UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF PENNSYLVANIA

MATTHEW B. HARMON and SUSAN H. CLARKE, on behalf of the FMC Corporation Savings and Investment Plan, themselves, and a class consisting of similarly situated participants of the Plan, Plaintiffs, v. FMC CORPORATION, EMPLOYEE WELFARE BENEFITS PLAN COMMITTEE OF FMC CORPORATION, PIERRE BRONDEAU, and JOHN DOES 1-10, Defendants.	Case No.: **JURY TRIAL DEMANDED** **CLASS ACTION COMPLAINT FOR VIOLATIONS OF THE EMPLOYEE RETIREMENT INCOME SECURITY ACT**

Plaintiffs Matthew B. Harmon and Susan H. Clarke ("Plaintiffs"), on behalf of the FMC Corporation Savings and Investment Plan (the "Plan"), themselves and a class of all others similarly situated, allege as follows, based upon their counsel's investigation, including a review of Plan documents, documents filed with the U.S. Department of Labor (the "DOL") and the United States Securities and Exchange Commission (the "SEC"); discussions with participants and beneficiaries (the "Participants") of the Plan; lawsuits brought against the Sequoia Fund Inc. (the "Sequoia Fund" or the "Fund"); and public statements and media reports:

INTRODUCTION

1. This action is brought pursuant to §§ 409 and 502 of the Employee Retirement Income Security Act ("ERISA"), 29 U.S.C. §§ 1109 and 1132, against the Plan's fiduciaries.

2. Plaintiffs were participants in the Plan during the Class Period (defined below), during which time the Plan invested substantial assets in the Sequoia Fund. Plaintiffs' investment portfolios in the Plan during the Class Period included the Sequoia Fund.

3. Defendants invested the assets of the Plan in the Sequoia Fund, a high-cost mutual fund run by Adviser Ruane, Cunniff & Goldfarb and its Portfolio Managers, Robert D. Goldfarb and David M. Poppe (collectively, the "Fund Managers").

4. The Plan is a defined contribution ("DC") plan. A DC plan is a type of retirement plan in which an employer, employee or both make regular contributions. Individual accounts are set up for participants, and benefits are the amounts credited to these accounts, plus any investment earnings on the money in the account. In DC plans, benefits fluctuate on the basis of investment earnings. Thus DC plan participants bear the risks of losses and/or poor returns.

5. Certain defined-contribution pension account plans defined in subsection 401(k) of the Internal Revenue Code ("401(k) plans"), such as the Plan, confer tax benefits on participating employees to incentivize saving for retirement and/or other long-term goals. An employee participating in a 401(k) plan may select investment options offered by that plan's fiduciaries.

6. Defendants, as "fiduciaries" of the Plan, as that term is defined under ERISA § 3(21)(A), 29 U.S.C. § 1002(21)(A), breached their duties owed to Plaintiffs and to the Plan and its other Participants in violation of ERISA §§ 404(a) and 405, 29 U.S.C. §§ 1104(a) and 1105, particularly with regard to the Plan's vast holdings of the Sequoia Fund and other aggressive investment options.

7. Defendants' fiduciary duties included ensuring that the Plan only offered prudent investment options. Defendants were also bound to follow the Plan which required that they offer at least three Investment Options, other than the Company Stock Fund. Each of those three Investment Options was required to be diversified. Furthermore, the Investment Options were required to have materially different risk and return characteristics.

8. The Sequoia Fund was not diversified. Indeed, if Defendants had acted with a reasonable level of diligence, they would have known that throughout 2015—in violation of the Fund's investment policies regarding concentration[1] and in spite of the concerns of Fund shareholders—the Fund Managers concentrated the Sequoia Fund's assets in a single stock: Valeant Pharmaceuticals, Inc. ("Valeant"). The Fund was the largest shareholder in Valeant in 2015, owning nearly 10 percent of Valeant. And Valeant represented more than 30 percent of the Fund's total assets.

9. Plaintiffs allege in Count I that certain Defendants, each having certain responsibilities regarding the management and investment of Plan assets, breached their fiduciary duties to Plaintiffs, the Plan and proposed Class by failing to prudently and loyally manage the Plan's investments by maintaining the Plan's pre-existing heavy investment in aggressive mutual funds when those mutual funds were no longer a prudent

[1] Form N-1A, the registration form for open-end mutual funds like the Sequoia Fund, reflects the SEC's long-standing view that "25% is an appropriate benchmark to gauge the level of investment concentration that could expose investors to additional risk," and thus "a fund investing more than 25% of its assets in an industry is concentrating in that industry." *See* Investment Company Release No. 23064, 63 Fed. Reg. 13,916, at 13,927 (Mar. 23, 1998). Accordingly, the Concentration Policy prohibited the Sequoia Fund from investing 25 percent or more of its total assets in any single industry, and perforce a single company within an industry.

investment for the Plan. These actions/inactions run directly counter to the purpose of ERISA pension plans, which are expressly designed to help provide funds for participants' retirement. *See* ERISA § 2, 29 U.S.C. § 1001 ("CONGRESSIONAL FINDINGS AND DECLARATION OF POLICY").

10. Plaintiffs' Count II alleges that certain Defendants breached their fiduciary duties by failing to adequately monitor other persons to whom management/administration of Plan assets was delegated, despite the fact that such Defendants knew or should have known that such other fiduciaries were imprudently managing the Plan.

11. This action seeks losses to the Plan for which Defendants are liable pursuant to ERISA §§ 409 and 502, 29 U.S.C. §§ 1109 and 1132. Because Plaintiffs' claims apply to the Plan, inclusive of all Participants with accounts invested in the Sequoia Fund during the Class Period, and because ERISA specifically authorizes participants such as Plaintiffs to sue for relief to the Plan for breaches of fiduciary duty such as those alleged herein, Plaintiffs bring this action on behalf of the Plan and as a class action on behalf of all participants and beneficiaries of the Plan during the proposed Class Period, and alternatively as a derivative action on behalf of the Plan.

JURISDICTION AND VENUE

12. This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. § 1331 and ERISA § 502(e)(1), 29 U.S.C. § 1132(e)(1).

13. This Court has personal jurisdiction over all Defendants because Defendants reside or maintain their primary place of business in this district, and because 29 U.S.C. § 1132(e)(2) authorizes nationwide service of process without regard to a defendant's contacts with the state in which the district court is located.

14. Venue is proper in this district pursuant to ERISA § 502(e)(2), 29 U.S.C. § 1132(e)(2), because the Plan is administered in this district, some or all of the fiduciary breaches for which relief is sought occurred in this district, and/or some Defendants reside or maintain their primary place of business in this district.

PARTIES

Plaintiffs

15. Plaintiff Matthew B. Harmon, a Participant within the meaning of ERISA § 3(7), 29 U.S.C. § 1102(7), held the Sequoia Fund in his Plan account during the Class Period.

16. Plaintiff Susan H. Clarke, a Participant within the meaning of ERISA § 3(7), 29 U.S.C. § 1102(7), held the Sequoia Fund in her Plan account during the Class Period.

Defendants

(a) FMC Corporation

17. Defendant FMC Corporation ("FMC") is a diversified chemical company serving agricultural, consumer and industrial markets. FMC is headquartered at 2929 Walnut Street, Philadelphia PA 19104. According to Plan Document Section 8.1.1,[2] "[t]he Company is the Plan sponsor and a 'named fiduciary,' as that term is defined in ERISA Section on 402(a)(2), with respect to control over and management of the Plan's assets only to the extent that it (a) appoints the members of the Committee which administers the Plan at the Administrator's direction; (b) delegates its authorities and duties as 'plan

[2] The Plan's governing document (the "Plan Document"), as cited herein, was filed with the SEC as Exhibit 10.5.a to a Form 10-Q filed by FMC on August 14, 2000.

administrator' (as defined under ERISA) to the Committee; and (c) continually monitors the performance of the Committee."

18. Plan Document Sections 9.2.3 and 9.3.1 further state that "[t]he Administrator [defined as FMC] and the Committee have the power to direct that assets of the Trust[3] be held in a master trust consisting of assets of plans maintained by a Participating Employer which are qualified under Code Section 401(a)" and "The Administrator or, as delegated by the Administrator, the Committee may establish such different Investment Funds as it from time to time determines to be necessary or advisable for the investment of Participants' Account[. . . .] Each Investment Fund will have the investment objective or objectives established by the Administrator or Committee."

19. The Company was thus a fiduciary of the Plan, within the meaning of ERISA Section 3(21)(A), 29 U.S.C. § 1002(21)(A), because it was a named fiduciary and because it exercised discretionary authority or control over Plan management and/or authority or control over management or disposition of Plan assets.

(b) The Employee Welfare Benefits Plan Committee of FMC

20. Defendant Employee Welfare Benefits Plan Committee of FMC Corporation (the "Committee") administers the Plan, subject to the provisions of ERISA. Plan Document Sections 9.2.3 and 9.3.1 further state that "[t]he Administrator [defined as FMC] and the Committee have the power to direct that assets of the Trust be held in a master trust consisting of assets of plans maintained by a Participating Employer which are qualified under Code Section 401(a)" and "The Administrator or, as delegated by the Administrator, the Committee may establish such different Investment Funds as it from

[3] "Trust" refers to the FMC Corporation Savings and Investment Plan Trust (as amended and restated October 1, 2014), between FMC and Fidelity Management Trust Company.

time to time determines to be necessary or advisable for the investment of Participants' Account. . . . Each Investment Fund will have the investment objective or objectives established by the Administrator or Committee."

21. Plan Document Section 9.3 states:

> 9.3.1 The Administrator or, as delegated by the Administrator, the Committee may establish such different Investment Funds as it from time to time determines to be necessary or advisable for the investment of Participants' Account, including Investment Funds pursuant to which Accounts can be invested in "qualifying employer securities", as defined in Part 4 of Title I of ERISA. Each Investment Fund will have the investment objective or objectives established by the Administrator or Committee. Except to the extent investment responsibility is expressly reserved in another person, the Administrator or the Committee, in its sole discretion, will determine what percentage of the Plan assets is to be invested in qualifying employer securities. The percentage designated by the Administrator can exceed ten percent of the Plan's assets, up to a maximum of 100% of the Plan's assets.
>
> 9.3.2 The Administrator or, as delegated by the Administrator, the Committee, may in its sole discretion permit Participants to determine the portion of their Accounts that will be invested in each Investment Fund. The frequency with which a Participant may change his or her investment election concerning future Pre-Tax Contributions or his or her existing Account shall be governed by uniform and nondiscriminatory rules established by the Administrator or Committee. The Plan is intended to comply with and be governed by Section 404(c) of ERISA.

22. The Committee was thus a fiduciary of the Plan, within the meaning of ERISA Section 3(21)(A), 29 U.S.C. § 1002(21)(A), because it exercised discretionary authority or control over Plan management and/or authority or control over management or disposition of Plan assets.

23. The John Doe Defendants (below) include members of the Committee, whose identity is unknown to Plaintiffs at this time. Section 9.8 of the Plan Document states that the "Committee will consist of at least three people, who need not be directors, and will be appointed by the Chief Executive Officer of the Company. Any Committee member may resign and the Chief Executive Officer may remove any Committee member, with or without cause, at any time."

(c) Defendant Brondeau

24. Defendant Pierre Brondeau joined FMC Corporation on January 1, 2010, as President and Chief Executive Officer and became Chairman of the Board on October 1, 2010. As described in Plan Document Section 9.8, each member of the Committee served at the will of Defendant Brondeau. Defendant Brondeau was thus a fiduciary of the Plan, within the meaning of ERISA Section 3(21)(A), 29 U.S.C. § 1002(21)(A), because he exercised discretionary authority or control over Plan management and/or authority or control over management or disposition of Plan assets. Upon information and belief, Defendant Brondeau resides in Montgomery County, Pennsylvania.

(d) The John Doe Defendants: Additional Plan Fiduciaries

25. To the extent that there are additional Company officers, directors and employees who were fiduciaries of the Plan during the Class Period, including members of the Committee, the identities of whom are currently unknown to Plaintiffs, Plaintiffs reserve the right, once their identities are ascertained, to join them to the instant action. Thus, without limitation, unknown "John Doe" Defendants 1-10 include other individuals, including Company officers, directors and employees, who were fiduciaries of the Plan

within the meaning of ERISA Section 3(21)(A), 29 U.S.C. § 1002(21)(A) during the Class Period.

THE PLAN

26. The Plan is an "employee pension benefit plan," as defined by ERISA § 3(2)(A). The Plan is a legal entity that can sue and be sued. ERISA § 502(d)(1). However, in a breach of fiduciary duty action such as this, the Plan is not a party. Rather, pursuant to ERISA § 409, and the law interpreting it, the relief requested in this action is for the benefit of the Plan and its participants and beneficiaries.

27. The Form 11-K filed with the SEC on behalf of the Plan on June 19, 2015 (the "2015 11-K") sets forth the following description of the Plan:

> **(a) General**
>
> The Plan is a qualified defined contribution plan under Section 401(k) of the Internal Revenue Code, which covers substantially all employees of FMC Corporation (FMC or the Company), other than employees who generally reside or work outside of the United States. Such employees are eligible to participate in the Plan immediately upon commencement of their employment with the Company. The Plan is subject to the provisions of the Employee Retirement Income Security Act (ERISA). The Plan is administered by the Employee Welfare Benefits Plan Committee of FMC Corporation.
>
> **(b) Contributions**
>
> Participants may elect to defer not less than 2% and no more than 50% of their eligible compensation, and contribute it to the Plan's trust on a pretax (i.e, traditional 401K) or after-tax (i.e, Roth 401K) basis up to the Internal Revenue Code Section 402(g) limit for 2014 of $17,500. Participants who are aged 50 or older by the end of the plan year may elect to contribute pretax or after-tax contributions, up to a maximum of $5,500. Participants may also elect to make traditional after-tax contributions (all contributions not to exceed 50% of the total compensation in aggregate).

Employees who do not enroll in the Plan within 60 days from their date of hire will be automatically enrolled at a contribution rate of 3% of pre-tax eligible pay. At each of the following two anniversaries of the employees' enrollment, the contribution rate increases 1% until a 5% contribution rate is reached. Employees who do not want to be automatically enrolled may opt out by electing a 0% contribution rate.

For eligible employees participating in the Plan, except for those employees covered by certain collective bargaining agreements, the Company makes matching contributions of 80% of the portion of those contributions up to 5% of the employee's compensation (Basic Contribution). The Company matching contributions are paid in the form of cash and are allocated to participant accounts based upon the participant's investment elections. For the 2014 plan year, total annual contributions from all sources, other than catch-up contributions, were limited to the Internal Revenue Code Section 415(c) limit of the lesser of 100% of compensation or $52,000.

In addition to the Basic Contribution, all newly hired and rehired salaried and nonunion hourly employees of the Company beginning July 1, 2007 receive an annual employer core contribution of 5% of the employee's eligible compensation. This amount is contributed to the employee's account after the end of each plan year. This change was instituted for these employees effective July 1, 2007, since these employees are not eligible for the Company's defined benefit plan. Also, effective February 1, 2013, existing and newly hired Middleport union employees, except for 19 employees who were grandfathered in the defined benefit plan, are eligible for the annual employer core contribution. The 5% core contribution funds are not eligible for participant withdrawals and loans (Note 1(h)) but are subject to the same vesting requirements as discussed in Note 1(f). Additionally, the 5% core contribution funds are included in the 415(c) limit described above but not in the $17,500 402(g) limit on pretax contributions also described above. The amount of these 5% core contributions included in the statements of changes in net assets available for benefits were approximately $4,381,000 and $4,195,000 for the years ended December 31, 2014 and 2013, respectively.

> **(c) Participant Account Activity**
>
> Each participant's account is credited with the participant's contributions, employer matching contributions, and allocations of plan earnings and losses, as determined by the Plan document. The benefit to which a participant is entitled is the benefit that can be provided from the participant's vested account.
>
> **(d) Trust**
>
> The Company established a trust (the Trust) at Fidelity Management Trust Company (the Trustee) for investment purposes as part of the Plan. The recordkeeper of the Plan, Fidelity Investments Institutional Operations Company, is an affiliate of the Trustee.
>
> **(e) Investment Options**
>
> Upon enrollment in the Plan, a participant may direct his or her contributions in 1% increments to each investment option selected. Participants may also elect to have professionals at the Trustee help manage the investments, under a program called Portfolio Advisory Services at Work. Certain investment options of the Plan qualify for Class K based on volume held by the Plan in these funds. Class K offers the Plan a lower expense ratio compared to similar retail classes. Investment options for both participant and trustee-directed investments are further described in Note 3.

28. Section 12.1 of the Plan Document, amended effective as of January 1, 2015, requires that:

> The Plan shall, at all times, offer at least three Investment Options, other than the Company Stock Fund, which shall be diversified and have materially different risk and return characteristics. For this purpose, Investment Options which constitute a broad range of investment alternatives within the meaning of the Department of Labor Regulation section 2550.404c-1(b)(3) are treated as being diversified and having materially different risk and return characteristics.

29. The 2015 11-K sets forth the following description of investment options for both participant and trustee-directed investments in Note 3:

The objectives of the primary investments in which participants could invest in 2014 are described below:

Common Stocks:

FMC Stock - Funds are invested in the common stock of the Company.

Mutual Funds:

Large Cap Funds:

Clipper Fund - Fund's portfolio is principally in common stocks (including indirect holdings of common stock through depositary receipts) issued by large companies with market capitalizations of at least $10 billion.

Fidelity Blue Chip Growth Fund Class K - Funds are invested primarily in the common stock of well-known and established companies.

Sequoia Fund - Fund investments are concentrated in equity securities of U.S. and non-U.S. companies that the fund managers believe are undervalued at the time of purchase and have the potential for growth.

John Hancock Classic Value Fund - Class I - Funds are invested primarily in domestic equity securities, which are currently considered undervalued relative to the market by the fund manager, based on estimated future earnings and cash flow.

Fidelity Magellan Fund Class K - Funds are primarily invested in common stock of growth or value companies. This fund is closed to new contributions and exchanges.

Mid Cap Funds:

Fidelity Low-Priced Stock Fund Class K - Funds are heavily invested in stocks considered to be undervalued by the fund manager, which can lead to investment in small and medium-sized companies.

Wells Fargo Advantage Discovery Fund Class R6 - Funds invests at least 80% of its net assets in equity securities of small- and medium- capitalization companies; and 25% of funds total assets in equity securities of foreign issuers.

Small Cap Funds:

Managers Cadence Emerging Companies Fund - Institutional Class -The fund primarily invests at least 80% of its net assets in "emerging companies." It will invest at least 80% of its net assets, under normal circumstances, in U.S. companies with market capitalizations within the range of the Russell Microcap® Index and the Russell 2000® Index. The fund may invest a portion of its assets in real estate investment trusts (REITs).

Royce Special Equity - Institutional Class - Fund invests at least 80% of its assets in common stock of companies with market capitalizations less than $2.5 billion, attempting to find inexpensive companies with high returns on assets and low leverage. The fund invests in companies whose price is significantly lower than the fund managers' assessment of their economic value.

Blended Funds:

Fidelity Freedom K Funds - A series of asset allocation funds: Freedom K 2000 Fund, Freedom K 2005 Fund, Freedom K 2010 Fund, Freedom K 2015 Fund, Freedom K 2020 Fund, Freedom K 2025 Fund, Freedom K 2030 Fund, Freedom K 2035 Fund, Freedom K 2040 Fund, Freedom K 2045 Fund, Freedom K 2050 Fund and Freedom K 2055 Fund. The twelve target date funds are designed for investors who want a simple approach to investing for retirement by investing in a collection of other Fidelity mutual funds by targeting their retirement dates.

Fidelity Freedom K Income Fund - Designed for those already in retirement, the fund emphasizes bond and money market mutual funds.

Fidelity Puritan Fund Class K - Funds are invested in both equity and debt securities, including lower-quality debt securities, and U.S. and foreign securities, including those in emerging markets.

International Funds:

Spartan International Index Fund - Fund normally invests at least 80% of its assets in common stock included in the Morgan Stanley Capital International Europe, Australasia, and the Far East Index (MSCI EAFE Index), which represents the performance of foreign stock markets.

Fidelity Diversified International Fund Class K - Funds are invested primarily in stock of companies located outside the United States.

Franklin Mutual Quest Fund Class Z - Funds are invested primarily in common and preferred stock, debt securities, and convertible securities with a significant portion of the fund's assets in foreign securities.

Income Funds:

Fidelity Capital and Income Fund - Funds are invested in equity and debt securities, including defaulted securities, with emphasis on lower-quality debt securities.

PIMCO Total Return - Institutional Class - Funds are invested primarily in U.S. government, corporate, mortgage, and foreign bonds.

Spartan US Bond Index Advantage - Fund normally invests at least 80% of its assets in bonds included in the Barclays U.S. Aggregate Bond Index.

Commingled Funds:

Large Cap Index Fund:

Fidelity U.S. Equity Index Pool Fund - Funds are invested primarily in common stock of the 500 companies that comprise the S&P 500.

Money Market Funds:

Fidelity Retirement Government Money Market Portfolio - Funds are invested in short-term obligations of the U.S. government or its agencies.

Fully Benefit-Responsive Investment Contracts:

Stable Value Fund

Fidelity Managed Income Portfolio II Class 2 - Funds are invested in investment contracts offered by insurance companies and other approved financial institutions. The selection of these contracts and administration of this fund is directed by the fund's investment manager.

30. Note 4 to the 2015 11-K states that as of December 31, 2014, the Plan had $40,967,000 invested in the Sequoia Fund, which was its third largest overall holding.

CLASS ACTION ALLEGATIONS

31. Plaintiffs bring this action as a class action pursuant to Rules 23(a), (b)(1), and/or (b)(2) of the Federal Rules of Civil Procedure on behalf of the Plan, themselves, and the following class of persons similarly situated (the "Class"):

> All persons, except Defendants and their immediate family members, who were participants in or beneficiaries of the FMC Corporation Savings and Investment Plan at any time between March 1, 2015 and the present (the "Class Period") and whose Plan accounts included investments in Sequoia Fund.

32. The members of the Class are so numerous that joinder of all members is impracticable. While the exact number of Class members is unknown to Plaintiffs at this time, and can only be ascertained through appropriate discovery, Plaintiffs believe there are hundreds of members of the Class. A 2014 Form 5500 Annual Return/Report of Employee Benefit Plan submitted for the Plan on August 4, 2015, states that, as of December 31, 2014, there were 3,420 participants with account balances as of the end of the plan year. Because the Sequoia Fund was the Plan's third largest holding, representing almost $41 million in assets at that time, it was almost certainly held by at least hundreds of Participants

33. Common questions of law and fact exist as to all members of the Class and are central to the resolution of Plaintiffs' claims. Among the questions of law and fact common to the Class are:

- whether Defendants each owed a fiduciary duty to the Plan, Plaintiffs and the other members of the Class;

- whether Defendants breached their fiduciary duties to the Plan, Plaintiffs and the other members of the Class by failing to act prudently and solely in the interests of the Plan and the Participants;
- whether Defendants violated ERISA; and
- whether the Plan and the other members of the Class have sustained damages and, if so, what is the proper measure of damages.

34. Plaintiffs' claims are typical of the claims of the other members of the Class because Plaintiffs, the Plan and the other members of the Class each sustained damages from Defendants' wrongful conduct in violation of federal law as complained of herein.

35. Plaintiffs will fairly and adequately protect the interests of the members of the Class and have retained competent counsel experienced in class actions and ERISA and other types of complex litigation. Plaintiffs have no interests antagonistic to or in conflict with those of the Plan or the Class.

36. Class action status in this ERISA action is proper under Rule 23(b)(1)(B) because prosecution of separate actions by the members of the Class would create a risk of adjudications with respect to individual members of the Class which would, as a practical matter, be dispositive of the interests of the other members not parties to the actions, or substantially impair or impede their ability to protect their interests.

37. Class action status is also proper under the other subsections of Rule 23(b) because: (i) prosecution of separate actions by the members of the Class would create a risk of establishing incompatible standards of conduct for Defendants; and (ii) Defendants have acted or refused to act on grounds generally applicable to the Class, thereby making

appropriate final injunctive, declaratory, or other appropriate equitable relief with respect to the Class as a whole.

DEFENDANTS' FIDUCIARY STATUS

38. As pled above, during the Class Period, upon information and belief, each Defendant was a fiduciary of the Plan, either as a named fiduciary or as a *de facto* fiduciary with discretionary authority with respect to the management of the Plan and/or the management or disposition of the Plan's assets.

39. ERISA requires every plan to provide for one or more named fiduciaries who will have "authority to control and manage the operation and administration of the plans." ERISA § 402(a)(1), 29 U.S.C. § 1102(a)(1).

40. ERISA treats as fiduciaries not only persons explicitly named as fiduciaries under § 402(a)(1), 29 U.S.C. § 1102(a)(1), but also any other persons who in fact perform fiduciary functions. Thus a person is a fiduciary to the extent "(i) he exercises any discretionary authority or discretionary control respecting management of such plan or exercises any authority or control respecting management or disposition of its assets, (ii) he renders investment advice for a fee or other compensation, direct or indirect, with respect to any moneys or other property of such plan, or has any authority or responsibility to do so, or (iii) he has any discretionary authority or discretionary responsibility in the administration of such plan." ERISA § 3(21)(A)(i), 29 U.S.C. § 1002(21)(A)(i).

41. Each of the Defendants was a fiduciary—either as a named fiduciary or *de facto* fiduciary—with respect to the Plan and owed fiduciary duties to the Plan and the Participants under ERISA in the manner and to the extent set forth in the Plan Document, through their conduct, and under ERISA.

42. As fiduciaries, Defendants were required by ERISA § 404(a)(1), 29 U.S.C. § 1104(a)(1), to manage and administer the Plan, and the Plan's investments solely in the interest of the Plan's participants and beneficiaries and with the care, skill, prudence, and diligence under the circumstances then prevailing that a prudent man acting in a like capacity and familiar with such matters would use in the conduct of an enterprise of a like character and with like aims.

43. Instead of delegating all fiduciary responsibility for the Plan to external service providers, the Company chose to assign the appointment and removal of fiduciaries, such as the Committee members, to itself.

44. ERISA permits fiduciary functions to be delegated to Company insiders without an automatic violation of the rules against prohibited transactions, ERISA § 408(c)(3), 29 U.S.C. § 1108(c)(3), but insider fiduciaries, like external fiduciaries, must act solely in the interest of participants and beneficiaries, not in the interest of the Plan sponsor.

45. During the Class Period, all of Defendants acted as fiduciaries of the Plan pursuant to ERISA § 3(21)(A), 29 U.S.C. § 1002(21)(A), and the law interpreting that section.

(a) The Company's and the Committee's Fiduciary Status

46. The Company and the Committee are both named and *de facto* fiduciaries as set forth above. Both the Company and the Committee further had and exercised discretion under the Plan.

(b) Defendant Brondeau's Fiduciary Status

47. Because Defendant Brondeau had the authority to appoint and remove the Committee's members, and the Committee and its members were responsible for managing the Plan's assets, Defendant Brondeau had the duty to monitor the activities of the Committee. As a result, Defendant Brondeau had the ultimate responsibility for removing Committee members if necessary and thus was a fiduciary to Plaintiffs and the other members of the Class.

(c) The John Doe Defendants' Fiduciary Status

48. All ERISA plans must have fiduciaries. The persons, including members of the Committee, unknown to Plaintiffs at this time, who exercised discretionary authority or control over Plan management and/or authority or control over management or disposition of Plan assets, are fiduciaries of the Plan by virtue of how the group is defined. Further, to the extent that Fidelity, as the Plan's trustee, directed "trustee-directed investments" into the Sequoia Fund or any investment holding Valeant common stock, Plaintiffs intend to name Fidelity as a defendant.

ADDITIONAL FIDUCIARY ASPECTS OF DEFENDANTS' ACTIONS/INACTIONS

49. ERISA fiduciaries must systematically consider all the investments of the trust at regular intervals to ensure that they are appropriate. ERISA fiduciaries thus have a continuing duty to monitor investments and remove imprudent ones.

50. Further, Defendants, as the Plan's fiduciaries, knew or should have known certain basic facts about the characteristics and behavior of the Plan's participants, well-recognized in the 401(k) literature and the trade press, including that:

- Employees tend to over-extrapolate from recent returns, expecting high returns to continue or increase going forward;

- Employees tend not to change their investment option allocations in the plans once made;
- Many participants use a simple strategy of "equal split" to allocate their investments between stocks and bonds in their 401(k), which naïve form of diversification is sensitive to the framing of the saving plan because investors split equally across investment options rather than across risk categories, making the riskiness of their retirement portfolios a function of plan fiduciaries' decisions.

51. ERISA plan fiduciaries cannot insulate themselves from liability by the simple expedient of including a large number of investment alternatives in its portfolio and then shifting to the participants the responsibility for choosing among them. Such a strategy could result in the inclusion of many investment alternatives that a responsible fiduciary should exclude, and would place an unreasonable burden on unsophisticated plan participants who do not have the resources to pre-screen investment alternatives.

52. Even though Defendants knew or should have known these facts, among others, and even though Defendants knew of the substantial investment of the Plan's funds in the Sequoia Fund, they still took no action to protect the Plan's assets from their imprudent investment in the Sequoia Fund.

DEFENDANTS' CONDUCT

General Plan Administration

53. In selecting the Plan's investment options (*see supra* ¶ 28), Defendants selected 33 investment funds, many of which were redundant. The selection included 12 target date funds, which are collective investment schemes designed to provide a simple investment solution through a portfolio whose asset allocation mix becomes more conservative as the target date approaches. The 33 selected funds also included five funds

categorized as a "Stock Long-Term Growth Fund"[4] in the 2015 11-K, which five funds accounted for $87.223 million, 13.7% of the Plan's total assets of $637,551,000.

54. It is well documented that providing multiple options in a single investment style adds unnecessary complexity to the investment lineup and leads to participant confusion. *See, e.g.*, Donald B. Keim and Olivia S. Mitchell, Simplifying Choices in Defined Contribution Retirement Plan Design, at 3 (Nov. 30, 2015) (recognizing that "too many choices can create confusion and distraction");[5] 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.").

55. It thus appears that Defendants created unnecessary complexity in the Plan's investment lineup, risking Participant confusion and distraction, and placed an unreasonable burden on unsophisticated Participants who do not have the resources to pre-screen investment alternatives.

The Offering of the Sequoia Fund

56. Despite the Plan requiring that all investment options other than the Company Stock Fund "shall be diversified", Defendants allowed investment in the "non-

[4] These funds were the Clipper Fund, the Fidelity Magellan Fund Class K, the Franklin Mutual Quest Fund Class Z, the Royce Special Equity – Institutional Class, and the Sequoia Fund.

[5] *Available at* papers.ssrn.com/sol3/papers.cfm?abstract_id=2697680 (last visited November 16, 2016).

diversified" Sequoia Fund. *See* 15 U.S.C. § 80a-5(b); Sequoia Fund, Inc., Annual Report (December 31, 2014) at 26 ("Sequoia Fund . . . is registered under the Investment Company Act of 1940, as amended, as a non-diversified, open-end management investment company"), *available at* www.sequoiafund.com/Reports/Annual/Ann14.pdf (last visited Nov. 16, 2016). As a non-diversified fund, the Sequoia Fund was not constrained under the Investment Company Act of 1940 to a limit of 5% in a single position as the vast majority of mutual funds are.

57. As a result of the Sequoia Fund being the Plan's third largest overall holding, Defendants should have been particularly attuned to its prudence. Indeed, as the Sequoia Fund's March 1, 2016 Form N-CSR recognized, "Sequoia turned in its second straight year of poor results in 2015." On the heels of a poor 2014, Defendants should have paid extra attention to the Sequoia Fund's appropriateness for the Plan.

58. Instead, they ignored the red flags discussed below, including, among others, that: (1) criticism of the Sequoia Fund's outsized Valeant holdings, which Defendants either knew about or would have known about had they read the March 5, 2015 Form N-CSR filed by Valeant with the SEC, which Form N-CSR referenced "Allergan's broadsides" (the most famous of which was Morgan Stanley banker Robert Kindler publicly referring to Valeant as a "house of cards"); (2) during the Spring and Summer of 2015, close to forty percent of the Sequoia Fund was invested based upon a contradictory investment hypothesis where the stewardship of Charlie Munger and Warren Buffet, at the helm of Berkshire Hathaway, was trusted except their views of Valeant were ignored; (3) even after, as the Sequoia Fund recognized in its year-end 2015 shareholder letter "[a]s the largest shareholder of Valeant, [its] credibility as investors has been damaged by this saga"

and, to boot, the non-Valeant portion of the Sequoia Fund modestly underperformed the S&P 500 Index; (4) Valeant's (a) accounting was opaque, (b) it was publicly criticized for drug price rises, which put it in regulators' crosshairs and posed risks to Valeant's profitability, (c) Valeant's growth model relied upon continuing acquisitions, heightening accounting concerns, (d) Valeant trading during 2015 at over five times the average multiple for U.S. Healthcare stocks made it an unlikely candidate for a growth fund because its stock price did not "appear low in relation to the value of the total enterprise", and its "valuation appears excessive relative to its expected future earnings" which was, alone, a reason for the Sequoia Fund to sell its holdings in per the 2014 Prospectus (defined below); and, (5) Vinod Ahooja and Sharon Osberg, who were listed as independent directors on Sequoia's August 24, 2015 semiannual report for the period ending June 30, 2015, resigned as such in October of 2015.:[6]

The Sequoia Fund

59. At all relevant times, the Sequoia Fund has stated that it seeks long-term growth of capital. While the Sequoia Fund seemed to be performing well for a period of time, that performance was a function of its risky holdings of Valeant (as described further below).

60. The Sequoia Fund's holdings of Valeant, based on its Forms N-CSR and N-Q during the Class Period, were:

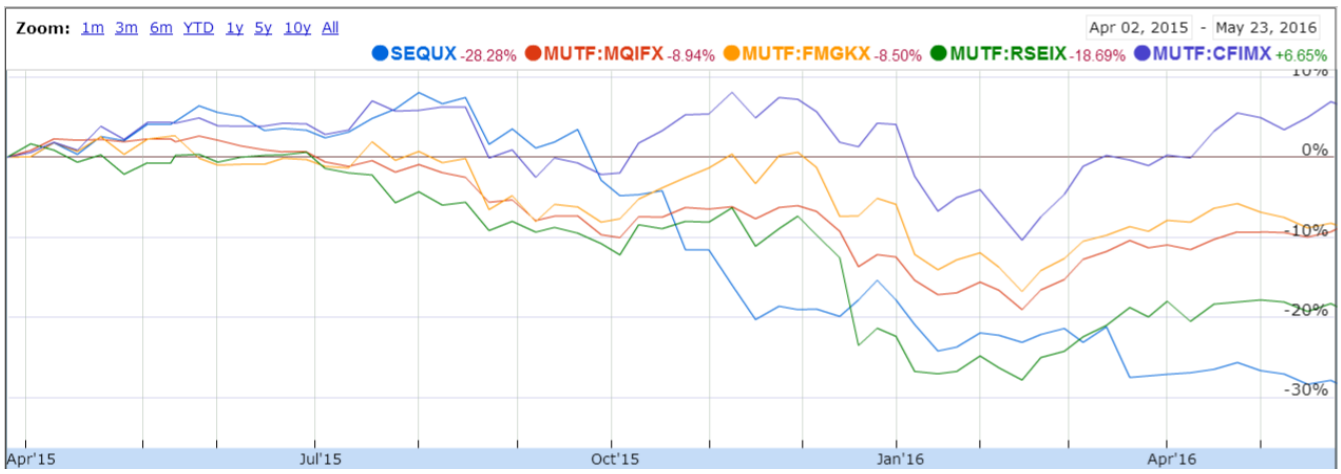
As of:	Valeant Shares	Value of Valeant Shares	Sequoia Fund Net Assets	Valeant as a Percentage of Sequoia Fund Assets

[6] Of these resignations, *Bloomberg* reported on October 29, 2015, "'It is weird that two directors resigned at the same time,' Steven Roge, a longtime investor in Sequoia who oversees more than $200 million at R.W. Roge & Co. in Bohemia, New York, said in a telephone interview. 'That gives you pause.'" *Available at* http://bloom.bg/1Wkej1W (last visited Nov. 16, 2016).

Sept. 30, 2014	11,281,224	$ 1,480,096,589	$ 7,662,182,543	19.317%
Dec. 31, 2014	11,281,224	$ 1,614,455,967	$ 8,068,030,715	20.011%
Mar. 31, 2015	11,281,224	$ 2,240,676,711	$ 8,615,272,201	26.008%
June 30, 2015	11,281,224	$ 2,506,123,912	$ 8,726,845,682	28.717%
Sept. 30, 2015	11,280,682	$ 2,012,248,055	$ 8,102,557,454	24.835%
Dec. 31, 2015	12,803,392	$ 1,301,464,797	$ 6,740,881,322	19.307%
Mar. 31, 2016	11,114,082	$ 292,300,357	$ 5,456,283,675	5.357%

61. Even without considering Valeant's reputation and red flags in connection therewith, these concentrations in a single security are too high for any mutual fund to qualify as a prudent retirement plan investment option. Prudent fiduciaries cannot invest 401(k) plan assets in large-cap domestic stock funds with as high concentrations in a single stock as did the Fund. *See also* R. Kinnel, *Understanding Mutual Fund Strategies and Fundamental Risk*, *in* Morningstar Fund Spy, at 46 (2009) ("For example, if a fund has a stock position over 10 percent or a few over 5 percent, it's more vulnerable to problems at an individual company"). Additionally, the Sequoia Fund was not differentiated from the Plan's four other funds categorized as "Stock Long-Term Growth Fund", which deceptively made the Sequoia Fund appear no riskier than those other Funds.

62. As a result of its Valeant holdings, described below, the Sequoia Fund has significantly underperformed the Plan's other "Stock Long-Term Growth Funds":



63. Further, the Sequoia Fund's high fee of 103 basis points was outsized compared to prudent long-term growth funds. Indeed, all of the Plan's Stock Long-Term Growth Funds bore imprudently high expense ratios:

Fund	Total Expense Ratio
Sequoia Fund[7]	1.03%
Clipper Fund	0.72%
Fidelity Magellan Fund Class K[8]	0.85%
Franklin Mutual Quest Fund Class Z[9]	0.82
Royce Special Equity – Institutional Class[10]	1.15

64. Many of the Plan's other Investment Options fare no better.

65. Defendants breached their fiduciary duty of prudence by failing to monitor the Plan's investments, particularly in growth funds, and to remove imprudent ones, ignoring significantly changed circumstances and allowing the Plan to become over-concentrated in the Sequoia Fund, which was, itself, over-concentrated in Valeant common stock, as well as investing in a fund that had advisory fees well above average.

66. The Sequoia Fund is an open-end mutual fund. As a Statement of Additional Information (the "May 1, 2014 SAI") accompanying the Fund's Prospectus dated May 1, 2014 (the "2014 Prospectus") noted, with respect to the Sequoia Fund's Principal Investment Strategies,

> The Fund's investment objective is long-term growth of capital. In pursuing this objective the Fund focuses on investing in equity securities that it believes are undervalued at the time of purchase and have the potential for growth. A guiding principle is the consideration of equity securities,

[7] www.sequoiafund.com/si-fees-and-expenses.htm (last visited Nov. 16, 2016).

[8] fundresearch.fidelity.com/mutual-funds/summary/316184100 (last visited Nov. 16, 2016).

[9] www.franklintempleton.com/investor/products/mutual-funds/overview?FundID=075 (last visited Nov. 16, 2016).

[10] www.roycefunds.com/funds/royce-special-equity-fund/rysex (last visited Nov. 16, 2016).

> such as common stock, as units of ownership of a business and the purchase of them when the price appears low in relation to the value of the total enterprise. No weight is given to technical stock market studies. The balance sheet and earnings history and prospects of each company are extensively studied to appraise fundamental value. The Fund normally invests in equity securities of U.S. and non-U.S. companies. The Fund may invest in securities of issuers with any market capitalization. The Fund typically sells the equity security of a company when the company shows deteriorating fundamentals, its earnings progress falls short of the investment adviser's expectations or its valuation appears excessive relative to its expected future earnings.

67. The May 1, 2014 SAI further stated that:

> for the fiscal year ended December 31, 2014, the Fund has qualified, and for each fiscal year thereafter the Fund intends to conduct its operations so as to qualify, to be taxed as a "regulated investment company" for purposes of the Internal Revenue Code of 1986, as amended, (a "RIC"), which will relieve the Fund of any liability for Federal income tax on that part of its net ordinary taxable income and net realized long-term capital gain which it distributes to stockholders. Such qualification does not involve supervision of management or investment practices or policies by any government agency. To so qualify, among other requirements, the Fund will limit its investments so that, at the close of each quarter of the taxable year, (i) not more than 25 percent of the market value of the Fund's total assets will be invested in the securities of a single issuer ("the 25% test"), and (ii) with respect to 50 percent of the market value of its total assets, not more than 5 percent of the market value of its total assets will be invested in the securities of a single issuer and the Fund will not own more than 10 percent of the outstanding voting securities of a single issuer ("the 50% test"). The Fund's investments in U.S. Government securities are not subject to these limitations. The Fund will not lose its status as a RIC if the Fund fails to meet the 25% test or the 50% test at the close of a particular quarter due to fluctuations in the market values of its securities.

68. As alleged herein, the Sequoia Fund deviated from its policies, and from sound investment practices and principles in allowing high concentrations of Valeant common stock, particularly given the risks of Valeant discussed below. Defendants, in

turn, ignored the Sequoia Fund's deviation from its policies, and that the deviation rendered the Sequoia Fund an inappropriate investment option for the Plan.

69. Rather than intervene on behalf of Participants, remove the Sequoia Fund as a Plan investment option, and shift their assets to any of the Plan's other Stock Long-Term Growth Funds, Defendants allowed the Plan to lose tens of millions of dollars as a result of the Sequoia Fund's imprudence.

70. The Sequoia Fund's March 5, 2015 Form N-CSR informed the public, including Defendants, that:

> A topic many shareholders and clients wanted to discuss with us in 2014 was Valeant. It is the largest holding in Sequoia by far. One could argue Valeant wasted much of the year on a quixotic effort to buy Allergan, maker of Botox. Allergan had no interest in being acquired and fought a vicious and savvy public relations campaign to portray Valeant as unworthy of marriage to such a prized catch. In the end, Allergan found a suitor more to its liking in Actavis, and Actavis agreed to pay a substantially higher price than Valeant had offered.
>
> In our opinion, much of what Allergan said was wrong but Valeant seemed unprepared for what it should have known would be an aggressive counterattack. The defenses available to the targets of hostile takeovers are considerable and Valeant has now lost three hostile bids for public companies since 2011. Meanwhile, Allergan's stock price nearly doubled over the past year without so much as a thank you note sent to Valeant CEO J. Michael Pearson.
>
> Some good came out of this defeat. As it fought for Allergan, ***Valeant stopped making other acquisitions and so stopped taking one-time charges for restructuring and integrating its serial acquisitions. This made its financial reports easier to follow***, and more investors came to see Valeant has a fine business. Most of its product categories show strong organic growth, despite claims to the contrary by Allergan. Valeant throws off sizable cash flows. It has very few products vulnerable to patent expirations in coming years. Management has done an excellent job of picking its spots, both geographically and by product category, while avoiding

> dependence upon a single drug. It integrated the large Bausch & Lomb acquisition flawlessly. And it proved itself capable of launching a new prescription drug, Jublia, with a highly-successful direct-to-consumer ad campaign.
>
> In short, Valeant lost the battle for Allergan but we believe it is winning the war to establish itself among the first rank of global pharmaceutical companies. The stock suffered for much of the year from ***Allergan's broadsides***, but performed better once the takeover battled ended. We think Valeant is poised for more growth, both organic and acquired. We think it is brilliantly managed by Mike Pearson and his team. And yes, we are comfortable with the size of our holding.

(emphasis added).

71. As of March 31, 2015, the Sequoia Fund held $2,240,676,711 of its net assets of $8,615,272,201 (or over 26%) of its assets in Valeant's common stock, and held over 30% of its assets in Healthcare stocks.

72. The high concentration of Valeant and healthcare stocks continued. As of June 30, 2015, per a Form N-CSR, the Sequoia Fund held over $2.5 billion of Valeant stock, 28.7% of its net assets in Valeant (substantially larger than its second largest holding of Berkshire Hathaway at 10.6%, and larger than its second, third, fourth, fifth and sixth largest holdings combined), and 30% of its assets in Healthcare stocks.

73. Per a Form N-Q, on September 30, 2015, the Sequoia Fund held 26% of its assets in Healthcare stocks, of which the vast majority was invested in Valeant. And, at its peak price, Valeant constituted more than 30% of the Sequoia Fund's assets.

74. In October 2015, Sequoia purchased an additional 1.5 million shares of Valeant, bringing the total shares of Valeant held by Sequoia to over 12.7 million.

75. Contrary to the May 1, 2014 SAI, Valeant's stock price did not "appear low in relation to the value of the total enterprise" during 2015. Indeed, the *National Post's Financial Post & FP Investing* (Canada) reported on April 27, 2015, that "The U.S. health

care index trades at about 19 times earnings." On April 11, 2015, Valeant's shares were trading at around $196.55 with a P/E ratio of 81.90; on May 11, 2015, Valeant's shares had a P/E ratio of 83.10; on July 22, 2015, Valeant's shares had a P/E ratio of 106.24; on August 7, 2015, Valeant's shares had a P/E ratio of 103.03; on September 7, 2015, Valeant's shares had a P/E of 109.7. By contrast, the U.S. Healthcare traded at a P/E multiple of approximately 18.4 on April 24, 2015; on June 14, 2015, the S&P 500 Health Care sector boasted a P/E of 19 based on analysts' earnings estimates for the coming 12 months; on July 4, 2015, the US healthcare sector's forward P/E ratio was 18.5 times; and, as of September 17, 2015, the healthcare sector traded at a P/E of 28.7 - a 41 per cent premium to its historical average. Simply stated, Valeant was not, objectively, a stock whose price "appear[ed] low in relation to the value of the total enterprise."

76. As summarized in the Sequoia Fund's December 31, 2015 Annual Report:

> As you are no doubt aware, Valeant was rocked in the fall by the closure of an affiliated specialty pharmacy, Philidor, after health care payers said they would not reimburse Philidor for claims it submitted. It has been further buffeted by subpoenas from Congress over its pricing strategies and by regulatory and law enforcement scrutiny over practices at Philidor. A committee of Valeant's board of directors is investigating the relationship with Philidor. Valeant recently said it would restate prior earnings as it improperly accounted for sales to Philidor in late 2014.
>
> As these inquiries continue and Valeant remains a subject of intense scrutiny, the share price is very unstable. For the stock to regain credibility with long-term investors, Valeant will need to generate strong earnings and cash flow this year, make progress in paying down some of its debt, demonstrate that it can launch new drugs from its own development pipeline and avoid provoking health care payers and the government. The company has committed to doing all of these things and we are confident interim CEO Howard Schiller and interim board chairman Robert Ingram are focused on the right metrics. Before CEO J. Michael Pearson

> went out on an extended medical leave, he also seemed committed to this path.
>
> In the end, Valeant's ability to grow earnings over a period of years will determine the stock price. A few months ago, the consensus cash earnings estimate from Wall Street analysts for Valeant in 2016 was about $16 per share. Today, estimates are closer to $13.50. This represents material deterioration, but still good growth over 2015 results. And with strong performance from its gastrointestinal drug Xifaxan and a slate of new product releases in 2016, Valeant has the potential to grow earnings for several years driven more by organic volume increases than price hikes.
>
> As the largest shareholder of Valeant, our own credibility as investors has been damaged by this saga. We've seen higher-than-normal redemptions in the Fund, had two of our five independent directors resign in October and been sued by two Sequoia shareholders over our concentration in Valeant. We do not believe the lawsuit has merit and intend to defend ourselves vigorously in court.
>
> Moving along, Valeant was not the only problem with our portfolio last year. The non-Valeant portion of Sequoia modestly underperformed the Index.
>
> Berkshire Hathaway, our second largest holding, declined by 12.5% during the year. Berkshire now trades at less than 12 times our estimate of 2016 earnings. We think Berkshire grew its earnings at a high-single digit rate in 2015 but many of its individual operating companies face challenges. Railroad volumes declined abruptly at year-end and the outlook for 2016 volume is poor. GEICO's auto insurance profit was off and many of Berkshire's other service and manufacturing businesses were soft. Berkshire committed over $40 billion to acquisitions in 2015, the bulk of it to buy Precision Castparts.

77. The Sequoia Fund's March 1, 2016 Form N-CSR informed the public, including Defendants, that:

> Sequoia turned in its second straight year of poor results in 2015.Teasing out the source of our underperformance doesn't take much work. We began the year with a 20% weighting in Valeant Pharmaceuticals. Valeant rose by more than 80% through the summer, driving very strong gains for

the Fund. But the price collapsed in the fall amid revelations and allegations about the company's business practices. Ultimately, Valeant declined 29% for the year and by more than 70% from its 52-week high to its low. We bought more shares in October, and we calculate that Valeant contributed -6.3% to Sequoia's return of -7.3% for the year.

At its peak price, Valeant constituted more than 30% of the Fund's assets. We've been criticized for allowing the holding to grow so large, but our feeling before the crisis erupted was that Valeant was executing well on its business model. Earnings were growing rapidly and we believed the company was making intelligent acquisitions that were creating shareholder value. Valeant was taking outsized price increases on a portion of its drug portfolio, but the entire branded pharmaceutical industry routinely has taken substantial annual price increases on drugs for more than a decade.

As you are no doubt aware, Valeant was rocked in the fall by the closure of an affiliated specialty pharmacy, Philidor, after health care payers said they would not reimburse Philidor for claims it submitted. It has been further buffeted by subpoenas from Congress over its pricing strategies and by regulatory and law enforcement scrutiny over practices at Philidor. A committee of Valeant's board of directors is investigating the relationship with Philidor. Valeant recently said it would restate prior earnings as it improperly accounted for sales to Philidor in late 2014.

As these inquiries continue and Valeant remains a subject of intense scrutiny, the share price is very unstable. For the stock to regain credibility with long-term investors, Valeant will need to generate strong earnings and cash flow this year, make progress in paying down some of its debt, demonstrate that it can launch new drugs from its own development pipeline and avoid provoking health care payers and the government. The company has committed to doing all of these things and we are confident interim CEO Howard Schiller and interim board chairman Robert Ingram are focused on the right metrics. Before CEO J. Michael Pearson went out on an extended medical leave, he also seemed committed to this path.

In the end, Valeant's ability to grow earnings over a period of years will determine the stock price. A few months ago, the consensus cash earnings estimate from Wall Street

> analysts for Valeant in 2016 was about $16 per share. Today, estimates are closer to $13.50. This represents material deterioration, but still good growth over 2015 results. And with strong performance from its gastrointestinal drug Xifaxan and a slate of new product releases in 2016, Valeant has the potential to grow earnings for several years driven more by organic volume increases than price hikes.
>
> As the largest shareholder of Valeant, our own credibility as investors has been damaged by this saga. We've seen higher-than-normal redemptions in the Fund, had two of our five independent directors resign in October and been sued by two Sequoia shareholders over our concentration in Valeant. We do not believe the lawsuit has merit and intend to defend ourselves vigorously in court.
>
> Moving along, Valeant was not the only problem with our portfolio last year. The non-Valeant portion of Sequoia modestly underperformed the Index.
>
> * * *
>
> As of this writing, our top 10 holdings make up about 70% of Sequoia's portfolio. Given this, you should expect performance variance from the Index from year to year. Valeant continues to be our largest holding and if it does not recover our future performance may lag the Index.

78. On May 31, 2016, the Sequoia Fund disclosed that it had finally sold half of its holdings in Valeant, reducing its ownership to under 5 percent. But by that point, Valeant's stock price had dropped by over 88% in less than a year on unusually large volume. Valeant's stock price has shed an additional 20 percent since then.

79. On July 12, 2016, Ruane, Cunniff & Goldfarb Inc. wrote a letter to Sequoia Fund shareholders[11] advising them that

> Our new leadership elected to sell our position in Valeant Pharmaceuticals, exiting completely by mid-June. Valeant was our largest position to start the year and its 80% decline through June 30 badly penalized our results. For the first half, Sequoia generated a negative 13.2% return vs. a

[11] *Available at* http://www.sequoiafund.com/RCG%20Letter%207-12.pdf (last visited Nov. 16, 2016).

> positive 3.8% return for the S&P 500 Index.* Absent Valeant, the rest of the Fund's portfolio generated a positive return of 2.3% for the first half. At the end of this letter you will find holdings data for the Fund's 10 largest holdings in Sequoia as of June 30th.

80. Because of its large advisory fees and its concentration in Valeant, the Sequoia Fund underperformed its benchmark—the S&P 500 Index—by 6.14 percent in 2014, 8.68 percent in 2015, and 15.17 percent during the period from January 1 to June 15, 2016.

Defendants Knew or Should Have Known the Sequoia Fund Was Unsuitable for the Plan As a Result of Its Outsized Valeant Investment

81. It was not only Valeant's P/E multiple that should have given Defendants concerns about its concentration in the Sequoia Fund. Criticism of Valeant was rampant:

82. In March 2014, Jim Grant, a legend in the financial community and favorite of contrarian investors, called Valeant a "financialized pharmaceutical company." Mr. Grant wrote that he is "confidently bearish" on Valeant. *Business in Canada* reported that "[e]ven more interesting is where he got the idea: from famous short-seller Jim Chanos, who employs Mr. Grant's daughter." Mr. Chanos noted that he was short on Valeant "noting the pitfalls and potential accounting issues associated with relying on deals for long-term growth."[12] Yet the Sequoia Fund continued holding Valeant despite its purported long-term growth strategy.

83. In May 2014, Bronte Capital's John Hempton publicized that his fund was shorting Valeant, calling its accounting "difficult to comprehend."

84. In June 2014, Allergan released emails from Morgan Stanley banker Robert Kindler in which he referred to Valeant as a "house of cards." Valeant responded by

[12] on.wsj.com/1g940cM (last visited Nov. 16, 2016).

stating, in part, that "Kindler is one of the best M&A bankers out there. While we will have some fun with him later, he's still very much on our team[.]"

85. The Sequoia Fund's October 28, 2015, Shareholder letter stated "[i]n a letter to clients, we once described Pearson as a value investor in pharmaceuticals. He understood that developing drugs from scratch via in-house R&D had become a low-return proposition for many companies and that higher returns could be earned by acquiring products in attractive categories, using historically low interest rates to fund purchases with debt, and then taking out costs and utilizing lower tax domiciles to house intellectual property. He has been aggressive every step of the way and has attracted equally aggressive critics."

86. By late 2014, experts recognized that "At the end Valeant is a 'trust me' story." And, Evan Lorenz, an analyst for Grant's Interest Rate Observer newsletter, which has been critical of Valeant since 2014, was quoted in the *Wall Street Journal* in late 2015 as stating "The very big problem about Valeant is that it's a trust-me story."

87. On December 31, 2014, the Sequoia Fund reported that Valeant represented 20 percent of its portfolio. Given the Plan's diversification policy and the obvious risk that high concentrations in a single investment pose to retirement plan investors, Defendants should have taken steps to remove the Fund from the Plan.

88. In March 2015, Charlie Munger, the heir-apparent to Berkshire Hathaway, the Sequoia Fund's second largest holding, was quoted by *Forbes* as stating that "Valeant is like ITT[13] and Harold Green come back to life, only the guy is worse this time." This should have been a serious red flag to anybody following the Sequoia Fund because, as

[13] ITT was one of a number of serial acquirers that were active particularly in 1960s. ITT covered up losses from acquisitions with paper profits from other acquisitions.

discussed herein, it was a serious challenge to the Sequoia Fund's investment hypothesis which, going forward without changes (and which changes were not made) both relied upon and ignored the wisdom of Mr. Munger.

89. The same December 16, 2015, *Wall Street Journal* article reported that:

> Valeant Pharmaceuticals International Inc. didn't just pioneer a new way of running a drug company -- it has an unusual way of accounting for one, too.
>
> The approach flows in part from Valeant's unconventional business model for a drugmaker, focused more on acquiring and selling drugs than on discovering them. As with its business, the Canadian company's books look very different from those of its peers, appearing in some ways more complex and opaque.
>
> Valeant's accounting stands out for its heavy use of tailored earnings metrics that strip out a wide range of expenses; favorable accounting for its acquisition and research-and-development costs; and a less granular view of its business lines than rivals provide, analysts and investors say.
>
> For years, even as some critics complained of Valeant's complexities, investors didn't seem to care, sending the stock up more than 1,000% over five years.
>
> Since August, though, shares have dropped -- at one point more than 70% -- as Valeant faced a barrage of questions including about its accounting, which it has defended, and its close ties to a mail-order pharmacy that for nearly a year it hadn't revealed to Wall Street.

90. Recognizing that "The past few months for the troubled Canadian drugmaker have also put a question mark over its overall strategy of rapid acquisition-driven expansion and aggressive price hikes[,]" *Reuters* published the following "key events in Valeant's history" on March 15, 2016:

> December 2007: Biovail Corp of Canada, Valeant's predecessor, pays $138 million to settle a shareholder lawsuit accusing it of making false statements to inflate its stock price. February 2008: California-based Valeant

Pharmaceuticals International names McKinsey & Co veteran and pharmaceutical acquisitions expert Michael Pearson as its CEO. It buys Coria Laboratories for $95 million and Australia's DermaTech for $12.6 million that year.

March 2008: The U.S. Securities and Exchange Commission charges Biovail Corp, its former CEO, and three other senior executives with fraudulent accounting and making a series of misstatements to analysts and investors. January 2009: Valeant buys Dow Pharmaceutical Sciences Inc, a maker of topical dermatology products, for $285 million and buys Mexican generic drugmaker Tecnofarma. May 2010: Valeant buys Aton Pharmaceuticals, a New Jersey-based maker of ophthalmology products, for $318 million.

Sept 2010: Valeant is acquired by Biovail in a reverse merger. Pearson becomes CEO of the combined company with an annual revenue of $1.75 billion. It takes Valeant's name and is incorporated in Canada, where Valeant predicts to have a 10-15 percent tax rate, far below the U.S. levels.

2011: Valeant settles a civil lawsuit brought by the SEC accusing Biovail of accounting fraud. It boosts its presence in Central and Eastern Europe by snapping up Switzerland-based generic company PharmaSwiss for $481 million; AB Sanitas of Lithuania for about $500 million; Canada's Afexa Life Sciences and Sanofi SA's dermatology unit Dermik. However, its $5.7 billion unsolicited bid for U.S. biotech Cephalon loses to an almost $7 billion offer from Israeli drugmaker Teva Pharmaceutical Industries.

2012: Valeant buys Medicis Pharmaceutical Corp for $2.6 billion, acquiring anti-wrinkle medicines and facial fillers that compete with Allergan Inc's market-leading portfolio.

April 2013: Valeant offers more than $13 billion in stock for smaller U.S. rival Actavis Inc, but merger talks collapse.

August 2013: In its biggest deal ever, Valeant buys eye-care company Bausch & Lomb from private equity firm Warburg Pincus for $8.6 billion. January 2014: After making the list of world's top 15 drugmakers by market capitalization, Pearson tells analysts Valeant aims to crack the top 5 by the end of 2016.

March 2014: Jim Grant, editor of an investment journal, criticizes Valeant for its lack of concern for research and development.

April 2014: Valeant and activist investor William Ackman's Pershing Square Capital Management hedge fund team up to buy Allergan. May 2014: Bronte Capital's John Hempton says his fund is shorting Valeant, calling its accounts "difficult to comprehend". James Chanos, founder of Kynikos Associates and short on Valeant accuses it of "aggressive accounting games".

June 2014: Allergan, battling off Valeant's takeover attempt, releases email exchanges with Morgan Stanley in which the bank called Valeant a "house of cards." Nov 2014: Valeant and Ackman end their pursuit for Allergan after rival Actavis outbids them with a $66 billion offer.

March 2015: Pershing Square discloses it has taken a 5 percent stake in Valeant.

April 2015: Valeant completes its $11 billion purchase of Salix Pharmaceuticals, a maker of gastrointestinal medicines. June 2015: Long-time investor ValueAct Capital Management says it sold 4.2 million Valeant shares, but retains a stake worth over $3 billion.

Sept 28, 2015: Democratic members of a Congressional committee urge their chairman to subpoena Valeant over "massive" price increases for two of its heart drugs.

Oct 15, 2015: Valeant says it has been subpoenaed by U.S. prosecutors seeking details on its patient assistance programs, drug pricing and distribution practices.

Oct 19, 2015: New York Times reports how Valeant has used its ties with a specialty pharmacy Philidor to sell conventional medications, averting health insurer barriers to reimbursement.

In a conference call later that day, Valeant discloses for the first time that it has used Philidor's services, has an option to buy the pharmacy and has already incorporated its financials into its own results.

Oct 21, 2015: Valeant shares plunge as much as 40 percent after an influential short-seller, Citron Research, accuses the company of using specialty pharmacies, including Philidor,

to inflate its revenue. Valeant categorically denies the allegations.

Oct 26, 2015: Valeant holds investor call to defend itself against Citron's allegations and sets up an ad-hoc committee to study them in depth.. Valeant shares end 5.3 percent down.

Oct 30, 2015: Valeant cuts ties with specialty pharmacy distributor, Philidor, accused of helping it inflate revenue. Philidor has since gone out of business. Valeant later warned its dermatology business would be hurt in the short term.

Dec 15, 2015: Valeant inks a deal to distribute its drugs through pharmacy chain Walgreens Boots Alliance Inc.

Dec 16, 2015: The Canadian drugmaker says its Q4 profit was hit when it cut ties with pharmacy Philidor Rx Services, but it could contain the damage in 2016 and grow profit.

Dec 28, 2015: Valeant appoints group of company executives to take over duties of its Chief Executive Michael Pearson until he returns from medical leave.

Jan 6, 2016: The company appoints its former CFO Howard Schiller as interim CEO.

Jan 28, 2016: Campaign of Democratic presidential contender Hillary Clinton posts a blog detailing exorbitant price hikes for a migraine drug made by Valeant.

Feb 4, 2016: At a U.S. congressional hearing interim CEO Howard Schiller puts forward a conciliatory face, testifying that his company had changed its business and pricing tactics.

Feb 22, 2016: Valeant says it would restate its financial results for 2014 and 2015 after identifying some sales of Philidor that should have been recognized when products were dispensed to patients.

Feb 29, 2016: Valeant discloses that it was under investigation by the U.S. Securities and Exchange Commission a day after announcing the return of CEO Pearson from medical leave and withdrawing 2016 guidance.

> March 7, 2016: Valeant says it would release preliminary quarterly results and guidance on March 15, two week after it was originally scheduled to be released.
>
> Mar 9, 2016: The company adds a representative from shareholder Pershing Square Capital Management to its board as well as two other new directors.
>
> Mar 10, 2016: A U.S. congressional committee urges Valeant to explain why it was withholding documents related to an investigation into steep hikes in prices of two of the company's heart drugs.
>
> Mar 15, 2016: Valeant cuts 2016 revenue forecast by about 12 percent and says a delay in filing its annual report could mean a debt default, causing its shares to plunge.

91. Asked about Mr. Munger's comments about Valeant and ITT during the Ruane, Cunniff & Goldfarb Investor Day at the St. Regis Hotel, New York City on May 15, 2015,[14] the following colloquy took place, demonstrating, *inter alia*, that the Sequoia Fund's earnings were substantially linked to Valeant:

> **Question:**
>
> If I could ask about Valeant as well.... Being students of the family of Berkshire, can you discuss your views and perhaps comment on what Mr. Munger insinuated about Valeant recently?
>
> **Bob Goldfarb:**
>
> After reading about Mr. Munger's comments, Rory looked for all the books on Harold Geneen that he could find. I think he is the man to answer your question. Rory?
>
> **Rory Priday:**
>
> We were not at the *Daily Journal* meeting, where Mr. Munger made the remark comparing Valeant and ITT. So we do not know exactly what he said. But it was something to the effect that Valeant was like ITT, except that Mike Pearson was worse than Harold Geneen, who became CEO

[14] www.sequoiafund.com/Reports/Transcript15.htm (last visited Nov. 16, 2016).

of ITT in 1959. ITT was one of a number of serial acquirers that were active particularly in 1960s. Geneen bought a raft of companies — some of the names you will recognize today like Sheraton and Avis. Bob can provide more context than I can because he is pretty familiar with the company as well. But Geneen bought a lot of disparate businesses in different industries. I recall from the books I read that ITT's sales went from $700 million to $17 billion over eighteen years and the earnings went from $29 million to $550 million. But ITT also issued a lot of equity and was prone to issue equity in order to buy these companies. By the time Geneen stepped down from the CEO's spot, ITT's share count had increased tenfold.

One of the big differences is that Valeant is focused on the healthcare sector. Last year, 57% of sales came from pharmaceuticals. The company is not really going outside the healthcare space, and it is not going far outside pharmaceuticals. There are plenty of pharma companies that operate in different therapeutic areas, and the main ones for Valeant today are dermatology, ophthalmology, and gastroenterology. Another difference is that Mike does not like to issue equity. Even though the

Bausch & Lomb and Salix acquisitions required him to issue some equity, the share count has not really moved that much.

If you adjust for the dividend that Valeant paid out before the Biovail merger, earnings per share have gone from 81 cents to probably close to $27 this year. Next year's EPS will be close to $38 a share. So the earnings will have gone up over 45 times in seven years.

Bob Goldfarb:

My guess, when I saw the comments, was that Charlie might have been targeting Valeant's accounting. If I were going to question the accounting, the principal issue I would have would be with the accounting for the restructuring charges after Valeant makes a large acquisition. The company and the analysts who follow it add back these restructuring charges to derive the company's cash earnings. What we do is add back the restructuring charges to the purchase price; so that if Valeant buys a company for $9 billion and there are $500 million of after-tax restructuring charges, the company effectively paid $9.5 billion rather than the $9 billion that it announced initially.

> If you deduct the restructuring charges associated with significant acquisitions from a given year's earnings, I do not think that is accurate accounting even though it does conform to GAAP. When we look at a company's reported earnings in a given year, we are always searching for a sense of what the true earning power of that company is relative to the stock price. If you deduct the large restructuring charges in a given year, you are not going to get an accurate number for the earning power. Heinz — Berkshire acquired 50% of the company — is an example. Jonny, Heinz had very low earnings last year, right, because of the restructuring charges?
>
> **Jon Brandt:**
>
> Yes, it did.

92. Further indicating that the Sequoia Fund deviated from its policy that "[t]he balance sheet and earnings history and prospects of each company are extensively studied to appraise fundamental value" and further highlighting the opacity of Valeant's finances, on May 24, 2016, *Reuters* reported, in part, in an article entitled "SEC raises concerns about Valeant's use of 'Non-GAAP' measures"[15]

> The Securities and Exchange Commission is concerned about the way Canadian drugmaker Valeant Pharmaceuticals International Inc (VRX.TO) has been disclosing its "non-GAAP" financial measures, regulatory filings showed on Tuesday.
>
> The SEC has questioned Valeant's practice of stripping away acquisition-related expenses from its "non-GAAP" or adjusted metrics, given that the drugmaker had been fueling growth through frenzied deal making.
>
> The company is facing mounting scrutiny by members of Congress, prosecutors and regulators over its drug pricing, business practices and accounting, issues that have led to its share plummeting nearly 90 percent since August.

[15] *Available at* http://reut.rs/20xoSMM (last visited Nov. 16, 2016).

> In multiple letters, the SEC said Valeant's management is in possession of all the facts and urged for adequate and accurate financial disclosures.
>
> "We are concerned with your overall format and presentation of the non-GAAP measures and believe revisions to your future earnings releases and investor materials are appropriate," the SEC said in a letter to the company in February.
>
> In response, the Laval, Quebec-based company defended its use of non-GAAP measures but agreed to make changes in its disclosures.
>
> The SEC also questioned Valeant's disclosure of the tax effects of the costs it stripped out of its non-GAAP measures, calling the strategy "potentially misleading".
>
> Non-GAAP measures are metrics that don't comply with generally accepted accounting principles, or GAAP, the standard set of accounting rules in the United States.
>
> Typically, they exclude non-cash and non-recurring items from a company's results and are designed to present a truer reflection of performance.
>
> This correspondence, which demonstrates the SEC's lack of comfort with Valeant's reporting, could add gravity to the multiple investigations the company is currently embroiled in, Wells Fargo's David Maris said, cutting his target price to a range of $25-$30 from $27-$31.

Defendants Allowed the Plan to Hold and Invest In the Sequoia Fund despite Its Conflicting and Unreasonable Concentration in Valeant Stock

93. As noted above, the Sequoia Fund represented that it "typically sells the equity security of a company when the company shows deteriorating fundamentals, its earnings progress falls short of the investment adviser's expectations or its valuation appears excessive relative to its expected future earnings." Yet, despite P/E multiples of over 100, the Sequoia Fund did not even pair back its holdings of Valeant's stock.

94. Indeed, as Mr. Chanos noted (*supra*), "the pitfalls and potential accounting issues associated with relying on deals for long-term growth." Yet the Sequoia Fund

invested over 30% of its assets in Valeant, and Defendants continued to (1) allow Participants to invest in the Sequoia Fund and (2) not warn or inform Participants of the true risks of the Sequoia Fund.

95. *Reuters* reported on April 30, 2016,[16]

> Warren Buffett and Charlie Munger made clear that they are no fans of embattled drugmaker Valeant Pharmaceuticals International Inc.
>
> "In my view, the business model of Valeant was enormously flawed," Buffett said at the annual Berkshire Hathaway meeting on Saturday. Buffett responded to a question about whether he agreed with his right-hand man, Charlie Munger, who last year called Valeant's core strategy of buying smaller pharmacies and then raising prices of their drugs "deeply immoral."
>
> ***Buffett implied that Valeant was similar, in some respects, to "chain letter" companies designed to fool investors***.
>
> Shares in Valeant have lost 87 percent of their value from their 2015 high, and its former chief executive was called to testify before Congress this week about the company's drug-pricing policies.
>
> Buffett said the Sequoia Fund, which traces its roots to Buffett, took an ***"unusually large position" in Valeant, mainly a result of the fund becoming "overly entranced with the business model."***
>
> ***Buffett noted the money manager responsible for Sequoia's investment in Valeant, then-chief executive Robert Goldfarb, has left the fund***. Buffett said he also was approached by multiple people asking if he wanted to invest in Valeant and meet former Valeant CEO Michael Pearson. Buffett said he declined to do either of those things, and ***was wary of the company from the very beginning.***
>
> All told, Buffett expressed support for portfolio managers of the Sequoia, which has long invested in Berkshire and shared similar values, characterizing them as "very smart, decent people."

[16] *Available at* http://reut.rs/1rpZmOi (last visited Nov. 16, 2016).

> Munger concurred that Sequoia "reconstituted" itself. He added: "We think the whole thing is fixed. ***Valeant was a sewer, and those who created it deserved the opprobrium they got.***"

(emphasis added).

96. Based on the foregoing, Valeant's stock price and, as shown above, the Sequoia Fund's net asset value ("NAV") have been decimated.

97. Defendants either ignored or did not notice the above. Simply stated, the Fund's Valeant investment, which represented an overconcentration in an unconventional business model with non-traditional financial statements and metrics, represented a complete departure from the Fund's value-oriented investment strategy and sound investment principles that should have been employed by a growth fund offered in a retirement plan. This was a breach of Defendants' ERISA fiduciary duty to monitor investments and remove imprudent ones. In short, the fundamental nature of the Sequoia Fund changed, and the Plan's fiduciaries did not appropriately react to the same.

CLAIMS FOR RELIEF UNDER ERISA

98. At all relevant times, Defendants were and acted as fiduciaries within the meaning of ERISA § 3(21)(A), 29 U.S.C. § 1002(21)(A).

99. ERISA § 502(a)(2), 29 U.S.C. §1132(a)(2), provides, in pertinent part, that a civil action may be brought by a participant for relief under ERISA § 409, 29 U.S.C. §1109.

100. ERISA § 409(a), 29 U.S.C. §1109(a), "Liability for Breach of Fiduciary Duty," provides, in pertinent part, that any person who is a fiduciary with respect to a plan who breaches any of the responsibilities, obligations, or duties imposed upon fiduciaries by this title shall be personally liable to make good to such plan any losses to the plan

resulting from each such breach, and to restore to such plan any profits of such fiduciary which have been made through use of assets of the plan by the fiduciary, and shall be subject to such other equitable or remedial relief as the court may deem appropriate, including removal of such fiduciary.

101. ERISA § 404(a)(1)(A) and (B), 29 U.S.C. § 1104(a)(1)(A) and (B), provides, in pertinent part, that a fiduciary shall discharge his duties with respect to a plan solely in the interest of the participants and beneficiaries, for the exclusive purpose of providing benefits to participants and their beneficiaries, and with the care, skill, prudence, and diligence under the circumstances then prevailing that a prudent man acting in a like capacity and familiar with such matters would use in the conduct of an enterprise of a like character and with like aims.

102. These fiduciary duties under ERISA § 404(a)(1)(A) and (B) are referred to as the duties of loyalty, exclusive purpose and prudence and are the "highest known to the law." *Donovan v. Bierwirth*, 680 F.2d 263, 272 n. 8 (2d Cir. 1982). They entail, among other things:

a. The duty to conduct an independent and thorough investigation into, and continually to monitor, the merits of all the investment alternatives of a plan;

b. A duty to avoid conflicts of interest and to resolve them promptly when they occur. A fiduciary must always administer a plan with an "eye single" to the interests of the participants and beneficiaries, regardless of the interests of the fiduciaries themselves or the plan sponsor; and

c. A duty to disclose and inform, which encompasses: (1) a negative duty not to misinform; (2) an affirmative duty to inform when the fiduciary knows or should know that silence might be harmful; and (3) a duty to convey complete and accurate information material to the circumstances of participants and beneficiaries.

103. ERISA § 405(a), 29 U.S.C. § 1105 (a), "Liability for breach by co-fiduciary," provides, in pertinent part, that:

> [I]n addition to any liability which he may have under any other provision of this part, a fiduciary with respect to a plan shall be liable for a breach of fiduciary responsibility of another fiduciary with respect to the same plan in the following circumstances: (A) if he participates knowingly in, or knowingly undertakes to conceal, an act or omission of such other fiduciary, knowing such act or omission is a breach; (B) if, by his failure to comply with section 404(a)(1), 29 U.S.C. §1104(a)(1), in the administration of his specific responsibilities which give rise to his status as a fiduciary, he has enabled such other fiduciary to commit a breach; or (C) if he has knowledge of a breach by such other fiduciary, unless he makes reasonable efforts under the circumstances to remedy the breach.

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

CAUSATION

105. The Plan suffered millions of dollars in losses because substantial assets of the Plan were imprudently invested, or allowed to be invested by Defendants, in the Sequoia Fund during the Class Period, in breach of Defendants' fiduciary duties, and reflected in the diminished account balances of the Plan's Participants.

106. Had Defendants properly discharged their fiduciary and/or co-fiduciary duties, the Plan and its Participants would have avoided all or a substantial portion of the losses that they suffered during the Class Period through the Plan's continued investment in the Sequoia Fund.

REMEDY FOR BREACHES OF FIDUCIARY DUTY

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

108. ERISA § 502(a), 29 U.S.C. § 1132(a), authorizes a plan participant to bring a civil action for appropriate relief under ERISA § 409, 29 U.S.C. § 1109. Section 409 requires "any person who is a fiduciary . . . who breaches any of the . . . duties imposed upon fiduciaries . . . to make good to such plans any losses to the plans[.]" Section 409 also authorizes "equitable or remedial relief as the court may deem appropriate[.]"

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

110. Plaintiffs, the Plan, and the Class are therefore entitled to relief from Defendants in the form of: (1) a monetary payment to the Plan to make good to the Plan the losses to the Plan resulting from the breaches of fiduciary duties alleged above in an amount to be proven at trial based on the principles described above, as provided by ERISA

§ 409(a), 29 U.S.C. § 1109(a); (2) injunctive and other appropriate equitable relief to remedy the breaches alleged above, as provided by ERISA §§ 409(a) and 502(a), 29 U.S.C. §§ 1109(a) and 1132(a); (3) reasonable attorney fees and expenses, as provided by ERISA § 502(g), 29 U.S.C. § 1132(g), the common fund doctrine, and other applicable law; (4) taxable costs; (5) interest on these amounts, as provided by law; and (6) such other legal or equitable relief as may be just and proper.

111. Each Defendant is jointly and severally liable for the acts of the other Defendants as a co-fiduciary.

COUNT I

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

112. Plaintiffs incorporate the allegations contained in the previous paragraphs of this Complaint as if fully set forth herein.

113. At all relevant times, as alleged above, all Defendants were fiduciaries within the meaning of ERISA § 3(21)(A), 29 U.S.C. § 1002(21)(A), in that they exercised discretionary authority or control over the administration and/or management of the Plan or disposition of the Plan's assets.

114. Under ERISA, fiduciaries who exercise discretionary authority or control over management of a plan or disposition of a plan's assets are responsible for ensuring that investment options made available to participants under that plan are prudent. Furthermore, such fiduciaries are responsible for ensuring that assets within the plan are prudently invested. Defendants were responsible for ensuring that all investments in the Plan, including the Sequoia Fund, were prudent and that such investment was consistent

with the purpose of the Plan. Defendants are liable for losses incurred as a result of such investments being imprudent.

115. Defendants further breached their duty of loyalty and prudence which obligated them to speak truthfully to Participants, not to mislead them regarding the Plan or its assets, and to disclose information that Participants need in order to exercise their rights and interests under a plan. This duty to inform Participants includes an obligation to provide them with complete and accurate information, and to refrain from providing inaccurate or misleading information, or concealing material information, regarding the Plan's investments/investment options such that Participants can make informed decisions with regard to the prudence of investing in such options made available under the Plan.

116. Defendants breached their duties to prudently and loyally manage the Plan's assets. During the Class Period these Defendants knew or should have known that, as described herein, the Sequoia Fund was an unsuitable and inappropriate investment for the Plan. Yet, during the Class Period, despite their knowledge of the imprudence of the investment, Defendants failed to take any meaningful steps to protect Plan Participants from the losses that they knew or should have known were unacceptably likely to ensue as a result of the Sequoia Fund's pivot towards Valeant and away from classic growth stocks.

117. Defendants further breached their duties of loyalty and prudence by failing to divest the Plan of the Sequoia Fund when they knew or should have known that it was not a suitable and appropriate Plan investment.

118. Defendants breached their duties of loyalty and prudence by failing to ensure that Participants liquidated their Sequoia Fund investment under the Plan and transferred the sale proceeds to the other investment options available in the Plan.

119. Defendants breached their duties of loyalty and prudence by offering the Sequoia Fund as a Plan investment option because, as a non-diversified investment option, the offering of the Sequoia Fund was violative of both the Plan, which required that all investment options other than the Company Stock Fund "shall be diversified[,]" and ERISA, which requires that fiduciaries "diversify[] the investments of the plan so as to minimize the risk of large losses, unless under the circumstances it is clearly prudent not to do so."

120. Defendants breached their duties of loyalty and prudence by describing the Sequoia Fund, a non-diversified investment option, in the same manner as the Plan's diversified investment options and the Plan's four other "Stock Long-Term Growth Fund[s.]"

121. Defendants breached their duties of loyalty and prudence by offering high priced investment options in the Plan instead of seeking comparable mutual funds with lower fees.

122. Defendants breached their duties of loyalty and prudence by creating unnecessary complexity in the Plan's investment lineup, risking Participant confusion and distraction, and placed an unreasonable burden on unsophisticated Participants who do not have the resources to pre-screen investment alternatives.

123. Defendants also breached their co-fiduciary obligations by, among their other failures: knowingly participating in, or knowingly undertaking to conceal, the other Defendants' failure to disclose crucial information regarding the risks of the Sequoia Fund. Defendants had or should have had knowledge of such breaches by other Plan fiduciaries, yet made no effort to remedy them.

124. As a direct and proximate result of the breaches of fiduciary duties alleged herein, the Plan, and indirectly Plaintiffs and the Plan's other Participants , lost at least millions of dollars of their retirement savings. Had Defendants taken appropriate steps to comply with their fiduciary obligations, Participants could have liquidated some or all of their holdings in the Sequoia Fund and thereby eliminated, or at least reduced, losses to the Plan and themselves.

125. Pursuant to ERISA § 502(a), 29 U.S.C. § 1132(a) and ERISA § 409, 29 U.S.C. § 1109(a), Defendants in this Count are liable to restore the losses to the Plan caused by their breaches of fiduciary duties alleged in this Count.

COUNT II

Failure to Adequately Monitor Other Fiduciaries and Provide Them with Accurate Information (Breaches of Fiduciary Duties in Violation of ERISA § 404 by Defendant Brondeau)

126. Plaintiffs incorporate the allegations contained in the previous paragraphs of this Complaint as if fully set forth herein.

127. At all relevant times, as alleged above, Defendant Brondeau was a Plan fiduciary, within the meaning of ERISA § 3(21)(A), 29 U.S.C. § 1002(21)(A).

128. At all relevant times, as alleged above, the scope of the fiduciary responsibility of Defendant Brondeau included the responsibility to appoint, evaluate, and monitor other fiduciaries, including, without limitation, the Committee and other Company officers, employees and agents to whom fiduciary responsibilities were delegated.

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

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

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

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

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

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

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

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

131. Defendant Brondeau breached his fiduciary monitoring duties by, among other things, (a) failing to ensure that the monitored fiduciaries had access to knowledge about the Sequoia Fund (and Valeant) alleged above, which made the Sequoia Fund an imprudent retirement investment, and (b) failing to ensure that the monitored fiduciaries completely appreciated the huge risk of significant investment of the retirement savings of rank and file employees in the Sequoia Fund, an investment that was imprudent and subject to unusually significant depreciation. Defendant Brondeau knew or should have known that the fiduciaries responsible for monitoring were (i) continuing to invest the assets of the Plan in the Sequoia Fund when it no longer was prudent to do so; and (ii) imprudently allowing the Plan to continue offering the Sequoia Fund as an investment alternative. Despite this knowledge, Defendant Brondeau failed to take action to protect the Plan, and concomitantly the Participants, from the consequences of these fiduciaries' failures.

132. Defendant Brondeau is liable as a co-fiduciary because he knowingly participated in other's fiduciary breaches, enabled the breaches by those other Defendants, and failed to make any effort to remedy these breaches, despite having knowledge of them.

133. As a direct and proximate result of the breaches of fiduciary duties alleged herein, the Plan, and indirectly the Plaintiffs and the other Participants, lost a significant portion of their retirement investments.

134. Pursuant to ERISA § 502(a), 29 U.S.C. § 1132(a) and ERISA § 409, 29 U.S.C. § 1109(a), Defendants in this Count are liable to restore the losses to the Plan caused by their breaches of fiduciary duties alleged in this Count.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs pray for:

A. A determination that this action is maintained by Plaintiffs as a class action, for the benefit of the Plan, the Plaintiffs, and the Class.

B. A Declaration that the Defendants, and each of them, breached their ERISA fiduciary duties to the Plan and the Participants;

C. An Order compelling the Defendants to make good to the Plan all losses to the Plan resulting from Defendants' breaches of their fiduciary duties, including losses to the Plan resulting from imprudent investment of the Plan's assets, and to restore to the Plan all profits which the Participants would have made if the Defendants had fulfilled their fiduciary obligations;

D. Imposition of a Constructive Trust on any amounts by which any Defendant was unjustly enriched at the expense of the Plan as the result of breaches of fiduciary duty;

E. Actual damages in the amount of any losses the Plan suffered, to be allocated among the Participants' individual accounts in proportion to the accounts' losses;

F. An Order that Defendants allocate the Plan's recoveries to the accounts of all Participants who had any portion of their account balances invested in the Sequoia Fund maintained by the Plan in proportion to the accounts' losses attributable to the decline the Sequoia Fund's NAV;

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

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

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

DATED: November 17, 2016

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