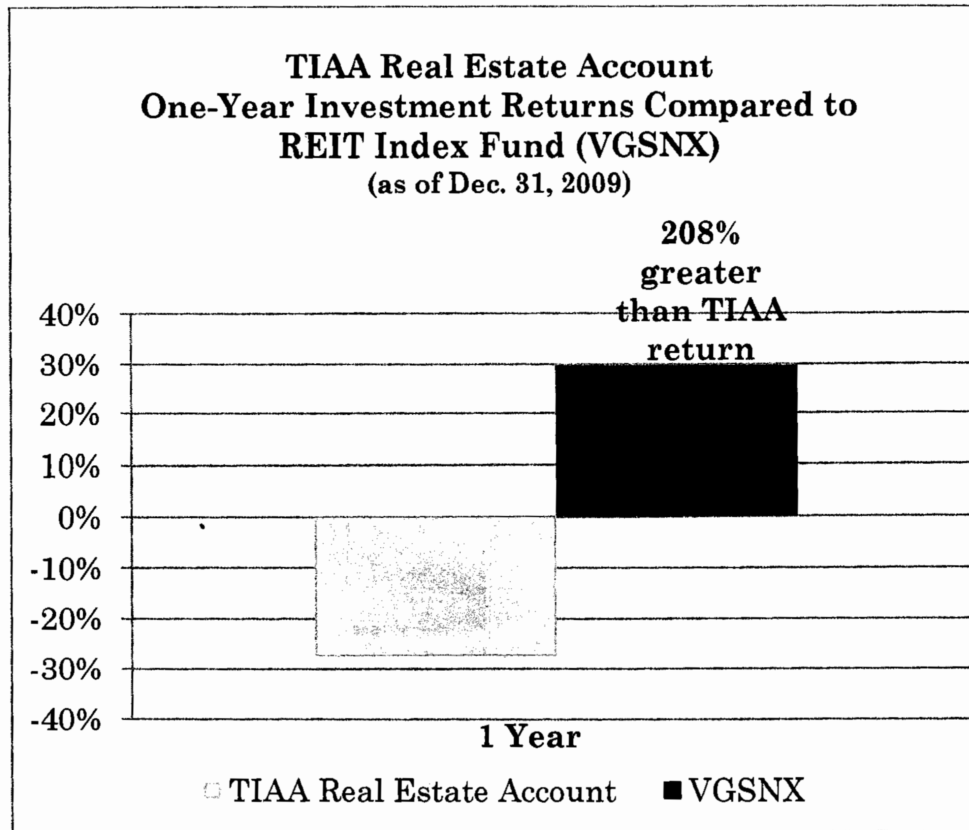
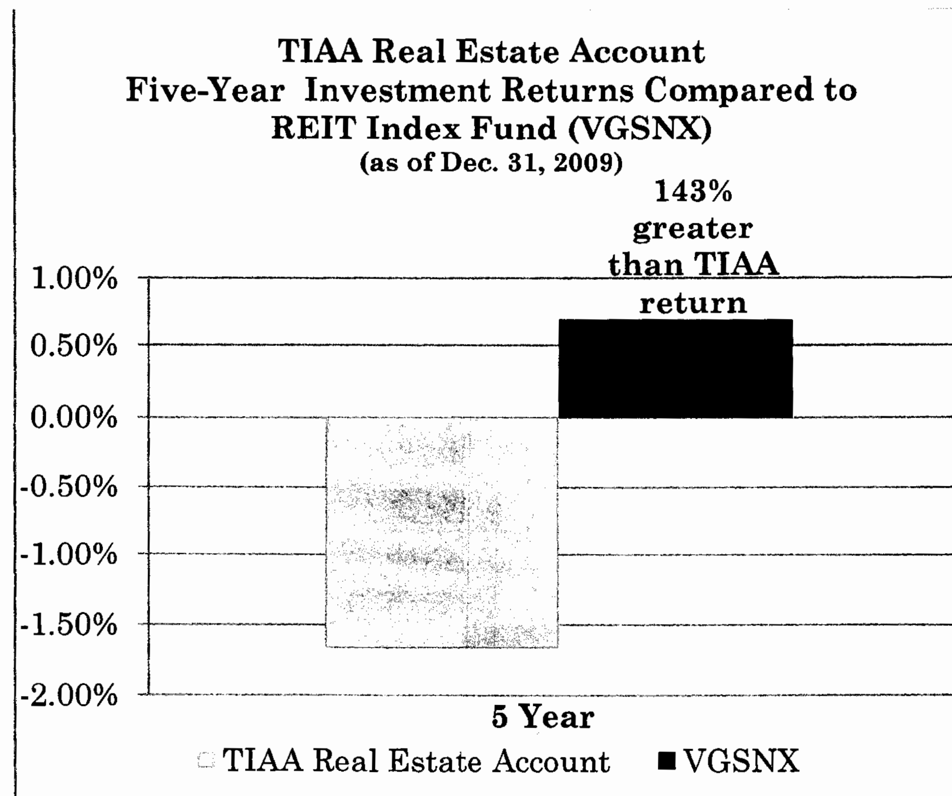
[22] Plan losses have been brought forward to the present value using the investment returns of the lower-cost alternatives to compensate participants who have not been reimbursed for their losses.

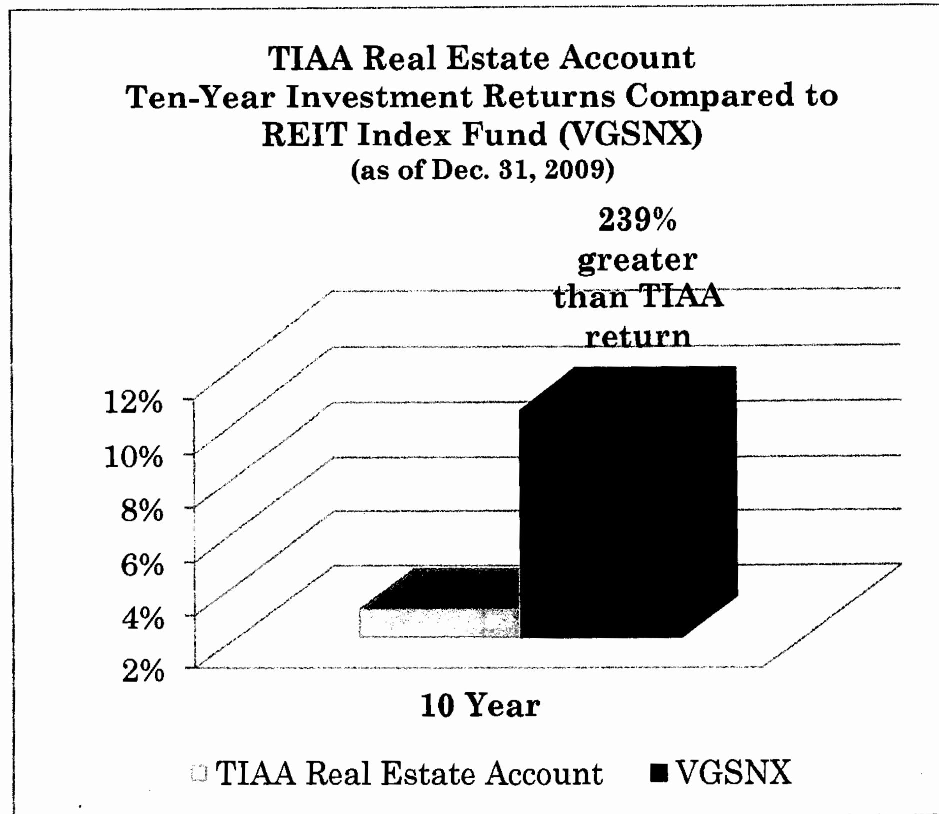


111. The TIAA Real Estate Account had a long history of substantial underperformance relative to the Vanguard REIT Index over the one-, five-, and ten-year periods ending December 31, 2009.[23] Despite this, Defendants selected and retained it in the Plan.

[23] The return of the investor share class was used for ten-year performance because the institutional share class was not offered until December 2, 2003. The return since inception for the Vanguard REIT Index-I was 5.49%.

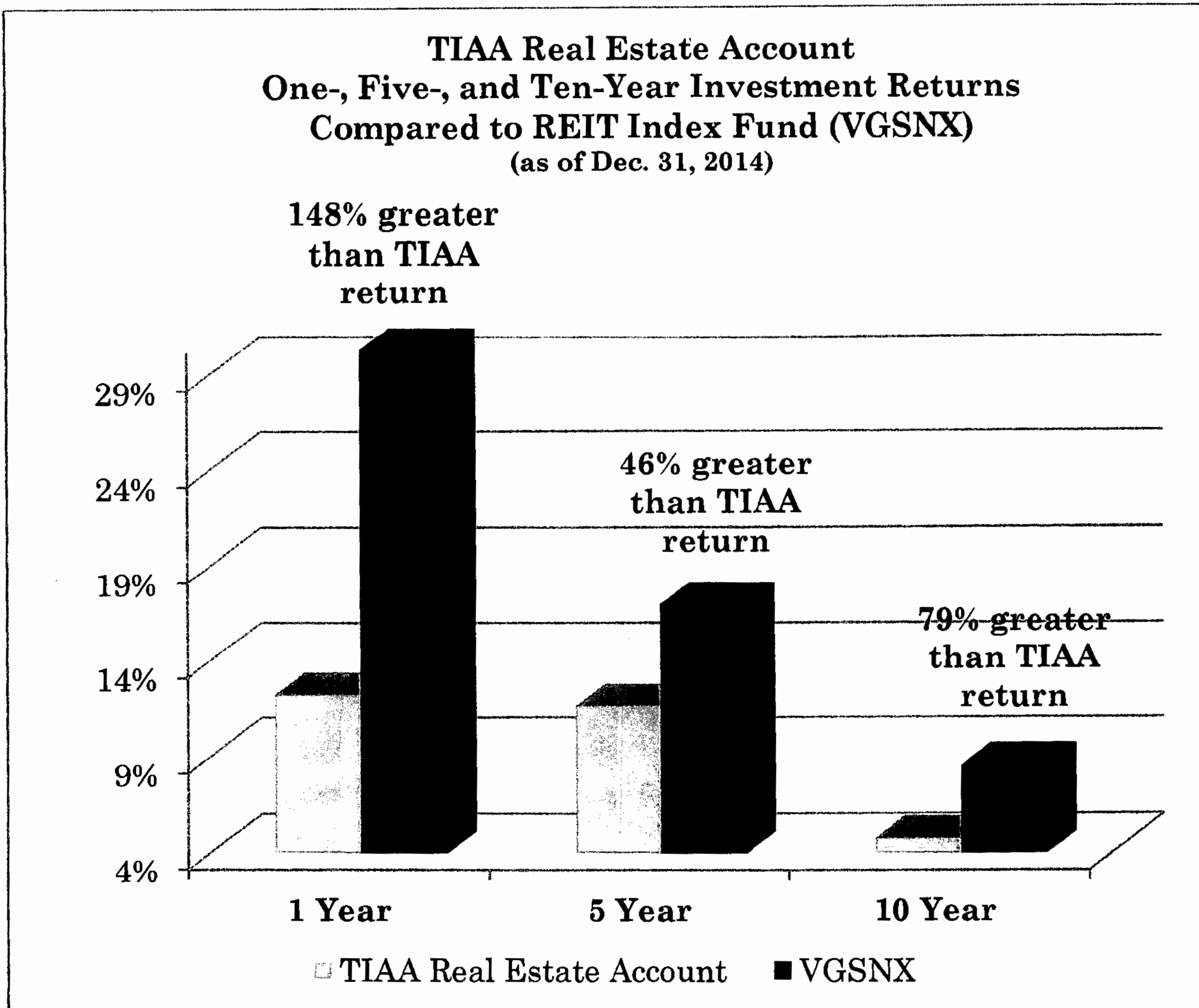

TIAA Real Estate Account
One-Year Investment Returns Compared to
REIT Index Fund (VGSNX)
(as of Dec. 31, 2009)
208% greater than TIAA return
40%
30%
20%
10%
0%
-10%
-20%
-30%
-40%
1 Year
TIAA Real Estate Account
VGSNX


TIAA Real Estate Account
Five-Year Investment Returns Compared to
REIT Index Fund (VGSNX)
(as of Dec. 31, 2009)
143% greater than TIAA return
1.00%
0.50%
0.00%
-0.50%
-1.00%
-1.50%
-2.00%
5 Year
TIAA Real Estate Account
VGSNX



112. This underperformance occurred for years before 2009 and continued after 2009. The TIAA Real Estate Account significantly underperformed the Vanguard REIT Index-I over the one-, five-, and ten-year periods ending December 31, 2014.[24]

[24] Performance data provided as of December 31, 2014 to correspond to the most recent filing of the Plan's Form 5500 with the Department of Labor.



113. As the Supreme Court unanimously ruled in *Tibble*, prudent fiduciaries of defined contribution plans continuously monitor plan investment options and replace imprudent investments. *Tibble*, 135 S. Ct. at 1829. In contrast, Defendants failed to conduct such process and continue to retain the TIAA Real Estate Account as a Plan investment option, despite its continued dramatic underperformance and far higher cost compared to available investment alternatives.

114. Had Defendants removed the TIAA Real Estate Account and the amounts been invested in the lower-cost and better-performing Vanguard REIT

Index I, Plan participants would not have lost in excess of $16 million of their retirement assets from the fund being retained in the Plan.[25]

ERISA'S FIDUCIARY STANDARDS

115. ERISA imposes strict fiduciary duties of loyalty and prudence upon the Defendants as fiduciaries of the Plan. 29 U.S.C. §1104(a)(1), states, in relevant part, that:

> [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.

116. 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.

117. Under ERISA, fiduciaries that exercise any authority or control over plan assets, including the selection of plan investments and service providers, must act prudently and solely in the interest of participants in the plan.

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[25] Plan losses have been brought forward to the present value using the investment returns of the Vanguard REIT Index-I to compensate participants who have not been reimbursed for their losses.

118. ERISA also imposes explicit co-fiduciary liabilities on plan fiduciaries. 29 U.S.C. §1105(a) provides a cause of action against a fiduciary for knowingly participating in a breach by another fiduciary and knowingly failing to cure any breach of duty. The statute states, in relevant part, that:

> 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; [or]
> >
> > (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.

119. 29 U.S.C. §1132(a)(2) authorizes a plan participant to bring a civil action to enforce a breaching fiduciary's liability to the plan under 29 U.S.C. §1109. Section 1109(a) 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.

CLASS ACTION ALLEGATIONS

120. 29 U.S.C. §1132(a)(2) authorizes any participant or beneficiary of the Plan to bring an action individually on behalf of the Plan to enforce a breaching fiduciary's liability to the Plan under 29 U.S.C. §1109(a).

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

> All participants and beneficiaries of the University of Pennsylvania Matching Plan from August 10, 2010 through the date of judgment, excluding the Defendants.

122. This action meets the requirements of Rule 23 and is certifiable as a class action for the following reasons:

a. The Class includes over 20,000 members and is so large that joinder of all its members is impracticable.

b. There are questions of law and fact common to this Class because the Defendants owed fiduciary duties to the Plan and to all participants and beneficiaries and took the actions and omissions alleged herein as to the Plan and not as to any individual participant. Thus, common questions of law and fact include the following, without limitation: who are the fiduciaries liable for the remedies provided by 29 U.S.C. §1109(a);

whether the fiduciaries of the Plan breached their fiduciary duties to the Plan; what are the losses to the Plan resulting from each breach of fiduciary duty; and what Plan-wide equitable and other relief the court should impose in light of Defendants' breach of duty.

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

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

e. Prosecution of separate actions for these breaches of fiduciary duties by individual participants and beneficiaries would create the risk of (A) inconsistent or varying adjudications that would establish incompatible standards of conduct for Defendants in respect to the discharge of their fiduciary duties to the Plan and personal liability to the Plan under 29 U.S.C. §1109(a), and (B) adjudications by individual participants and beneficiaries regarding these breaches of fiduciary duties and remedies for the Plan would, as a practical matter, be dispositive of the interests of the participants and beneficiaries not parties to the adjudication or would substantially impair or impede those participants' and beneficiaries' ability to protect their interests.

Therefore, this action should be certified as a class action under Rule 23(b)(1)(A) or (B).

123. A class action is the superior method for the fair and efficient adjudication of this controversy because joinder of all participants and beneficiaries is impracticable, the losses suffered by individual participants and beneficiaries may be small and impracticable for individual members to enforce their rights through individual actions, and the common questions of law and fact predominate over individual questions. Given the nature of the allegations, no class member has an 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. Alternatively, then, this action may be certified as a class under Rule 23(b)(3) if it is not certified under Rule 23(b)(1)(A) or (B).

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

a. Schlichter, Bogard & Denton has been appointed as class counsel in 15 other ERISA class actions regarding excessive fees in large defined contribution plans. As a district court in one of those cases recently observed: "the firm of Schlichter, Bogard & Denton ha[s] demonstrated its well-earned reputation as a pioneer and the leader in the field". *Abbott v. Lockheed Martin Corp.*, No. 06-701, 2015 U.S.Dist.LEXIS 93206 at 4 (S.D. Ill. July 17, 2015). Other courts have made similar findings: "It is clear to the

Court that the firm of Schlichter, Bogard & Denton is preeminent in the field" "and is the only firm which has invested such massive resources in this area." *George v. Kraft Foods Global, Inc.*, No. 08-3799, 2012 U.S.Dist.LEXIS 166816 at 8 (N.D. Ill. June 26, 2012). "As the preeminent firm in 401(k) fee litigation, Schlichter, Bogard & Denton has achieved unparalleled results on behalf of its clients." *Nolte v. Cigna Corp.*, No. 07-2046, 2013 U.S.Dist.LEXIS 184622 at 8 (C.D. Ill. Oct. 15, 2013). "Litigating this case against formidable defendants and their sophisticated attorneys required Class Counsel to demonstrate extraordinary skill and determination." *Beesley v. Int'l Paper Co.*, No. 06-703, 2014 U.S.Dist.LEXIS 12037 at 8 (S.D. Ill. Jan. 31, 2014).

b. The U.S. District Court Judge G. Patrick Murphy recognized the work of Schlichter Bogard & Denton as exceptional:

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

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

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

> Of special importance is the significant, national contribution made by the Plaintiffs whose litigation clarified ERISA standards in the context of investment fees. The litigation educated plan administrators, the Department of Labor, the courts and retirement plan participants about the importance of monitoring recordkeeping fees and separating a fiduciary's corporate interest from its fiduciary obligations.

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

d. Schlichter, Bogard & Denton is also class counsel in and handled *Tibble v. Edison Int'l,* in which the Supreme Court held in a unanimous 9–0 decision that ERISA fiduciaries have "a continuing duty to monitor investments and remove imprudent ones[.]" *Tibble,* 135 S. Ct. at 1829. Schlichter, Bogard & Denton successfully petitioned for a writ of certiorari,

and obtained amicus support from the United States Solicitor General and AARP, among others. Given the Court's broad recognition of an ongoing fiduciary duty, the *Tibble* decision will affect all ERISA defined contribution plans.

e. The firm's work in ERISA excessive fee class actions has been featured in the New York Times, Wall Street Journal, NPR, Reuters, and Bloomberg, among other media outlets. See, e.g., Anne Tergesen, *401(k) Fees, Already Low, Are Heading Lower*, WALL ST. J. (May 15, 2016);[26] Gretchen Morgenson, *A Lone Ranger of the 401(k)'s*, N.Y. TIMES (Mar. 29, 2014);[27] Liz Moyer, *High Court Spotlight Put on 401(k) Plans*, WALL ST. J. (Feb. 23, 2015);[28] Floyd Norris, *What a 401(k) Plan Really Owes Employees*, N.Y. TIMES (Oct. 16, 2014);[29] Sara Randazzo, *Plaintiffs' Lawyer Takes on Retirement Plans*, WALL ST. J. (Aug. 25, 2015);[30] Jess Bravin and Liz Moyer, *High-Court Ruling Adds Protections for Investors in 401(k) Plans*, WALL ST. J. (May 18, 2015); [31] Jim Zarroli, *Lockheed Martin Case Puts 401(k) Plans on*

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[26] Available at http://www.wsj.com/articles/401-k-fees-already-low-are-heading-lower-1463304601.
[27] Available at http://www.nytimes.com/2014/03/30/business/a-lone-ranger-of-the-401-k-s.html?_r=0.
[28] Available at http://www.wsj.com/articles/high-court-spotlight-put-on-401-k-plans-1424716527.
[29] Available at http://www.nytimes.com/2014/10/17/business/what-a-401-k-plan-really-owes-employees.html?_r=0.
[30] Available at http://blogs.wsj.com/law/2015/08/25/plaintiffs-lawyer-takes-on-retirement-plans/.
[31] Available at http://www.wsj.com/articles/high-court-ruling-adds-protections-for-investors-in-401-k-plans-1431974139.

Trial, NPR (Dec. 15, 2014);[32] Mark Miller, *Are 401(k) Fees Too High? The High Court May Have an Opinion*, REUTERS (May 1, 2014);[33] Greg Stohr, *401(k) Fees at Issue as Court Takes Edison Worker Appeal*, BLOOMBERG (Oct. 2, 2014).[34]

COUNT I

Breach of Duties of Loyalty and Prudence—Unreasonable Administrative Fees

125. Plaintiffs restate and incorporate the allegations in the preceding paragraphs.

126. This Count alleges breach of fiduciary duties against all Defendants.

127. The scope of the fiduciary duties and responsibilities of these Defendants includes discharging their duties with respect to the Plan solely in the interest of, and for the exclusive purpose of providing benefits to, Plan participants and beneficiaries, defraying reasonable expenses of administering the Plan, and acting with the care, skill, prudence, and diligence required by ERISA.

128. If a defined contribution plan overpays for recordkeeping services due to the fiduciaries' "failure to solicit bids" from other recordkeepers, the fiduciaries have breached their duty of prudence. See *George v. Kraft Foods Global, Inc.*, 641 F.3d 786, 798–99 (7th Cir. 2011). Similarly, "us[ing] revenue sharing to benefit [the plan sponsor and recordkeeper] at the Plan's expense" while "failing to monitor and

[32] Available at http://www.npr.org/2014/12/15/370794942/lockheed-martin-case-puts-401-k-plans-on-trial.

[33] Available at http://www.reuters.com/article/us-column-miller-401fees-idUSBREA400J220140501.

[34] Available at http://www.bloomberg.com/news/articles/2014-10-02/401-k-fees-at-issue-as-court-takes-edison-worker-appeal.

control recordkeeping fees" and "paying excessive revenue sharing" is a breach of fiduciary duties. *Tussey,* 746 F.3d at 336.

129. Defendants failed to engage in a prudent and loyal process for selecting and retaining a recordkeeper. Rather than consolidating the Plan's administrative and recordkeeping services to a single service provider, Defendants retained two recordkeepers to provide recordkeeping services. This failure to consolidate the recordkeeping services eliminated the Plan's ability to obtain the same services at a lower cost with a single recordkeeper and caused the Plan to pay significantly excessive recordkeeping fees. This conduct was a breach of the duties of loyalty and prudence.

130. Moreover, Defendants failed to solicit competitive bids from vendors on a flat per-participant fee. Defendants allowed the Plan's recordkeepers to receive open ended asset-based revenue sharing and hard dollar fees, but failed to monitor those payments to ensure that only reasonable compensation was received for the recordkeeping services provided to the Plan. As the amount of assets grew, the revenue sharing payments to the Plan's recordkeepers grew, even though the services provided by the recordkeepers remained the same. This caused the recordkeeping compensation paid to the recordkeepers to exceed a reasonable fee for the services provided. This conduct was a breach of the duties of loyalty and prudence.

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

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

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

COUNT II

Breach of Duties of Loyalty and Prudence— Unreasonable Investment Management Fees and Performance Losses

134. Plaintiffs restate and incorporate the allegations contained in the preceding paragraphs.

135. This Count alleges breach of fiduciary duties against all Defendants.

136. The scope of the fiduciary duties and responsibilities of these Defendants includes managing the assets of the Plan for the sole and exclusive benefit of Plan participants and beneficiaries, defraying reasonable expenses of administering the Plan, and acting with the care, skill, diligence, and prudence required by ERISA. These Defendants are directly responsible for ensuring that the Plan's fees are reasonable, selecting prudent investment options, evaluating and monitoring the Plan's investments on an ongoing basis and eliminating imprudent

ones, and taking all necessary steps to ensure that the Plan's assets are invested prudently.

137. As the Supreme Court recently confirmed, ERISA's "duty of prudence involves a continuing duty to monitor investments and remove imprudent ones[.]" *Tibble,* 135 S. Ct. at 1829.

138. For years, Defendants retained as Plan investment options mutual funds and insurance company variable annuities with higher expenses and historically poor performance relative to other investment options that were readily available to the Plan at all relevant times.

139. Rather than consolidating the Plan's over 75 investment options into a core investment lineup in which prudent investments were selected for a given asset class and investment style, as is the case with most defined contribution plans, Defendants retained multiple investment options in each asset class and investment style, thereby depriving the Plan of its ability to qualify for lower cost share classes of certain investments, while violating the well-known principle for fiduciaries that such a high number of investment options causes participant confusion and paralysis. In addition, Defendants, as fiduciaries charged with operating as prudent financial experts, *Katsaros v. Cody*, 744 F.2d 270, 279 (2d Cir. 1984), knew or should have known that providing numerous actively managed duplicative funds in the same investment style would produce a "shadow index" return before accounting for much higher fees than index fund fees, thereby resulting in significant underperformance. The Plan's investment offerings included

the use of mutual funds and variable annuities with expense ratios far in excess of other options available to the Plan, including lower-cost share classes with the identical investment manager and investments and lower-cost insurance company variable annuities. In so doing, Defendants failed to make Plan investment decisions based solely on the merits of the investment funds and what was in the interest of participants. Defendants therefore failed to discharge their duties with respect to the Plan solely in the interest of the participants and beneficiaries and for the exclusive purpose of providing benefits to participants and their beneficiaries and defraying reasonable expenses of administering the Plan. Therefore, Defendants breached their fiduciary duty of loyalty under 29 U.S.C. §1104(a)(1)(A).

140. The same conduct by the Defendants shows a failure to discharge their duties with respect to the Plan 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. Defendants therefore breached their fiduciary duty of prudence under 29 U.S.C. §1104(a)(1)(B).

141. Defendants failed to engage in a prudent process for the selection and retention of Plan investment options. Rather, Defendants used more expensive funds with inferior historical performance compared to investments that were available to the Plan.

142. CREF Stock Account: Defendants selected and retained the CREF Stock Account despite its excessive cost and historical underperformance compared to lower-cost investments with similar underlying asset allocations.

143. TIAA Real Estate Account: Defendants selected and retained the TIAA Real Estate Account for the real estate investment in the Plan despite its excessive fees and historical underperformance compared to lower-cost real estate investments.

144. Had a prudent and loyal fiduciary conducted a prudent process for the retention of investment options, it would have concluded that the Plan's investment options were retained for reasons other than the best interest of the Plan and its participants and were causing the Plan to lose tens of millions of dollars of participants' retirement savings in excessive and unreasonable fees and underperformance relative to prudent investment options available to the Plan.

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

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

147. Each Defendant knowingly participated in the breach of the other Defendants, knowing that such acts were a breach, enabled the other Defendants to commit a breach by failing to lawfully discharge its own fiduciary duties, knew of

the breach by the other Defendants and failed to make any reasonable effort under the circumstances to remedy the breach. Thus, each Defendant is liable for the losses caused by the breach of its co-fiduciary under 29 U.S.C. §1105(a).

COUNT III

Failure to Monitor Fiduciaries

148. Plaintiffs restate and incorporate the allegations contained in the preceding paragraphs.

149. This Count alleges breach of fiduciary duties against the University of Pennsylvania.

150. The University of Pennsylvania has the responsibility to control and manage the operation and administration of the Plan, including the selection of Plan service providers, with all powers necessary to enable it to properly carry out such responsibilities.

151. A monitoring fiduciary must ensure that the monitored fiduciaries are performing their fiduciary obligations, including those with respect to the investment and holding of plan assets, and must take prompt and effective action to protect the plan and participants when they are not.

152. To the extent any of the University of Pennsylvania's fiduciary responsibilities were delegated to another fiduciary, its monitoring duty included an obligation to ensure that any delegated tasks were being performed prudently and loyally.

153. The University of Pennsylvania breached its fiduciary monitoring duties by, among other things:

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

b. failing to monitor its appointees' fiduciary process, which would have alerted any prudent fiduciary to the potential breach because of the excessive administrative and investment management fees and consistently underperforming Plan investments in violation of ERISA;

c. failing to ensure that the monitored fiduciaries had a prudent process in place for evaluating the Plan's administrative fees and ensuring that the fees were competitive, including a process to identify and determine the amount of all sources of compensation to the Plan's recordkeeper and the amount of any revenue sharing payments; a process to prevent the recordkeeper from receiving revenue sharing that would increase the recordkeeper's compensation to unreasonable levels even though the services provided remained the same; and a process to periodically obtain competitive bids to determine the market rate for the services provided to the Plan;

d. failing to ensure that the monitored fiduciaries considered the ready availability of comparable and better performing investment options that charged significantly lower fees and expenses than the Plan's investments; and

e. failing to remove appointees whose performance was inadequate in that they continued to maintain imprudent, excessively costly, and poorly performing investments, all to the detriment of Plan participants' retirement savings.

154. As a consequence of these breaches of the fiduciary duty to monitor, the Plan suffered substantial losses. Had the University of Pennsylvania discharged its fiduciary monitoring duties 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, and the Plaintiffs and the other Class members, lost tens of millions of dollars of their retirement savings.

JURY TRIAL DEMANDED

155. Pursuant to Fed.R.Civ.P. 38 and the Constitution of the United States, Plaintiffs demand a trial by jury.

PRAYER FOR RELIEF

For these reasons, Plaintiffs, on behalf of the Plan and all similarly situated Plan participants and beneficiaries, respectfully request that the Court:

- find and declare that the Defendants have breached their fiduciary duties as described above;
- find and adjudge that Defendants are personally liable to make good to the Plan all losses to the Plan resulting from each breach of fiduciary duty, and to otherwise restore the Plan to the position it would have occupied but for the breaches of fiduciary duty;

- determine the method by which Plan losses under 29 U.S.C. §1109(a) should be calculated;
- order Defendants to provide all accountings necessary to determine the amounts Defendants must make good to the Plan under §1109(a);
- remove the fiduciaries who have breached their fiduciary duties and enjoin them from future ERISA violations;
- surcharge against Defendants and in favor of the Plan all amounts involved in any transactions which such accounting reveals were improper, excessive and/or in violation of ERISA;
- reform the Plan to include only prudent investments;
- reform the Plan to obtain bids for recordkeeping and to pay only reasonable recordkeeping expenses;
- 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.

August 10, 2016

Respectfully submitted,

David M. Promisloff

PROFY, PROMISLOFF & CIARLANTO, P.C.
David M. Promisloff (ID# 200971)
Joseph M. Profy (ID# 77141)
Jeffrey J. Ciarlanto (ID# 205838)
100 N. 22nd Street, Unit 105
Philadelphia, PA 19103
Phone: (215) 259-5156
Fax: (215) 600-2642
david@prolawpa.com
profy@prolawpa.com
ciarlanto@prolawpa.com

Local Counsel for Plaintiffs

SCHLICHTER, BOGARD & DENTON, LLP
Jerome J. Schlichter, MO No. 32225*
Michael A. Wolff, MO No. 38207*
Troy A. Doles, MO No. 47958*
Heather Lea, MO No. 49872*
Kurt C. Struckhoff, MO No. 61873*
Stephen M. Hoeplinger, MA No. 676219*
100 South Fourth Street, Ste. 1200
St. Louis, MO 63102
Phone: (314) 621-6115
Fax: (314) 621-5934
**Pro Hac Vice* forthcoming

Lead Counsel for Plaintiffs

JS 44 (Rev. 07/16)

CIVIL COVER SHEET

16 CV 4329

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. *(SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)*

16 4329

I. (a) PLAINTIFFS
Jennifer Sweda, Benjamin A. Wiggins, Robert L. Young, Faith Pickering, Pushkar Sohoni, and Rebecca N. Toner, individually and as representatives of a class of participants and beneficiaries

(b) County of Residence of First Listed Plaintiff: Philadelphia
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys *(Firm Name, Address, and Telephone Number)*
David Promisloff, Profy, Promisloff & Ciarlanto, P.C., 100 N. 22nd Street, Unit 105, Philadelphia, PA 19103; Phone: (215) 259-5156

DEFENDANTS
The University of Pennsylvania and Jack Heuer

County of Residence of First Listed Defendant: Philadelphia
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys *(If Known)*

TJ

II. BASIS OF JURISDICTION *(Place an "X" in One Box Only)*

- ☐ 1 U.S. Government Plaintiff
- ☒ 3 Federal Question *(U.S. Government Not a Party)*
- ☐ 2 U.S. Government Defendant
- ☐ 4 Diversity *(Indicate Citizenship of Parties in Item III)*

III. CITIZENSHIP OF PRINCIPAL PARTIES *(Place an "X" in One Box for Plaintiff and One Box for Defendant)* *(For Diversity Cases Only)*

	PTF	DEF		PTF	DEF
Citizen of This State	☐ 1	☐ 1	Incorporated *or* Principal Place of Business In This State	☐ 4	☐ 4
Citizen of Another State	☐ 2	☐ 2	Incorporated *and* Principal Place of Business In Another State	☐ 5	☐ 5
Citizen or Subject of a Foreign Country	☐ 3	☐ 3	Foreign Nation	☐ 6	☐ 6

IV. NATURE OF SUIT *(Place an "X" in One Box Only)*

CONTRACT
- ☐ 110 Insurance
- ☐ 120 Marine
- ☐ 130 Miller Act
- ☐ 140 Negotiable Instrument
- ☐ 150 Recovery of Overpayment & Enforcement of Judgment
- ☐ 151 Medicare Act
- ☐ 152 Recovery of Defaulted Student Loans (Excludes Veterans)
- ☐ 153 Recovery of Overpayment of Veteran's Benefits
- ☐ 160 Stockholders' Suits
- ☐ 190 Other Contract
- ☐ 195 Contract Product Liability
- ☐ 196 Franchise

REAL PROPERTY
- ☐ 210 Land Condemnation
- ☐ 220 Foreclosure
- ☐ 230 Rent Lease & Ejectment
- ☐ 240 Torts to Land
- ☐ 245 Tort Product Liability
- ☐ 290 All Other Real Property

TORTS

PERSONAL INJURY
- ☐ 310 Airplane
- ☐ 315 Airplane Product Liability
- ☐ 320 Assault, Libel & Slander
- ☐ 330 Federal Employers' Liability
- ☐ 340 Marine
- ☐ 345 Marine Product Liability
- ☐ 350 Motor Vehicle
- ☐ 355 Motor Vehicle Product Liability
- ☐ 360 Other Personal Injury
- ☐ 362 Personal Injury - Medical Malpractice

PERSONAL INJURY
- ☐ 365 Personal Injury - Product Liability
- ☐ 367 Health Care/ Pharmaceutical Personal Injury Product Liability
- ☐ 368 Asbestos Personal Injury Product Liability

PERSONAL PROPERTY
- ☐ 370 Other Fraud
- ☐ 371 Truth in Lending
- ☐ 380 Other Personal Property Damage
- ☐ 385 Property Damage Product Liability

CIVIL RIGHTS
- ☐ 440 Other Civil Rights
- ☐ 441 Voting
- ☐ 442 Employment
- ☐ 443 Housing/ Accommodations
- ☐ 445 Amer. w/Disabilities - Employment
- ☐ 446 Amer. w/Disabilities - Other
- ☐ 448 Education

PRISONER PETITIONS

Habeas Corpus:
- ☐ 463 Alien Detainee
- ☐ 510 Motions to Vacate Sentence
- ☐ 530 General
- ☐ 535 Death Penalty

Other:
- ☐ 540 Mandamus & Other
- ☐ 550 Civil Rights
- ☐ 555 Prison Condition
- ☐ 560 Civil Detainee - Conditions of Confinement

FORFEITURE/PENALTY
- ☐ 625 Drug Related Seizure of Property 21 USC 881
- ☐ 690 Other

LABOR
- ☐ 710 Fair Labor Standards Act
- ☐ 720 Labor/Management Relations
- ☐ 740 Railway Labor Act
- ☐ 751 Family and Medical Leave Act
- ☐ 790 Other Labor Litigation
- ☒ 791 Employee Retirement Income Security Act

IMMIGRATION
- ☐ 462 Naturalization Application
- ☐ 465 Other Immigration Actions

BANKRUPTCY
- ☐ 422 Appeal 28 USC 158
- ☐ 423 Withdrawal 28 USC 157

PROPERTY RIGHTS
- ☐ 820 Copyrights
- ☐ 830 Patent
- ☐ 840 Trademark

SOCIAL SECURITY
- ☐ 861 HIA (1395ff)
- ☐ 862 Black Lung (923)
- ☐ 863 DIWC/DIWW (405(g))
- ☐ 864 SSID Title XVI
- ☐ 865 RSI (405(g))

FEDERAL TAX SUITS
- ☐ 870 Taxes (U.S. Plaintiff or Defendant)
- ☐ 871 IRS—Third Party 26 USC 7609

OTHER STATUTES
- ☐ 375 False Claims Act
- ☐ 376 Qui Tam (31 USC 3729(a))
- ☐ 400 State Reapportionment
- ☐ 410 Antitrust
- ☐ 430 Banks and Banking
- ☐ 450 Commerce
- ☐ 460 Deportation
- ☐ 470 Racketeer Influenced and Corrupt Organizations
- ☐ 480 Consumer Credit
- ☐ 490 Cable/Sat TV
- ☐ 850 Securities/Commodities/ Exchange
- ☐ 890 Other Statutory Actions
- ☐ 891 Agricultural Acts
- ☐ 893 Environmental Matters
- ☐ 895 Freedom of Information Act
- ☐ 896 Arbitration
- ☐ 899 Administrative Procedure Act/Review or Appeal of Agency Decision
- ☐ 950 Constitutionality of State Statutes

V. ORIGIN *(Place an "X" in One Box Only)*

☒ 1 Original Proceeding ☐ 2 Removed from State Court ☐ 3 Remanded from Appellate Court ☐ 4 Reinstated or Reopened ☐ 5 Transferred from Another District *(specify)* ☐ 6 Multidistrict Litigation - Transfer ☐ 8 Multidistrict Litigation - Direct File

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing **(Do not cite jurisdictional statutes unless diversity)**:
29 U.S.C. 1001 et seq.

Brief description of cause:
Breach of fiduciary duty

VII. REQUESTED IN COMPLAINT:

☒ CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P.

DEMAND $

CHECK YES only if demanded in complaint:
JURY DEMAND: ☒ Yes ☐ No

VIII. RELATED CASE(S) IF ANY

(See instructions): JUDGE ______ DOCKET NUMBER ______

AUG 10 2016

DATE: 08/10/2016

SIGNATURE OF ATTORNEY OF RECORD: David M. Promisloff [signature]

FOR OFFICE USE ONLY

RECEIPT # ______ AMOUNT ______ APPLYING IFP ______ JUDGE ______ MAG. JUDGE ______

GEKP

UNITED STATES DISTRICT COURT

16 4329

FOR THE EASTERN DISTRICT OF PENNSYLVANIA — DESIGNATION FORM to be used by counsel to indicate the category of the case for the purpose of assignment to appropriate calendar.

Address of Plaintiff: 4247 Locust St, #920, Philadelphia PA 19104

Address of Defendant: Office of the Secretary, 1 College Hall, Room 211, Philadelphia PA 19104

Place of Accident, Incident or Transaction: Philadelphia, PA
(Use Reverse Side For Additional Space)

Does this civil action involve a nongovernmental corporate party with any parent corporation and any publicly held corporation owning 10% or more of its stock?
(Attach two copies of the Disclosure Statement Form in accordance with Fed.R.Civ.P. 7.1(a)) Yes☐ No☑

Does this case involve multidistrict litigation possibilities? Yes☐ No☑

RELATED CASE, IF ANY:
Case Number: ______ Judge ______ Date Terminated: ______

Civil cases are deemed related when yes is answered to any of the following questions:

1. Is this case related to property included in an earlier numbered suit pending or within one year previously terminated action in this court?
Yes☐ No☑
2. Does this case involve the same issue of fact or grow out of the same transaction as a prior suit pending or within one year previously terminated action in this court?
Yes☐ No☑
3. Does this case involve the validity or infringement of a patent already in suit or any earlier numbered case pending or within one year previously terminated action in this court? Yes☐ No☑
4. Is this case a second or successive habeas corpus, social security appeal, or pro se civil rights case filed by the same individual?
Yes☐ No☑

CIVIL: (Place ✔ in ONE CATEGORY ONLY)

A. *Federal Question Cases:*
1. ☐ Indemnity Contract, Marine Contract, and All Other Contracts
2. ☐ FELA
3. ☐ Jones Act-Personal Injury
4. ☐ Antitrust
5. ☐ Patent
6. ☐ Labor-Management Relations
7. ☐ Civil Rights
8. ☐ Habeas Corpus
9. ☐ Securities Act(s) Cases
10. ☐ Social Security Review Cases
11. ☑ All other Federal Question Cases
(Please specify) ERISA

B. *Diversity Jurisdiction Cases:*
1. ☐ Insurance Contract and Other Contracts
2. ☐ Airplane Personal Injury
3. ☐ Assault, Defamation
4. ☐ Marine Personal Injury
5. ☐ Motor Vehicle Personal Injury
6. ☐ Other Personal Injury (Please specify)
7. ☐ Products Liability
8. ☐ Products Liability — Asbestos
9. ☐ All other Diversity Cases
(Please specify) ______

ARBITRATION CERTIFICATION
(Check Appropriate Category)

I, David M. Promisloff, counsel of record do hereby certify:

☑ Pursuant to Local Civil Rule 53.2, Section 3(c)(2), that to the best of my knowledge and belief, the damages recoverable in this civil action case exceed the sum of $150,000.00 exclusive of interest and costs;
☐ Relief other than monetary damages is sought.

DATE: 8/10/2016 [signature] Attorney-at-Law 200971 Attorney I.D.#

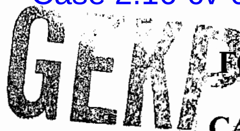
NOTE: A trial de novo will be a trial by jury only if there has been compliance with F.R.C.P. 38.

I certify that, to my knowledge, the within case is not related to any case now pending or within one year previously terminated action in this court except as noted above.

AUG 10 2016

DATE: 8/10/2016 [signature] Attorney-at-Law 200971 Attorney I.D.#

CIV. 609 (5/2012)



IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

CASE MANAGEMENT TRACK DESIGNATION FORM

Jennifer Sweda, et al.

v.

The University of Pennsylvania and Jack Heuer

CIVIL ACTION

NO. 16 4329

In accordance with the Civil Justice Expense and Delay Reduction Plan of this court, counsel for plaintiff shall complete a Case Management Track Designation Form in all civil cases at the time of filing the complaint and serve a copy on all defendants. (See § 1:03 of the plan set forth on the reverse side of this form.) In the event that a defendant does not agree with the plaintiff regarding said designation, that defendant shall, with its first appearance, submit to the clerk of court and serve on the plaintiff and all other parties, a Case Management Track Designation Form specifying the track to which that defendant believes the case should be assigned.

SELECT ONE OF THE FOLLOWING CASE MANAGEMENT TRACKS:

(a) Habeas Corpus – Cases brought under 28 U.S.C. § 2241 through § 2255. ( )

(b) Social Security – Cases requesting review of a decision of the Secretary of Health and Human Services denying plaintiff Social Security Benefits. ( )

(c) Arbitration – Cases required to be designated for arbitration under Local Civil Rule 53.2. ( )

(d) Asbestos – Cases involving claims for personal injury or property damage from exposure to asbestos. ( )

(e) Special Management – Cases that do not fall into tracks (a) through (d) that are commonly referred to as complex and that need special or intense management by the court. (See reverse side of this form for a detailed explanation of special management cases.) (✓)

(f) Standard Management – Cases that do not fall into any one of the other tracks. ( )

8/10/2016	David M. Promisloff	Jennifer Sweda et al.
Date	**Attorney-at-law**	**Attorney for**
215-259-5156	215-600-2642	David@prolawpa.com
Telephone	**FAX Number**	**E-Mail Address**

(Civ. 660) 10/02

AUG 10 2016