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12
13 **UNITED STATES DISTRICT COURT**
NORTHERN DISTRICT OF CALIFORNIA
14 **SAN JOSE DIVISION**
15

16 BRIAN REICHERT, individually,
and as representative of a Class of
17 Participants and Beneficiaries of the
Juniper Networks, Inc. 401(k) Plan,
18
19 Plaintiff,

20 v.

21 JUNIPER NETWORKS, INC., and
22 BOARD OF DIRECTORS
OF JUNIPER NETWORKS, INC., and
23
24 INVESTMENT COMMITTEE OF
JUNIPER NETWORKS, INC. and
25
26 JOHN DOES 1-30,
27
28 Defendants.

Case No: 21-cv-____ - ____

**CLASS ACTION COMPLAINT
FOR CLAIMS UNDER ERISA,
29 U.S.C., § 1132(a)(2)**

1 COMES NOW Plaintiff, Brian Reichert, individually and as representative of a Class of
 2 Participants and Beneficiaries on behalf of the Juniper Networks, Inc. 401(k) Plan (the “Plan”), by
 3 and through his counsel, WALCHESKE & LUZI, LLC, and CREITZ & SEREBIN LLP, as and for a
 4 claim against Defendants, alleges and asserts to the best of his knowledge, information, and belief,
 5 formed after an inquiry reasonable under the circumstances, the following:

6 INTRODUCTION

7 1. The essential remedial purpose of the Employee Retirement Income Security Act
 8 (“ERISA”) is “to protect the beneficiaries of private pension plans.” *Nachwalter v. Christie*, 805 F.2d
 9 956, 962 (11th Cir. 1986).

10 2. The law is settled that ERISA fiduciaries have a duty to evaluate fees and expenses
 11 when selecting retirement plan service providers (“RPSP”) and investments *as well as* a continuing
 12 duty to monitor fees and expenses of selected RPSP and investments and remove imprudent ones.
 13 *Tibble v. Edison Int’l*, 135 S. Ct. 1823, 1828 (2015); 29 U.S.C. § 1104(a)(1)(A) (fiduciary duty includes
 14 “defraying reasonable expenses of administering the Plan”); 29 C.F.R. § 2250.404a-1(b)(i) (ERISA
 15 fiduciary must give “appropriate consideration to those facts and circumstances” that “are relevant
 16 to the particular investment.”). It is for good reason that ERISA requires fiduciaries to be cost-
 17 conscious:

18 Expenses, such as management or administrative fees, can sometimes significantly
 19 reduce the value of an account in a defined-contribution Plan, *Tibble*, 135 S. Ct. at
 20 1826, by decreasing its immediate value, and by depriving the participant of the
 prospective value of funds that would have continued to grow if not taken out in fees.

21 *Sweda v. Univ. of Pa.*, 923 F.3d 320, 328 (3d Cir. 2019).

22 3. Defendants, Juniper Networks, Inc. (“Juniper”), the Board of Directors of Juniper
 23 Networks, Inc. (“Board Defendants”), the Investment Committee of Juniper Networks, Inc.
 24 (“Investment Defendants”), and John Does 1-30 (collectively, “Defendants”), are ERISA fiduciaries,
 25 as they exercises discretionary authority or discretionary control over the 401(k) defined contribution
 26 pension plan – known as the Juniper Networks, Inc. 401(k) Plan (the “Plan”) – that it sponsors and
 27 provides to its employees.

1 4. Plaintiff alleges that during the putative Class Period (August 11, 2015 through the
2 date of judgment), Defendants, as fiduciaries of the Plan, as that term is defined under ERISA, 29
3 U.S.C. § 1002(21)(A), breached the duties they owed to the Plan, to Plaintiff, and to the other
4 Participants of the Plan by, among other things: (1) authorizing the Plan to pay unreasonably high
5 fees for retirement plan services (“RPS”); (2) failing to objectively, reasonably, and adequately review
6 the Plan’s investment portfolio with due care to ensure that each investment option was prudent, in
7 terms of cost; (3) maintaining certain funds in the Plan despite the availability of identical or similar
8 investment options with lower costs and/or better performance histories; (4) authorizing the Plan to
9 pay unreasonably high fees for managed account services; and (5) failing to disclose to Participants
10 necessary Plan information for them to make informed Plan investment decisions.

11 5. These objectively unreasonable RPS, managed account, and investment management
12 fees, cannot be justified. Defendants’ failures breached the fiduciary duties they owed to Plaintiff,
13 Plan Participants, and beneficiaries. Prudent fiduciaries of 401(k) Plans continuously monitor fees
14 against the market rates, applicable benchmarks, and peer groups to identify objectively unreasonable
15 and unjustifiable fees. Defendants did not engage in a prudent decision-making process, as there is
16 no other explanation for why the Plan paid these objectively unreasonable fees for RPS, managed
17 accounts, and investment management.

18 6. To remedy, Plaintiff brings this action on behalf of the Plan under 29 U.S.C.
19 § 1132(a)(2) to enforce Defendants’ liability under 29 U.S.C. § 1109(a) to make good to the Plan all
20 losses resulting from their breaches of fiduciary duty.

21 **JURISDICTION AND VENUE**

22 7. This Court has subject matter jurisdiction in this ERISA matter under 28 U.S.C.
23 § 1331 and pursuant to 29 U.S.C. § 1332(e)(1), which provides for federal jurisdiction of actions
24 brought under Title I of ERISA, 29 U.S.C. § 1001 et seq.

25 8. This Court has personal jurisdiction over Defendants because they transact business
26 in this District, reside in this District, and have significant contacts with this District, and because
27 ERISA provides for nationwide service of process.

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

6 10. In conformity with 29 U.S.C. § 1132(h), Plaintiff served the Complaint by certified
7 mail on the Secretary of Labor and the Secretary of the Treasury.

8 **PARTIES**

9 11. Plaintiff, Brian Reichert, is a resident of the State of Wisconsin and currently resides
10 in Madison, Wisconsin, and during the Class Period, is a participant in the Plan under 29 U.S.C.
11 § 1002(7).

12 12. Plaintiff has been employed by Juniper since January 2021, in the position of Staff
13 Software Engineer. He previously worked in the same position for Apstra, a company that was
14 recently acquired by Juniper.

15 13. Plaintiff's employment with Juniper continues to the present.

16 14. Plaintiff has Article III standing to bring this action on behalf of the Plan because he
17 suffered an actual injury to his own Plan account in which he is still a Participant, that injury is fairly
18 traceable to Defendants' unlawful conduct, and the harm is likely to be redressed by a favorable
19 judgment.

20 15. It is well settled, moreover, that recovery may be had for the Class Period before
21 Plaintiff personally suffered injury, as that turns on ERISA § 502(a)(2) on which his claim rests. This
22 claim is brought in a representative capacity on behalf of the Plan as a whole and remedies
23 under ERISA § 409 protect the entire Plan. Courts have recognized that a plaintiff with Article III
24 standing, like Plaintiff, may proceed under ERISA § 502(a)(2) on behalf of the Plan and all
25 participants in the Plan. Plaintiff may seek relief under ERISA § 502(a)(2) that sweeps beyond his
26 own injury and beyond any given investment he has held as a Participant in the Plan.

1 16. The named Plaintiff and all Participants in the Plan suffered ongoing financial harm
2 as a result of Defendants’ continued imprudent and unreasonable investment and fee decisions made
3 with regard to the Plan.

4 17. The named Plaintiff and all participants in the Plan did not have knowledge of all
5 material facts (including, among other things, the RPS fees, managed account fees, investment
6 alternatives that are comparable to the investments offered within the Plan, total cost comparisons
7 to similarly-sized Plans, and information regarding other available share classes) necessary to
8 understand that Defendants breached their fiduciary duties and engaged in other unlawful conduct in
9 violation of ERISA until shortly before this suit was filed.

10 18. The named Plaintiff and all Participants in the Plan, having never managed a large
11 401(k) Plan such as the Plan, lacked actual knowledge of reasonable fee levels and prudent alternatives
12 available to such Plans. Further, Plaintiff did not have actual knowledge of the specifics of
13 Defendants’ decision-making processes with respect to the Plan (including Defendants’ processes for
14 selecting and monitoring the Plan’s RPSP because this information is solely within the possession of
15 Defendants prior to discovery. For purposes of this Complaint, Plaintiff has drawn reasonable
16 inferences regarding these processes based upon (among other things) the facts set forth below.

17 19. Defendant Juniper Networks, Inc. (“Juniper”) provides products, solutions, and
18 services that simplifies the process of transitioning to a secure and automated multi-cloud
19 environment to enable secure, AI-driven networks. Its principal headquarters are located at 1194
20 North Mathilda Avenue, Sunnyvale, California 94089-1206 and the Plan is located at 1133 Innovation
21 Way, Sunnyvale, CA 94089-1206. In this Complaint, “Juniper” refers to the named Defendant and
22 all parent, subsidiary, related, predecessor, and successor entities to which these allegations pertain.

23 20. Juniper acted through its officers, including the Board Defendants, and their
24 members (John Does 1-10), to perform Plan-related fiduciary functions in the course and scope of
25 their business. Juniper appointed other Plan fiduciaries, and accordingly had a concomitant fiduciary
26 duty to monitor and supervise those appointees. For these reasons, Juniper is a fiduciary of the Plan,
27 within the meaning of 29 U.S.C. § 1002(21)(A).

1 21. The Plan Administrator of the Juniper Inc. Savings Plan is the Investment Committee
2 of Juniper Networks, Inc. (“Committee”), located at 1133 Innovation Way, Sunnyvale, CA 94089-
3 1206. As the Plan Administrator, the Committee is a fiduciary with day-to-day administration and
4 operation of the Plan under 29 U.S.C. § 1002(21)(A). It has authority and responsibility for the
5 control, management, and administration of the Plan in accord with 29 U.S.C. § 1102(a). The
6 Committee has exclusive responsibility and complete discretionary authority to control the operation,
7 management, and administration of the Plan, with all powers necessary to properly carry out such
8 responsibilities.

9 22. The Committee in its Plan Administrator capacity, as well as individuals who carried
10 out Plan functions (John Does 11-20), are collectively referred to herein as the “Committee
11 Defendants.”

12 23. To the extent that there are additional officers and employees of Juniper who
13 are/were fiduciaries of the Plan during the Class Period, or other individuals who were hired as
14 investment managers for the Plan during the Class Period, the identities of whom are currently
15 unknown to Plaintiff, Plaintiff reserves the right, once their identities are ascertained, to seek leave to
16 join them to the instant action. Thus, without limitation, unknown “John Doe” Defendants 21-30
17 include, but are not limited to, Juniper officers and employees who are/were fiduciaries of the Plan
18 within the meaning of ERISA Section 3(21)(A), 29 U.S.C. § 1002(21)(A), during the Class Period.

19 24. The Plan is a Section 401(k) “defined contribution” pension Plan under 29 U.S.C.
20 §§ 1102(2)(A) and 1002(34), meaning that Juniper’s contribution to the payment of Plan costs is
21 guaranteed but the pension benefits are not. In a defined contribution Plan, the value of participants’
22 investments is “determined by the market performance of employee and employer contributions, less
23 expenses.” *Tibble*, 135 S. Ct.at 1826. Thus, the employer has no incentive to keep costs low or to
24 closely monitor the Plan to ensure every investment remains prudent, because all risks related to high
25 fees and poorly performing investments are borne by the participants.

26 25. The Plan currently has about \$1,411,936,460 in assets entrusted to the care of the
27 Plan’s fiduciaries. The Plan had substantial bargaining power regarding the fees and expenses that
28

1 were charged against participants' investments. Defendants, however, did not sufficiently attempt to
2 reduce the Plan's expenses or exercise appropriate judgment to monitor its RPSP and each
3 investment option to ensure they were a prudent choice.

4 26. With 6,860 participants in 2019, the Plan had more participants than 99.73% of the
5 defined contribution Plans in the United States that filed 5500 forms for the 2019 Plan year. Similarly,
6 with \$1,411,936,460 in assets in 2019, the Plan had more assets than 99.89% of the defined
7 contribution Plans in the United States that filed 5500 forms for the 2019 Plan year.

8 **ERISA'S FIDUCIARY STANDARDS**

9 27. ERISA imposes strict fiduciary standards of loyalty and prudence on Defendants as
10 a Plan fiduciaries. 29 U.S.C. § 1104(a)(1) provides in relevant part:

11 [A] fiduciary shall discharge his duties with respect to a Plan solely in the interest of
12 the participants and beneficiaries and –

13 (A) for the exclusive purpose of:

- 14 (i) providing benefits to participants and their beneficiaries; and
15 (ii) defraying reasonable expenses of administering the Plan; [and]

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

20 28. With certain exceptions, 29 U.S.C. § 1103(c)(1) provides in relevant part:

21 [T]he assets of a Plan shall never inure to the benefit of any employer and shall be held for
22 the exclusive purposes of providing benefits to participants in the Plan and their beneficiaries
23 and defraying reasonable expenses of administering the Plan.

24 29. Title 29 U.S.C. § 1109 provides in relevant part:

25 Any person who is a fiduciary with respect to a Plan who breaches any of the
26 responsibilities, obligations, or duties imposed upon fiduciaries by this subchapter shall
27 be personally liable to make good to such Plan any losses to the Plan resulting from
28 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.

1 30. Under ERISA, fiduciaries that exercise any authority or control over Plan assets,
2 including the selection of Plan investments and service providers, must act prudently and for the
3 exclusive benefit of participants in the Plan, and not for the benefit of third parties including service
4 providers to the Plan such as RPSP and those who provide investment products. Fiduciaries must
5 ensure that the amount of fees paid to those service providers is no more than reasonable. *See* DOL
6 Adv. Op. 97-15A; DOL Adv. Op. 97-16A.

7 31. “[T]he duty to conduct an independent investigation into the merits of a particular
8 investment” is “the most basic of ERISA’s investment fiduciary duties.” *In re Unisys Savings Plan Litig.*,
9 74 F.3d 420, 435 (3d Cir. 1996); *Katsaros v. Cody*, 744 F.2d 270, 279 (2nd Cir. 1984) (fiduciaries must
10 use “the appropriate methods to investigate the merits” of Plan investments). Fiduciaries must
11 “initially determine, and continue to monitor, the prudence of *each investment* option available to Plan
12 Participants.” *DiFelice v. U.S. Airways, Inc.*, 497 F.3d 410, 423 (4th Cir. 2007) (emphasis original); 29
13 C.F.R. § 2550.404a-1; DOL Adv. Opinion 98-04A; DOL Adv. Opinion 88-16A. Thus, a defined
14 contribution Plan fiduciary cannot “insulate itself from liability by the simple expedient of including
15 a very large number of investment alternatives in its portfolio and then shifting to the participants
16 the responsibility for choosing among them.” *Hecker v. Deere & Co.*, 569 F.3d 708, 711 (7th Cir. 2009).
17 Fiduciaries have “a continuing duty to monitor investments and remove imprudent ones[.]” *Tibble*,
18 135 S. Ct. at 1828-29.

19 32. “Wasting beneficiaries’ money is imprudent. In devising and implementing strategies
20 for the investment and management of trust assets, trustees are obligated to minimize costs.”
21 Uniform Prudent Investor Act § 7.

22 33. 29 U.S.C. § 1132(a)(2) authorizes Plan Participants to bring a civil action for
23 appropriate relief under 29 U.S.C. § 1109.

24 DEFINED CONTRIBUTION INDUSTRY

25 34. Over the past three decades, defined contribution plans have become the most
26 common employer-sponsored retirement plan. A defined contribution plan allows employees to
27 make pre-tax elective deferrals through payroll deductions to an individual account under a plan.

1 Among many options, employers may make contributions on behalf of all employees and/or make
2 matching contributions based on the employees' elective deferrals. Employees with money in a plan
3 are referred to as "Participants."

4 35. As of September 2020, Americans had approximately \$9.3 trillion in assets invested
5 in defined contribution plans, such as 401(k) and 403(b) plans. See INVESTMENT COMPANY
6 INSTITUTE, *Retirement Assets Total \$33.1 Trillion in Third Quarter 2020* (Dec. 16, 2020), available at
7 https://www.ici.org/research/stats/retirement/ret_20_q3. Defined contribution plans have largely
8 replaced defined benefit plans—or pension plans—that were predominant in previous generations.
9 See BANKRATE, *Pensions Decline as 401(k) Plan Multiply* (July 24, 2014), available at
10 <http://www.bankrate.com/finance/retirement/pensions-decline-as-401-k-Plan-multiply-1.aspx>. By
11 2012, approximately 98% of employers offered defined contribution plans to their current employees,
12 whereas only 3% offered pension plans. *Id.*

13 36. Failures by ERISA fiduciaries to monitor fees and costs for reasonableness have stark
14 financial consequences for retirees. Every extra level of expenses imposed upon plan participants
15 compounds over time and reduces the value of participants' investments available upon retirement.

16 37. The potential for disloyalty and imprudence is much greater in defined contribution
17 plans than in defined benefit plans. In a defined benefit plan, the participant is entitled to a fixed
18 monthly pension payment, while the employer is responsible for making sure the plan is sufficiently
19 capitalized, and thus the employer bears all risks related to excessive fees and investment
20 underperformance. *See Hughes Aircraft Co. v. Jacobson*, 525 U.S. 432, 439 (1999). Therefore, in a defined
21 benefit plan, the employer and the plan's fiduciaries have every incentive to keep costs low and to
22 remove imprudent investments. But in a defined contribution plan, participants' benefits "are limited
23 to the value of their own investment accounts, which is determined by the market performance of
24 employee and employer contributions, less expenses." *Tibble*, 135 S. Ct. at 1826. Thus, the employer
25 has no incentive to keep costs low or to closely monitor the plan to ensure every investment remains
26 prudent, because all risks related to high fees and poorly performing investments are borne by the
27 employee.

1 **Retirement Plan Services (RPS)**

2 38. Defined Contribution plan fiduciaries virtually always hire service providers to deliver
3 a retirement plan benefit to their employees. There is a large group of national retirement plan services
4 providers (“RPSP”), commonly and generically referred to as “recordkeepers,” that have developed
5 bundled service offerings that can meet all the needs of virtually all retirement plans. In some cases,
6 these RPSP have developed all the capabilities “in-house,” while in other cases, the RPSP outsource
7 some of the required services to other service providers.

8 39. These RPSP deliver all the essential recordkeeping and related administrative
9 (“RK&A”) services through standard bundled offerings.

10 40. There are two types of essential RK&A services provided by all RPSP. For large plans
11 with substantial bargaining power (like the Plan here), the first type, “Bundled RK&A,” is provided
12 as part of a “bundled” fee for a buffet style level of service (meaning that the services are provided
13 in retirement industry parlance on an “all-you-can-eat” basis). The Bundled RK&A services include,
14 but are not limited to, the following standard services:

- 15 a. Recordkeeping;
- 16 b. Transaction Processing (which includes the technology to process purchases and
17 sales of participants’ assets as well as providing the participants the access to
18 investment options selected by the plan sponsor);
- 19 c. Administrative Services related to converting a plan from one RPSP to another RPSP;
- 20 d. Participant communications (including employee meetings, call centers/phone
21 support, voice response systems, web account access, and the preparation of other
22 communications to participants, e.g., Summary Plan descriptions and other
23 participant materials);
- 24 e. Maintenance of an employer stock fund (if needed);
- 25 f. Plan Document Services which include updates to standard plan documents to
26 ensure compliance with new regulatory and legal requirements;
- 27 g. Plan consulting services including assistance in selecting the investments offered to
28 participants;
- h. Accounting and audit services including the preparation of annual reports, e.g., Form
5500 (not including the separate fee charged by an independent third-party auditor);
- i. Compliance support which would include, e.g., assistance interpreting plan
provisions and ensuring the operation of the plan is in compliance with legal
requirements and the provisions of the plan (which would not include separate legal

services provided by a third-party law firm); and

- j. Compliance testing to ensure the plan complies with Internal Revenue nondiscrimination rules.

41. The second type of essential RK&A services, hereafter referred to as “Ad Hoc RK&A” services, provided by all RPSP, often have separate, additional fees based on the conduct of individual participants and the usage of the service by individual participants (usage fees). These “Ad Hoc RK&A” services typically include, but are not limited to, the following:

- a. Loan Processing;
- b. Brokerage services/account maintenance (if offered by the plan);
- c. Distribution services; and
- d. Processing of Qualified Domestic Relations Orders.

42. For very large plans with about 7,000 participants or more, like the Plan here, any minor variations in the way that these two types of essential RK&A services, as well as any other RK&A services included in the bundled offering of RK&A services, are delivered has *no material impact on the fees charged by RPSP*. This fact is confirmed by the practice of all RPSP quoting fees for the Bundled RK&A services on a per participant basis without regard for any individual differences in type of level of services requested -- which are treated by the RPSP as immaterial because they are, in fact, inconsequential from a cost perspective to the delivery of the Bundled RK&A services.

43. The combination of Bundled RK&A Services and Ad Hoc RK&A services can be referred to as retirement plan services (“RPS”). The vast majority of fees earned by RPSP through providing RPS typically come from the bundled fee for providing the Bundled RK&A services as opposed to the Ad Hoc RK&A services.

44. The Plan’s 404a-5 participant fee disclosure makes clear that the Plan here had a standard package of RPS that all mega retirement 401(k) plans have (more than a billion dollars in assets), i.e., Bundled RK&A Services and Ad Hoc RK&A services as described. The RPS received by the Juniper Plan was identical or substantially similar in terms of the quality, type, and level of services that almost all comparable plans with similar numbers of participants and/or assets under management received from the same or similar RPSPs.

1 45. Because RPSP at this level of plan size offer the same bundles and combinations of
2 services as their competitors, the market for defined contribution RPS has become increasingly price
3 competitive, particularly for large plans that, like the Plan here, have a sizable number of participants
4 and a large amount of assets.

5 46. Over the past twenty years, the fees that RPSP have been willing to accept for
6 providing RPS has significantly decreased. RPSP are willing (or competitively required) to accept a
7 lower and more competitive fee as a result of, among other things, the competitive pressures created
8 by greater information becoming available to plan fiduciaries and the reduction in opaque fee
9 structures.

10 47. By the start of and during the entire Class Period, the level of fees that RPSP have
11 been willing to accept for providing RPS has stabilized, and has not materially changed for large
12 plans, including the Plan here. In other words, reasonable RPS fees paid in 2019 or 2020 are
13 representative of the reasonable fees for RPS during the entire Class Period.

14 48. The underlying cost to a RPSP of providing the RPS to a defined contribution plan
15 is primarily dependent on the number of participant accounts in the Plan rather than the amount of
16 assets in the Plan.

17 49. The incremental cost for a RPSP to provide RPS for a participant's account does not
18 materially differ from one participant to another and is not dependent on the balance of the
19 participant's account.

20 50. RSPS for relatively larger defined contribution plans, like the Plan here, experience
21 certain efficiencies of scale that lead to a reduction in the per-participant cost as the number of
22 participants increase because the marginal cost of adding an additional participant to a recordkeeping
23 platform is relatively low.

24 51. Therefore, while the total cost to an RPSP to deliver RPS increases as more
25 participants join the Plan, the cost per participant to deliver the RPS decreases.

26 52. Since at least the early 2000s, plan fiduciaries and their consultants and advisors have
27 been aware of this cost structure dynamic for RPSP.

1 53. Since at least the early 2000s, Defendants should have been aware of this cost
2 structure dynamic for RPSP.

3 54. Sponsors of defined contribution plans contract for RPS separately from any
4 contracts related to the provision of investment management services to plan participants.

5 55. The investment options selected by plan fiduciaries often have a portion of the total
6 expense ratio allocated to the provision of RPS performed by the RPSP on behalf of the investment
7 manager.

8 56. As a result, RPSP often make separate contractual arrangements with mutual fund
9 providers. For example, RPSP often collect a portion of the total expense ratio fee of the mutual
10 fund in exchange for providing services that would otherwise have to be provided by the mutual
11 fund. These fees are known as “revenue sharing.”

12 57. For example, if a mutual fund has a total expense ratio fee of 0.75%, the mutual fund
13 provider may agree to pay the RPSP 0.25% of the 0.75% total expense ratio fee that is paid by the
14 investor in that mutual fund (in this context the Plan Participant). That 0.25% portion of the 0.75%
15 total expense ratio fee is known as the “revenue sharing.”

16 58. In the context of defined contribution plans, the amount of revenue sharing is
17 deemed to be the amount of revenue paid by participants that is allocable to RPS. The difference
18 between the total expense ratio and the revenue sharing is known as the “Net Investment Expense
19 to Retirement Plans.”

20 59. In the context of defined contribution plans, when a Plan adopts prudent and best
21 practices, the Net Investment Expense to Retirement Plans is the actual amount a Plan Participant
22 pays for the investment management services provided by a portfolio manager.

23 60. RPSP typically collect their fees through direct payments from the Plan or through
24 indirect compensation such as revenue sharing, or some combination of both.

25 61. Regardless of the pricing structure that the plan fiduciary negotiates with any service
26 provider, the amount of compensation paid to service providers, including the RPSP, must be
27 reasonable.

1 62. As a result, plan fiduciaries must understand the total dollar amounts paid to their
2 service providers, including the RPSP, and be able to determine whether the compensation is
3 reasonable by understanding what the market is for the RPS received by the Plan.

4 63. During the Class Period, Defendants knew and/or were aware that a Plan with more
5 participants can and will receive a lower effective per participant RPS fee when evaluated on a per
6 participant basis.

7 64. During the Class Period, Defendants knew and/or were aware that the Plan should
8 have received a lower effective per participant RPS fee when evaluated on a per participant basis.

9 **Investments**

10 65. Plan fiduciaries of a defined contribution Plan have a continuing and regular
11 responsibility to select and monitor all investment options they make available to Plan Participants.

12 66. The primary purpose in selecting Plan investments is to give all participants the
13 opportunity to create an appropriate asset allocation under modern portfolio theory by providing
14 diversified investment alternatives.

15 67. In many cases, a plan sponsor can receive the investment management services of the
16 same portfolio manager through different share classes. When the same investment management
17 services are provided through a mutual fund with different share classes, the fee paid to the portfolio
18 manager is the same for all share classes. The difference in the share class fees is the amount of
19 additional fees which can be used to pay for, among other things, RPS services.

20 68. As a result, when a prudent plan fiduciary can select from among several alternative
21 share classes of the identical investment option, the prudent plan fiduciary selects the share class that
22 provides the lowest Net Investment Management Expense to Retirement Plans.

23 **Managed Account Service Fees**

24 69. During the Class Period, Defendants selected and made available to Plan Participants
25 managed account services.
26
27
28

1 70. In general, managed account services are investment services under which a
2 participant pays a fee to have a managed account provider invest his account in a portfolio of
3 preselected investment options.

4 71. Managed account providers “generally offer the same basic service—initial and
5 ongoing investment management of a 401(k)-plan participant’s account based on generally accepted
6 industry methods.” THE UNITED STATES GOVERNMENT ACCOUNTABILITY OFFICE
7 (“GAO”), *401(K) PLANS: Improvements Can Be Made to Better Protect Participants in Managed Accounts*, at
8 14 (June 2014), available at <https://www.gao.gov/assets/670/664391.pdf>.

9 72. The assets of a participant signing up for a managed account service are generally
10 managed based upon a program designed by the managed account provider that purportedly
11 customizes the participant’s portfolio based upon factors such as their risk tolerance and the number
12 of years before they retire.

13 73. In practice, however, there is often little to no material customization provided to the
14 vast majority of plan participants which results in no material value to most, if not all, participants
15 relative to the fees paid.

16 74. In fact, many managed account services merely mimic the asset allocations available
17 through a target date fund while charging additional unnecessary fees for their services.

18 75. Participants who sign up for managed account services are generally charged an
19 annual fee that is a percentage of the participant’s account balance. The fee rates for these services
20 are often tiered. For example, the first \$100,000 of assets may be charged a certain fee rate, the next
21 \$150,000 in assets at a lower fee rate, and all remaining assets at a still-lower fee rate. This is
22 appropriate because the marginal cost to manage the additional assets for the participant is essentially
23 \$0.

24 76. In other words, the cost to manage the account of a participant with \$100,000 is the
25 same as the cost to manage the account of a participant with \$500,000. The economies of scale for
26 managed account services are even greater than for RPS.

1 77. The participant has no control over the fee rate they are charged if they use the
2 managed account service. The fee levels are determined at the plan level through a contractual
3 agreement between the managed account provider and plan fiduciaries.

4 78. For at least the past decade, larger plans have been able to negotiate multiple facets
5 of the fees charged by managed account providers such as both the asset levels at which a particular
6 fee tier starts (e.g., the highest tier applies to the first \$25,000 versus the first \$100,000), as well as the
7 fee rate charged at each asset level.

8 79. Managed account services are often offered by covered service providers to increase
9 the revenue they generate through their relationship with a retirement plan. In some cases, the
10 covered service provider outsources the investment management services to a third-party provider,
11 e.g., Morningstar, and charges a fee to the plan higher than what the third-party provider charges the
12 covered service provider. In other cases, the covered service provider provides all the services.

13 80. In many cases, the covered service provider will promote the managed account
14 services over other potential solutions because the covered service provider will earn more revenue
15 when participants use the managed account services.

16 81. As with any service provider, one of the most important factors when selecting a
17 managed account provider is fees. Managed account services have historically been expensive
18 compared to other alternatives, such as target date funds that provide the materially same service
19 (e.g., an automated time-based dynamic asset allocation creation and rebalancing solution).

20 82. This industry segment has matured over the past decade and the costs of providing
21 managed account services have declined and competition has increased. As a result, the fees providers
22 are willing to accept for managed account services have been declining for many years.

23 83. As with retirement plan service services, prudent fiduciaries will regularly monitor the
24 amount of managed account service fees the plan is paying and will ensure the fees are reasonable
25 compared to what is available in the market for materially similar services.

26 84. The most effective way to ensure a plan's managed account service fees are reasonable
27 is to periodically solicit bids from other managed account service providers, stay abreast of the market
28

1 rates for managed account solutions, and/or negotiate most-favored nation clauses with the managed
2 account service providers and/or the RPSP.

3 85. Defendants caused Plan Participants to pay excessive fees for the managed account
4 services it made available to Plan Participants by not periodically soliciting bids from other managed
5 account service providers and/or not staying abreast of the market rates for managed account
6 solutions to negotiate market rates.

7 86. The excessive fees paid by Plan Participants using the managed account service were
8 not warranted and did not provide any material value or benefit to Plan Participants.

9 **THE PLAN**

10 87. During the class period the Plan received RPS from RPSP Fidelity Investments
11 Institutional (“Fidelity”).

12 88. At all relevant times, the Plan’s fees were excessive when compared with other
13 comparable 401(k) plans offered by other sponsors that had similar numbers of plan participants,
14 and similar amounts of money under management. The fees were also excessive relative to the RPS
15 services received, which were identical or substantially similar in terms of quality, level, and types of
16 services. These excessive fees led to lower net returns than participants in comparable 401(k) plans
17 enjoyed.

18 89. During the Class Period, Defendants breached their duties owed to the Plan, to
19 Plaintiff and all other Plan Participants, by: (1) failing to monitor the RPS fees paid by the plan to
20 ensure that they were reasonable and, as a result, authorizing the Plan to pay objectively unreasonable
21 and excessive RPS fees, relative to the RPS received; (2) failing to objectively, reasonably, and
22 adequately review the Plan’s investment portfolio with due care to ensure that each investment option
23 was prudent, in terms of cost; (3) maintaining certain funds in the Plan despite the availability of
24 identical or similar investment options with lower costs and/or better performance histories; (4)
25 authorizing the Plan to pay unreasonably high fees for managed account services; and (5) failing to
26 disclose to Participants necessary Plan information for them to make informed Plan investment
27 decisions.

1 90. Defendants' mismanagement of the Plan, to the detriment of Plan Participants and
2 beneficiaries, breached the fiduciary duties of prudence and loyalty in violation of 29 U.S.C. § 1104.

3
4 **STANDARD OF CARE FOR PRUDENT FIDUCIARIES**
5 **SELECTING & MONITORING RECORDKEEPERS**

6 91. A plan fiduciary is required to fully understand all sources of revenue received by all
7 service providers, including its RPSP. It must regularly monitor that revenue to ensure that the
8 compensation received is, and remains, reasonable for the services provided.

9 92. Prudent plan fiduciaries ensure they are paying only reasonable fees for RPS by
10 soliciting competitive bids from other service providers to perform the same type and level of services
11 currently being provided to the plan. This is not a difficult or complex process and is performed
12 regularly by prudent plan fiduciaries.

13 93. For Plans with as many participants as the Juniper Plan, many RPSP would require
14 only the number of participants while others might require only the number of participants and the
15 amount of the assets to provide a quote.

16 94. Prudent plan fiduciaries have all of this information readily available and can easily
17 receive a quote from other RPSP to determine if the current level of RPS fees is reasonable.

18 95. Having received bids, the prudent plan fiduciary can negotiate with its current
19 provider for a lower fee and/or move to a new provider to provide the same (or better) services for
20 a competitive reasonable fee if necessary.

21 96. Prudent plan fiduciaries follow this same process to monitor the fees of retirement
22 plan advisors and/or consultants as well as any other covered service providers.

23 97. After the revenue requirement is negotiated, the plan fiduciary determines how to pay
24 the negotiated RPS fee. The employer/plan sponsor can pay the recordkeeping fee on behalf of
25 participants, which is the most beneficial to plan participants. If the employer were paying the fee,
26 the employer would have an interest in negotiating the lowest fee a suitable RPSP would accept.
27 Usually, however, the employer decides to have the plan (plan participants) pay the RPS fee instead.

1 If the RPS fee is paid by plan participants, the plan fiduciary can allocate the negotiated fee among
2 participant accounts on a per capita or pro-rata basis.

3 98. If the plan negotiates a per participant revenue threshold of \$30.00 for the Bundled
4 RK&A, the plan does not need to require that each participant pay \$30.00. Rather, the plan fiduciary
5 could determine that an asset-based fee is more appropriate for plan participants and allocate the
6 Bundled RK&A fee pro rata to participants. For example, a 15,000 participant-plan with a \$30.00
7 revenue threshold would pay \$450,000 for RPS. If the plan had \$3,000,000,000 in assets, then the
8 \$450,000 would work out to 1.5 basis points. Accordingly, the plan fiduciary could allocate the
9 \$450,000 to plan participants by requiring that each participant pay 1.5 basis points.

10 99. In an asset-based pricing structure, the amount of compensation received by the
11 service provider is based on a percentage of the total assets in the plan. This structure creates
12 situations in which the RPS do not change but, because of market appreciation and contributions to
13 the plan, the revenue received by the RPSP increases. This structure was historically preferred by
14 RPSP because it allowed them to obtain an increase in revenue without having to ask the client to
15 pay a higher fee.

16 100. Regardless of the pricing structure, and Plaintiff states no preference, the plan
17 fiduciary must ensure that the fees paid to service providers for RPS are reasonable.

18 101. All of these standards were accepted and understood by prudent plan fiduciaries,
19 including Defendants, at all times during the Class Period.

20 102. For example, fiduciary best practices based on DOL guidelines, case law, and
21 marketplace experience are as follows:

- 22 1. Price administrative fees on a per-participant basis.
- 23 2. Benchmark and negotiate recordkeeping and investment fees separately.
- 24 3. Benchmark and negotiate investment fees regularly, considering both fund
25 vehicle and asset size.

1 4. Benchmark and negotiate recordkeeping and trustee fees at least every other
2 year.

3

4 7. Review services annually to identify opportunities to reduce administrative
5 costs.¹

6 103. Prudent fiduciaries implement three related processes to prudently manage and
7 control a plan’s RPS costs. *Tussey v. ABB, Inc.*, 746 F.3d 327, 336 (8th Cir. 2014) (holding that
8 fiduciaries of a 401(k) Plan “breach[] their fiduciary duties” when they “fail[] to monitor and control
9 recordkeeping fees” incurred by the Plan); *George v. Kraft Foods Glob., Inc.*, 641 F.3d 786, 800 (7th Cir.
10 2011) (explaining that defined contribution plan fiduciaries have a “duty to ensure that [the
11 recordkeeper’s] fees [are] reasonable”).

12 104. First, a plan fiduciary must pay close attention to the RPS fees being paid by the Plan.
13 A hypothetical prudent fiduciary tracks the RPSP’s expenses by demanding documents that
14 summarize and contextualize the RPSP’s compensation, such as fee transparencies, fee analyses, fee
15 summaries, relationship pricing analyses, cost-competitiveness analyses, and multi-practice and
16 standalone pricing reports.

17 105. Second, to make an informed evaluation as to whether a RPSP or other service
18 provider is receiving no more than a reasonable fee for the services provided to a plan, a prudent
19 hypothetical fiduciary must identify all fees, including direct compensation and revenue sharing being
20 paid to the plan’s RPSP. To the extent that a plan’s investments pay asset-based revenue sharing to
21 the RPSP, prudent fiduciaries monitor the amount of the payments to ensure that the RPSP’s total
22 compensation from all sources does not exceed reasonable levels, and require that any revenue
23 sharing payments that exceed a reasonable level be returned to the plan and its participants.

24 106. Third, a hypothetical plan fiduciary must remain informed about overall trends in the
25 marketplace regarding the fees being paid by other plans, as well as the RPS rates that are available.

26 ¹ “Fiduciary Best Practices,” *DC Fee Management — Mitigating Fiduciary Risk and Maximizing Plan Performance*,
27 Mercer LLC (2013).

1 This will generally include conducting a Request for Proposal (“RFP”) or Request for Information
2 (“RFI”) process at reasonable intervals, and immediately if the plan’s RPS expenses have grown
3 significantly or appear high in relation to the general marketplace.

4 107. By merely soliciting bids from other RPSP, a prudent plan fiduciary can quickly and
5 easily gain an understanding of the current market for similar RPS services and have an idea of a
6 starting point for negotiation. Accordingly, the only way to determine the true market price at a given
7 time is to obtain competitive bids through some process. *See George v. Kraft Foods Global, Inc.*, 641 F.3d
8 786, 800 (7th Cir. 2011) (failure to solicit bids, and higher-than-market recordkeeping fees, supported
9 triable fiduciary breach claim).

10
11 **THE PLAN’S FIDUCIARIES DID NOT EFFECTIVELY MONITOR RPS FEES AND,**
12 **AS A RESULT, THE PLAN PAID UNREASONABLE RPS FEES**

13 108. A plan fiduciary must continuously monitor its RPS fees by regularly soliciting
14 competitive bids to ensure fees paid to RPSP are reasonable.

15 109. During the Class Period, Defendants knew or should have known that they must
16 regularly monitor the Plan’s RPS fees paid to RPSP, including but not limited to Fidelity.

17 110. During the Class Period, Defendants failed to regularly monitor the Plan’s RPS fees
18 paid to RPSP, including but not limited to Fidelity.

19 111. During the Class Period, Defendants knew or should have known that they must
20 regularly solicit quotes and/or competitive bids from RPSP, including but not limited to Fidelity, in
21 order to avoid paying objectively unreasonable fees for RPS.

22 112. During the Class Period, Defendants failed to regularly solicit quotes and/or
23 competitive bids from RPSP, including but not limited to Fidelity, in order to avoid paying
24 unreasonable fees for RPS.

25 113. During the Class Period, Defendants knew or should have known that it was in the
26 best interests of the Plan’s Participants to ensure that the Plan paid no more than a competitive
27 reasonable fee for RPS.

1 114. During the Class Period, and unlike a hypothetical prudent fiduciary, Defendants
2 failed to ensure that the Plan paid no more than a competitive reasonable fee for RPS.

3 115. During the Class Period, and unlike a hypothetical prudent fiduciary, Defendants
4 followed a fiduciary process that was done ineffectively given the objectively unreasonable fees paid
5 for RPS.

6 116. During the Class Period, and unlike a hypothetical prudent fiduciary, Defendants did
7 not engage in objectively reasonable and/or prudent efforts to ensure that the Plan paid no more
8 than a competitive reasonable fee for RPS.

9 117. During the Class Period and because Defendants failed to regularly monitor the Plan's
10 RPS fees paid to RPSP, including but not limited to Fidelity, the Plan's RPS fees were significantly
11 higher than they would have been had Defendants engaged in this process.

12 118. During the Class Period, given the Plan's objectively unreasonable RPS fees,
13 Defendants engaged in an ineffective fiduciary process in soliciting competitive bids for these
14 services.

15 119. During the Class Period and because Defendants did not engage in objectively
16 reasonable and/or prudent efforts when paying fees for RPS to RPSP, including but not limited to
17 Fidelity, the RPS fees were significantly higher than they would have been had Defendants engaged
18 in these efforts.

19 120. From the years 2015 through 2019 and based upon the best publicly available
20 information, which was equally or even more easily available to Defendants during the Class Period,
21 the table below shows the actual year-end participants and annual RPS fees illustrating that the Plan
22 had on average 6,770 participants with account balances and paid an average effective annual RPS
23 fee of at least approximately \$543,687, which equates to an average of at least approximately \$80 per
24 participant. These are the minimum amounts that could have been paid:

Retirement Plan Services (RPS) Fees

	2015	2016	2017	2018	2019	Average
Participants	6,742	6,824	6,708	6,715	6,860	6,770
Est. RPS Fees	\$584,568	\$575,750	\$733,946	\$308,323	\$515,846	\$543,687
Est. RPS Per Participant	\$87	\$84	\$109	\$46	\$75	\$80

121. From the years 2015 through 2019 and based upon the best publicly available information, which was equally or even more easily available to Defendants during the Class Period, the table below illustrates the annual RPS fees paid by other comparable plans of similar sizes with similar amounts of money under management, receiving a similar level and quality of services, compared to the average annual RPS fees paid by the Plan (as identified in the table above).

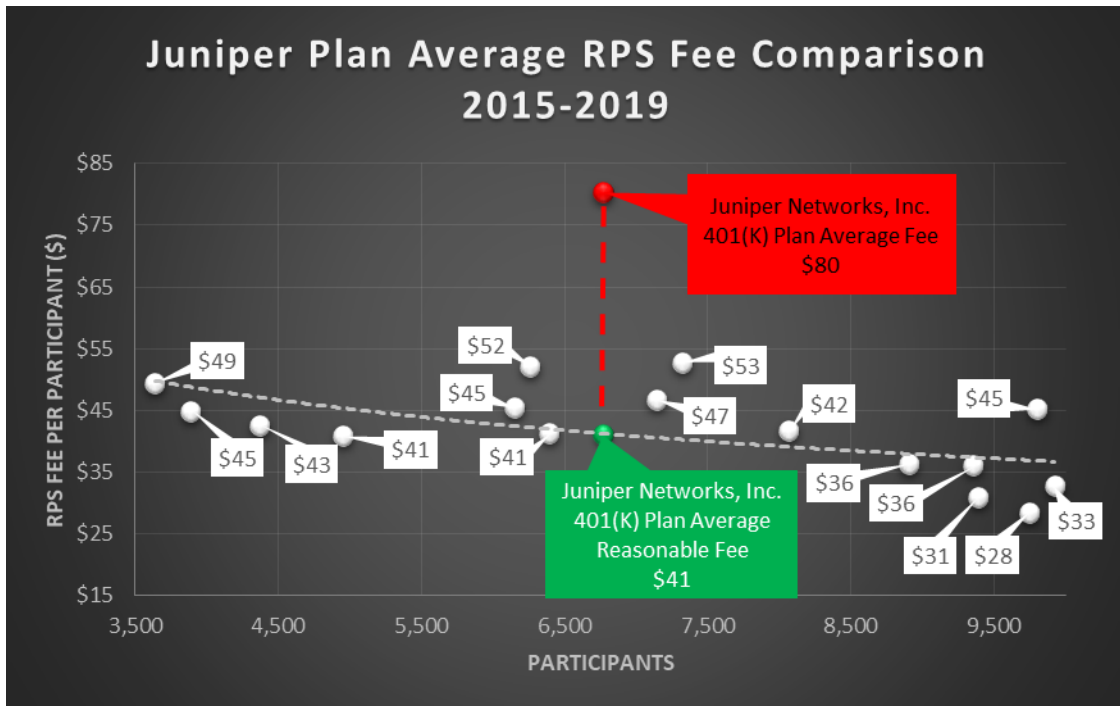
Comparable Plans' RPS Fees Based on Publicly Available Information from Form 5500¹

Plan	Partici pants	Assets	RPS Fee	RPS Fee /pp	Recordk eeper	Graph Color
Associated Materials, LLC 401(K) Retirement Plan	3,639	\$99,814,049	\$179,475	\$49	ADP	White
Hitachi Vantara Corporation Retirement and Savings Program	3,890	\$680,441,899	\$174,568	\$45	Fidelity	White
The Boston Consulting Group, Inc. Employees' Profit-Sharing Retirement Fund	4,369	\$421,208,989	\$185,805	\$43	Vanguard	White
Healthfirst Profit Sharing 401(K) Plan	4,950	\$227,721,800	\$201,889	\$41	Vanguard	White
Mercedes-Benz USA, LLC Employees' Retirement Savings Plan	5,713	\$572,242,547	\$331,038	\$58	Voya	White
Smithfield Foods, Inc. Salaried 401(K) Plan	6,149	\$500,178,777	\$278,907	\$45	Great-West	White
Genesis Health System Retirement Savings Plan	6,260	\$231,793,794	\$325,894	\$52	Transamerica	White

1	FlowsERVE Corporation Retirement Savings Plan	6,395	\$892,435,613	\$263,380	\$41	T. Rowe Price	White
2							
3	Juniper Networks, Inc. 401(K) Plan Average Fee	6,770	\$1,131,015,894	\$543,687	\$80	Fidelity	Red
4							
5	St. Luke's Health Network 403(B) Plan	7,142	\$241,600,647	\$333,578	\$47	Transam erica	White
6	Memorial Health System Defined Contribution Retirement Savings Plan	7,318	\$221,242,194	\$385,754	\$53	Transam erica	White
7							
8	Waste Connections, Inc. 401k Profit Sharing Plan	7,923	\$332,567,264	\$455,853	\$58	Voya	White
9							
10	The Boston Consulting Group, Inc. Employees' Savings Plan and Profit Sharing Retirement Fund	8,067	\$894,454,060	\$336,660	\$42	Vanguard	White
11							
12	Bausch Health Companies Inc. Retirement Savings Plan	8,902	\$904,717,349	\$322,496	\$36	Fidelity	White
13							
14	Children's Medical Center of Dallas Employee Savings Plan 403(b)	9,356	\$349,335,673	\$337,416	\$36	Fidelity	White
15							
16	Ralph Lauren Corporation 401(K) Plan	9,389	\$552,586,935	\$290,066	\$31	T. Rowe Price	White
17							
18	Vibra Healthcare Retirement Plan	9,750	\$107,652,510	\$277,532	\$28	Great- West	White
19							
20	Centerpoint Energy Savings Plan	9,802	\$2,108,802,293	\$442,946	\$45	Voya	White
21							
22	Republic National 401(k) Plan	9,922	\$671,989,837	\$324,171	\$33	Great- West	White
23							
24							
25							
26							
27							
28							

¹Price calculations are based on 2018 Form 5500 information.

1 122. From the years 2015 through 2019 and based upon the best publicly available
 2 information, which was equally or even more easily available to Defendants during the Class Period,
 3 the graph below illustrates the annual RPS fees paid by other comparable plans of similar sizes with
 4 similar amounts of money under management, receiving a similar level and quality of services,
 5 compared to the average annual RPS fees paid by the Plan (as identified in the table above), with the
 6 white data points representing RPS fees that RPS providers offered to (and were accepted by)
 7 comparable Plans.



20

21 123. From the years 2015 to 2019 and based upon the best publicly available information,
 22 which was equally or even more easily available to Defendants during the Class Period, the table and
 23 graph above illustrate that the Plan paid an effective average annual RPS fee of at least \$80 per
 24 participant for RPS.

25 124. From the years 2015 through 2019 and based upon the best publicly available
 26 information, which was equally or even more easily available to Defendants during the Class Period,
 27

1 the table and graph above illustrate that a hypothetical prudent plan fiduciary would have paid on
2 average an effective annual RPS fee of around \$41 per participant, if not lower.

3 125. From the years 2015 through 2019 and based upon the best publicly available
4 information, which was equally or even more easily available to Defendants during the Class Period,
5 and as also compared to other plans of similar sizes with similar amounts of money under
6 management, had Defendants been acting in the exclusive best interest of the Plan's Participants the
7 Plan actually would have paid significantly less than an average of approximately \$543,687 per year
8 in RPS fees, which equated to an effective average of approximately \$80 per participant per year.

9 126. From the years 2015 through 2019 and based upon the best publicly available
10 information, which was equally or even more easily available to Defendants during the Class Period,
11 and as also compared to other plans of similar sizes with similar amounts of money under
12 management, receiving a similar level and quality of services, had Defendants been acting in the best
13 interests of the Plan's Participants, the Plan actually would have paid on average a reasonable effective
14 annual market rate for RPS of approximately \$277,562 per year in RPS fees, which equates to
15 approximately \$41 per participant per year. During the entirety of the Class Period, a hypothetical
16 prudent plan fiduciary would not agree to pay almost double what they could otherwise pay for RPS.

17 127. From the years 2015 through 2019 and based upon the best publicly available
18 information, which was equally or even more easily available to Defendants during the Class Period,
19 the Plan additionally cost its Participants on average approximately \$266,125 per year in RPS fees,
20 which equates to on average approximately \$39 per participant per year.

21 128. From the years 2015 to 2019, and because Defendants did not act in the best interests
22 of the Plan's Participants, and as compared to other plans of similar sizes with similar amounts of
23 money under management, receiving a similar level and quality of services, the Plan actually cost its
24 Participants a total minimum amount of approximately \$1,330,624 in unreasonable and excessive
25 RPS fees.

26 129. From the years 2015 to 2019 based upon the best publicly available information,
27 which was equally or even more easily available to Defendants during the Class Period, because
28

1 Defendants did not act in the best interests of the Plan’s Participants, and as compared to other plans
2 of similar sizes with similar amounts of money under management, receiving a similar level and
3 quality of services, the Plan actually cost its Participants (when accounting for compounding
4 percentages) a total, cumulative amount in excess of \$1,836,069 in RPS fees.

5 130. During the entirety of the Class Period, and unlike a hypothetical prudent fiduciary,
6 Defendants did not regularly and/or reasonably assess the Plan’s RPS fees it paid to Fidelity.

7 131. During the entirety of the Class Period, and unlike a hypothetical prudent fiduciary,
8 Defendants did not engage in any regular and/or reasonable examination and competitive
9 comparison of the RPS fees it paid to Fidelity vis-à-vis the fees that other RPS providers would
10 charge, and would have accepted, for the same services.

11 132. During the entirety of the Class Period, Defendants knew or had knowledge that it
12 must engage in regular and/or reasonable examination and competitive comparison of the Plan’s
13 RPS fees it paid to Fidelity, but Defendants either simply failed to do so, or did so ineffectively given
14 that it paid almost 100% higher for RPS fees than it should have.

15 133. During the entirety of the Class Period and had Defendants engaged in regular and/or
16 reasonable examination and competitive comparison of the RPS fees it paid to Fidelity, it would have
17 realized and understood that the Plan was compensating Fidelity unreasonably and inappropriately
18 for its size and scale, passing these objectively unreasonable and excessive fee burdens to Plaintiff
19 and Plan Participants. The fees were also excessive relative to the RPS services received, since such
20 services are standard for mega 401(k) plans like the Plan here.

21 134. During the entirety of the Class Period and by failing to recognize that the Plan and
22 its participants were being charged much higher RPS fees than they should have been and/or by
23 failing to take effective remedial actions as described herein, Defendants breached their fiduciary
24 duties of loyalty and prudence to Plaintiff and Plan Participants.

**STANDARD OF CARE FOR PRUDENT FIDUCIARIES SELECTING
& MONITORING INVESTMENT OPTIONS**

1
2
3
4 135. For all practical purposes, there is a commonly accepted process to select and monitor
5 investment options which is based on modern portfolio theory and the prudent investor standard.
6 Under ERISA, plan fiduciaries are required to engage investment consultants or advisors to the extent
7 that the plan fiduciaries do not have the investment expertise necessary to select and monitor
8 investments.

9 136. That accepted process involves, among other things, evaluating the performance
10 history, tenure, and stability of the current portfolio manager; the risk adjusted returns; and the fees.

11 137. When an active investment option is chosen, one of the most critical aspects of the
12 analysis is to choose a portfolio manager because it is the skill of the portfolio manager that
13 differentially impacts the performance of the investment.

14 138. From the perspective of a plan participant, the other critical component of the
15 analysis is the fees. However, the total expense ratio of an investment option is often comprised of
16 multiple different types of fees, only one of which is specifically associated with the fee of the actual
17 portfolio manager.

18 139. As a result, a plan fiduciary is required to understand the interrelationship between
19 the pricing structure it has negotiated with the RPSP for RPS services as well as the different fee
20 components of the investment options selected to be made available to plan participants.

21 140. Plan fiduciaries of plans as large as the Defendant's Plan are deemed to be
22 "Institutional Investors" and are deemed to have a higher level of knowledge and understanding of
23 the different investment share classes and the different components of fees within the total expense
24 ratio of an investment option.

25 141. In fact, as "Institutional Investors," retirement plans often have the ability to access
26 investment options and service structures that are not available or understood by retail investors such
27 as individual plan participants like Plaintiff.
28

1 142. For example, minimum investment requirements and other fees or restrictions are
2 routinely waived for large retirement plans and were waived for the Plan’s investments.

3 143. As a result, when a plan fiduciary can choose among different share classes (or other
4 types of investment options, e.g., collective trusts) to receive the services of a specific portfolio
5 manager, the plan fiduciary is required to understand all the fees related to the different share classes
6 and collective trusts and choose the share class or collective trust that is in the best interest of the
7 plan participants. This is especially critical when the pricing structure provides compensation to the
8 RPSP from revenue sharing paid by plan participants as part of the total expense ratio of the
9 investment options selected by the plan fiduciaries.

10 **THE PLAN PAID UNREASONABLY HIGH FEES**
11 **FOR IMPRUDENT SHARE CLASSES**

12 144. Many mutual funds offer multiple classes of shares in a single mutual fund that are
13 targeted at different investors. Generally, more expensive shares are targeted at small investors with
14 less bargaining power, while lower cost shares are targeted at larger investors with greater assets.

15 145. There is no material difference between share classes other than costs – the funds
16 hold identical investments and have the same portfolio manager.

17 146. Large defined contribution plans, such as the Plan here, have sufficient assets to
18 qualify for the lowest cost share classes.

19 147. A prudent plan fiduciary ensures that a plan selects the share class that provides the
20 greatest benefit to plan participants given the institutional advantages provided to retirement plans
21 in relation to retail investors.

22 148. The share class that provides the greatest benefit to plan participants is the share class
23 that gives plan participants access to the skill and expertise of the portfolio managers at the lowest
24 net fee for the services of the portfolio manager and is referred to here as the “Net Investment
25 Expense to Retirement Plans.”

26 149. As described in more detail below, choosing the share class that provides the lowest
27 Net Investment Expense to Retirement Plans is always the prudent choice because the use of the
28

1 share class that provides the lowest Net Investment Expense to Retirement Plans will result in one
 2 of the following superior options: 1) The amount of the fee extraction to cover the RPS fee will be
 3 lower; or 2) the amount of excess revenue being credited back to Participant accounts is greater.

4 150. During the Class Period, Defendants knew or should have known that they were
 5 required to select the share classes that provide the greatest benefit to plan participants, i.e., the lowest
 6 Net Investment Expense to Retirement Plans.

7 151. During the Class Period, Defendants knew or should have known that it must engage
 8 in an objectively reasonable search for and selection of the share classes that provide the greatest
 9 benefit to plan participants.

10 152. During the Class Period, in many cases Defendants did not use share classes that
 11 provide the greatest benefit to plan participants.

12 153. During the Class Period, Defendants did not engage in an objectively reasonable
 13 search for and selection of the share classes that provide the greatest benefit to plan participants.

14 154. The following charts identifies Defendants’ share class investments during the Class
 15 Period vis-à-vis the prudent alternative that provided the greatest benefit to Plan Participants:

Defendants' Investment					Prudent Alternative Share Class					
Ticker	Fund Name	Exp Ratio (%)	Revenue Sharing (%)	Net Investment Expense to Retirement Plans (%)	Ticker	Fund Name	Exp Ratio (%)	Revenue Sharing (%)	Net Investment Expense to Retirement Plans (%)	Defendants' Plan's Investment Excessive Fees (%)
ABSZX	AB Discovery Value Z	0.79%	0.00%	0.79%	ABASX	AB Discovery Value A	1.13%	0.50%	0.63%	25%
FTBFX	Fidelity Total Bond Fund	0.45%	0.10%	0.35%	FEPTX	Fidelity Advisor® Total Bond M	0.75%	0.50%	0.25%	40%
<i>Average</i>		<i>0.62%</i>	<i>0.05%</i>	<i>0.57%</i>	<i>Average</i>		<i>0.94%</i>	<i>0.50%</i>	<i>0.44%</i>	<i>32.70%</i>

21 155. The underlying data and information reflected in the charts above are truthful,
 22 accurate, and derived from publicly available information, which was equally as available to
 23 Defendants during the Class Period, including, but not limited to, standard reports prepared by the
 24 Defendants’ RPS provider.
 25
 26
 27
 28

1 156. Based upon data and information reflected in the charts above, the excessive fee paid
2 by Participants during the Class Period as a result of Defendants’ failure to use the prudent alternative
3 share class that provided the greatest benefit to Plan Participants was approximately 33%.

4 157. There is no rational reason for a prudent plan fiduciary to choose an investment
5 option that effectively charges a fee that is approximately 33% higher than an alternative investment
6 option that provides the identical services of the same portfolio manager.

7 158. During the Class Period, and had Defendants engaged in a prudent process to select
8 the share class of the selected portfolio manager that provides the greatest benefit to Plan
9 Participants, the Plan would not have selected the share classes in the Plan.

10 159. During the Class Period, and had Defendants engaged in a prudent process, once a
11 portfolio manager had been selected, the Defendants would have selected the share classes listed in
12 the “Prudent Alternative Share Class” column of the chart above.

13 160. During the Class Period, and had Defendants engaged in an objectively reasonable
14 search for, and selection of, the share class that provided the greatest benefit to plan participants, the
15 Plan would not have selected the fund in the Plan.

16 161. During the Class Period, and had Defendants engaged in an objectively reasonable
17 search for, and selection of, the share class that provided the greatest benefit to plan participants, the
18 Plan would have selected the fund in the chart above.

19 162. During the Class Period, and had Defendants been acting in the best interests of the
20 Plan’s Participants, the Plan would not have selected the share class of the fund in the chart above.

21 163. During the Class Period and had Defendants been acting in the best interests of the
22 Plan’s Participants, the Plan would have selected the fund in the “Prudent Alternative Share Class”
23 columns of the chart above.

24 164. During the entirety of the Class Period, Defendants knew or should have known
25 about the existence of alternative share classes of the same mutual funds currently selected and
26 performed the analysis to determine the share class that provides the greatest benefit to Plan
27 Participants.

1 165. During the entirety of the Class Period, Defendants knew or should have known to
2 transfer the Plan funds into the share class that provides the greatest benefit to Plan Participants.

3 166. A hypothetical prudent fiduciary would not select a share class that results in higher
4 fees to Plan Participants when a share class that results in lower fees to Plan Participants is available
5 for the identical portfolio management services.

6 167. During the entirety of the Class Period, Defendants selected a share class that resulted
7 in higher fees to Plan Participants when a share class of the identical investment option was available
8 that would have resulted in lower fees, to the substantial detriment of Plaintiff and the Plan's
9 Participants.

10 168. During the entirety of the Class Period and because Defendants selected a share class
11 that resulted in higher fees when a share class that resulted in lower fees was available to the Plan for
12 the identical investment option, the Plaintiff and the Plan Participants did not receive any additional
13 services or benefits other than a higher cost for Plaintiff and the Plan Participants.

14 169. More specifically, the AB Discovery Value Z (ABSZX) was selected by plan
15 fiduciaries and made available to Participants in the Plan from 2015 through at least 2019.

16 170. As of December 31, 2019, Plan Participants had invested more than \$65,373,119 in
17 this investment option. The portfolio managers of this investment option were James W. MacGregor
18 and Erik Turenchalk (MacGregor & Turenchalk). Plan Participants can receive the identical portfolio
19 management services of MacGregor & Turenchalk through several different investment options
20 (share classes) with different fee structures. The fee structures for the varying share classes of this
21 investment option, all managed by MacGregor & Turenchalk, are set forth in the chart below:
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**Example of Different Share Class Fee Levels for
Identical Portfolio Management Services**

	AB Discovery Value A	AB Discovery Value Z
Share Class	A	Z
Investment Advisor	AllianceBernstein	AllianceBernstein
Portfolio Managers	James W. MacGregor, Erik Turenchalk	James W. MacGregor, Erik Turenchalk
Ticker	ABASX	ABSZX
Portfolio Management Fee	0.75%	0.75%
Total Expense Ratio	1.13%	0.79%
Revenue Sharing Credit	0.50%	0.00%
Net Investment Expense to Retirement Plans	0.63%	0.79%

171. The underlying data and information reflected in the chart above is truthful, accurate, and derived from publicly available information, which was equally as available to Defendants during the Class Period including, but not limited to, standard reports prepared by the Defendants' RPS provider.

172. In the second to last row of the chart above, "Revenue Sharing Credit," is the portion of the "Total Expense Ratio" that is allocable to the provision of RPS.

173. As a result, the fee paid for the portfolio management services of the portfolio managers MacGregor & Turenchalk to pursue the identical investment strategy with the same goals, objectives, and risk profile is the "Net Investment Expense to Retirement Plans" set forth in the bottom row.

174. As illustrated in the chart above, the AB Discovery Value A (ABASX) has the lowest "Net Investment Expense to Retirement Plans" at 0.63%. Despite the Total Expense Ratio being higher, the AB Discovery Value A (ABASX) provides the greatest benefit to Plan Participants because the 0.50% in revenue sharing that is allocable to RPS services is a credit that is returned to the participants directly or used as a credit against the RPS fee. If the 0.50% allocable to RPS services exceeds the actual RPS fee, then the excess can also be returned to the Plan and its Participants.

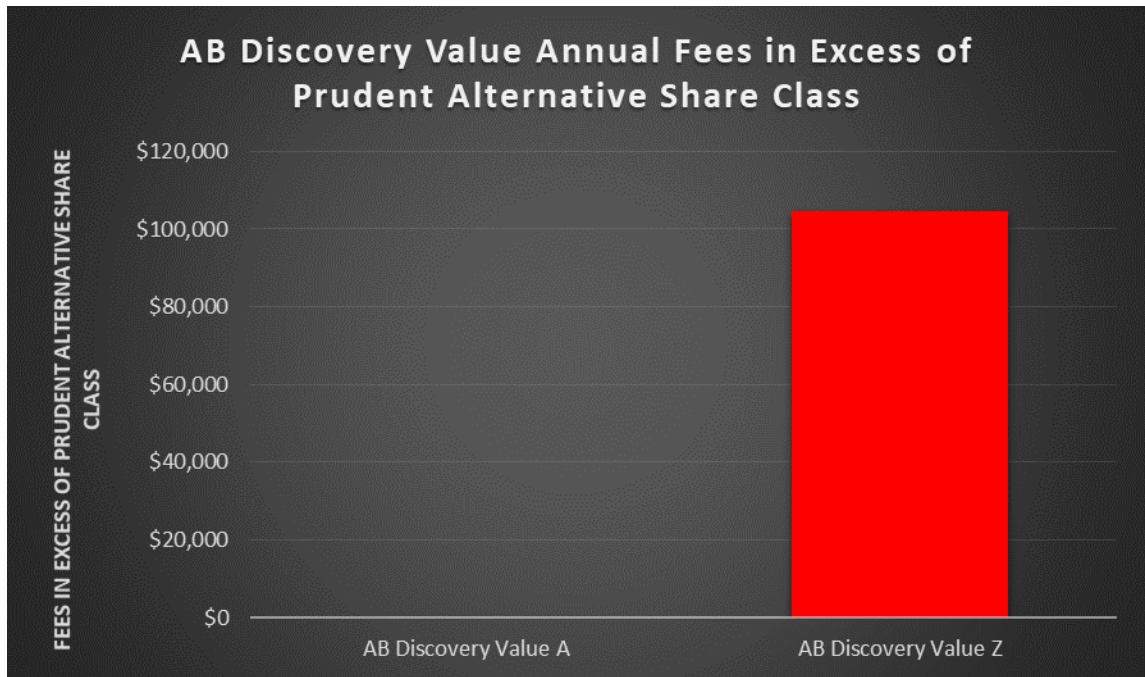
1 175. During the Class Period, Plan Participants would have received the lowest possible
2 fee for the portfolio management services of MacGregor & Turenchalk if invested in the AB
3 Discovery Value A (ABASX).

4 176. When two identical service options are readily available (in this case the portfolio
5 management services of MacGregor & Turenchalk) and would be known as part of the standard of
6 care related to selecting and monitoring investment options, a prudent plan fiduciary ensures that the
7 least expensive of those options is selected.

8 177. A prudent plan fiduciary understands that the higher “sticker” price of the RPS fee
9 portion of the expense ratio is not relevant since the RPS service provider returns excess revenue to
10 the Plan and its Participants.

11 178. The DOL requires plan fiduciaries to understand all the fees related to all the various
12 services provided to the Plan and its participants. By selecting an investment option that charges
13 more for identical portfolio management services, the Defendant plan fiduciaries breached their duty.

14 179. As illustrated in the chart below, which is based on the \$65,373,119 that the Plan
15 invested in AB Discovery Value Z (ABSZX) as of December 31, 2019, because Defendants did not
16 select the share class that provided the greatest benefit to Plan Participants, AB Discovery Value A
17 (ABASX), Defendants caused substantial monetary damage and detriment to Plaintiff and the Plan’s
18 Participants.



180. The underlying data and information reflected in the chart above is truthful, accurate, and derived from publicly available information, which was equally as available to Defendants during the Class Period.

181. A hypothetical prudent fiduciary conducting an impartial and objectively reasonable review of the Plan’s investments during the Class Period would have conducted a review on a quarterly basis, which would have identified and selected the share class that provided the greatest benefit to Plan Participants.

182. A hypothetical prudent fiduciary conducting an impartial and objectively reasonable review of the Plan’s investments during the Class Period would have conducted a review on a quarterly basis, would have identified the share class that provided the greatest benefit to Plan Participants, and would have transferred the Plan’s investments into the prudent share classes at the earliest opportunity.

183. During the entirety of the Class Period, Defendants: 1) did not conduct an impartial and objectively reasonable review of the Plan’s investments on a quarterly basis; 2) did not identify

1 the prudent share classes available to the Plan; and 3) did not transfer the Plan's investments into this
2 prudent share class at the earliest opportunity.

3 184. During the Class Period and because Defendants failed to act in the best interests of
4 the Plan's Participants by engaging in an objectively reasonable process when selecting its share
5 classes, Defendants caused unreasonable and unnecessary losses to the Plan's Participants through
6 2019 in the amount of approximately \$988,190 and as detailed in the following chart:

Actual Investment Lineup					
	2015	2016	2017	2018	2019
Net Investment Expense to Retirement Plans	\$4,085,210	\$4,538,024	\$5,749,947	\$5,303,635	\$6,504,381
Prudent Alternative Share Class					
Net Investment Expense to Retirement Plans	\$3,955,453	\$4,385,695	\$5,581,666	\$5,170,242	\$6,358,703
Est. Investment Damages	\$129,757	\$152,328	\$168,281	\$133,393	\$145,678
Compounding Percentage (VIII)		11.95%	21.82%	-4.41%	31.48%
Est. Cumulative Investment Damages	\$129,757	\$297,591	\$530,807	\$640,791	\$988,190

15 185. During the entirety of the Class Period, and by failing to recognize that the Plan was
16 invested in a share class that resulted in higher fees when a share class that resulted in lower fees to
17 Plan Participants was available for the same investment, and/or by failing to take effective remedial
18 actions as described herein, Defendants breached their fiduciary duties to Plaintiff and the Plan
19 Participants.

DEFENDANTS' INVESTMENTS IN THE PLAN

22 186. A prudent fiduciary will consider all plan investments, including "suitable index
23 mutual funds or market indexes (with such adjustments as may be appropriate)." Restatement (Third)
24 of Trusts § 100 cmt. b(1).

25 187. While higher-cost mutual funds may outperform a less-expensive option over the
26 short term, they rarely do so over a longer term. See Jonnelle Marte, Do Any Mutual Funds Ever
27

1 Beat the Market? Hardly, The Washington Post, available at
2 [https://www.washingtonpost.com/news/get-there/wp/2015/03/17/do-any-mutualfunds-ever-](https://www.washingtonpost.com/news/get-there/wp/2015/03/17/do-any-mutualfunds-ever-beat-the-market-hardly/)
3 [beat-the-market-hardly/](https://www.washingtonpost.com/news/get-there/wp/2015/03/17/do-any-mutualfunds-ever-beat-the-market-hardly/) (citing a study by S&P Dow Jones Indices that looked at 2,862 actively
4 managed mutual funds, focused on the top quartile in performance and found most did not replicate
5 performance from year to year); see also Index funds trounce actively managed funds: Study, available
6 at <http://www.cnbc.com/2015/06/26/index-funds-trounce-activelymanaged-funds-study.html>
7 (“long-term data suggests that actively managed funds “lagged their passive counterparts across nearly
8 all asset classes, especially over the 10-year period from 2004 to 2014.”)

9 188. Funds with high fees on average perform worse than less expensive funds, even on a
10 pre-fee basis. Javier Gil-Bazo & Pablo Ruiz-Verdu, When Cheaper is Better: Fee Determination in
11 the Market for Equity Mutual Funds, 67 J. Econ. Behav. & Org. 871, 873 (2009); see also Jill E. Fisch,
12 Rethinking the Regulation of Securities Intermediaries, 158 U. Pa. L. Rev. 1961, 1967-75 (2010)
13 (summarizing numerous studies showing that “the most consistent predictor of a fund’s return to
14 investors is the fund’s expense ratio”).

15 189. During the Class Period, the chart below identifies several investment options that
16 Defendants selected and/or made available to Plan Participants as compared to prudent alternative
17 and less expensive options.

Defendants' Investment					Prudent Alternative Investments					Defendants' Plan's Investment Excessive Fees (%)
Ticker	Fund Name	Exp Ratio (%)	Revenue Sharing (%)	Net Investment Expense to Retirement Plans (%)	Ticker	Fund Name	Exp Ratio (%)	Revenue Sharing (%)	Net Investment Expense to Retirement Plans (%)	
ABSZX	AB Discovery Value Z	0.79%	0.00%	0.79%	VMVAX	Vanguard Mid-Cap Value Index Admiral	0.07%	0.00%	0.07%	1029%
RWIGX	American Funds Capital World Gr&Inc R6	0.42%	0.00%	0.42%	VTWIX	Vanguard Total World Stock Index I	0.08%	0.00%	0.08%	425%
RFNGX	American Funds Fundamental Investors Fund	0.28%	0.00%	0.28%	FXAIX	Fidelity® 500 Index Institutional Prem	0.02%	0.00%	0.02%	1767%
DFCEX	DFA Emerging Market Core Equity Portfolio Fund	0.39%	0.00%	0.39%	FPADX	Fidelity® Emerging Markets Idx Instl Prm	0.08%	0.00%	0.08%	388%
FCNKX	Fidelity Contrafund	0.77%	0.20%	0.57%	FSPGX	Fidelity® Large Cap Growth Idx Instl Prm	0.04%	0.00%	0.04%	1529%
FDIKX	Fidelity Diversified International Fund	0.63%	0.20%	0.43%	VIAAX	Vanguard Intl Div Apprec Idx Adm	0.25%	0.00%	0.25%	72%
FNSXX	Fidelity Institutional Money Market Fund	0.14%	0.00%	0.14%	VMRXX	Vanguard Prime Money Market Fund	0.10%	0.00%	0.10%	40%
FOCPX	Fidelity OTC Portfolio Fund	0.89%	0.25%	0.64%	FSPGX	Fidelity® Large Cap Growth Idx Instl Prm	0.04%	0.00%	0.04%	1729%
FTBFX	Fidelity Total Bond Fund	0.45%	0.10%	0.35%	FXNAX	Fidelity® US Bond Index Instl Prem	0.03%	0.00%	0.03%	1300%
FNBXX	Fidelity® Government MMkt K6	0.28%	0.00%	0.28%	VMRXX	Vanguard Prime Money Market Fund Admiral	0.10%	0.00%	0.10%	180%
VEXRX	Vanguard Explorer Adm	0.30%	0.00%	0.30%	VSGIX	Vanguard Small Cap Growth Index I	0.06%	0.00%	0.06%	400%
VIEIX	Vanguard Extended Market Index Fund	0.06%	0.00%	0.06%	FSMDX	Fidelity® Mid Cap Index Instl Prem	0.03%	0.00%	0.03%	140%
VTISX	Vanguard Total International Stock Index Fund	0.05%	0.00%	0.05%	FSPSX	Fidelity® International Index InstlPrm	0.04%	0.00%	0.04%	43%

Defendants' Investment (continued)					Prudent Alternative Investments (continued)					Defendants' Plan's Investment Excessive Fees (%)
Ticker	Fund Name	Exp Ratio (%)	Revenue Sharing (%)	Net Investment Expense to Retirement Plans (%)	Ticker	Fund Name	Exp Ratio (%)	Revenue Sharing (%)	Net Investment Expense to Retirement Plans (%)	
PRFDX	T. Rowe Price Equity Income	0.64%	0.15%	0.49%	FLCOX	Fidelity® Large Cap Value Index Prm Inst	0.04%	0.00%	0.04%	1300%
3404987	T. Rowe Price Retirement 2005	0.43%	0.00%	0.43%	FFGFX	Fidelity Freedom® Index 2005 Instl Prem	0.08%	0.00%	0.08%	438%
3404984	T. Rowe Price Retirement 2010	0.43%	0.00%	0.43%	FFWTX	Fidelity Freedom® Index 2010 Instl Prem	0.08%	0.00%	0.08%	438%
3404986	T. Rowe Price Retirement 2015	0.43%	0.00%	0.43%	FIWFX	Fidelity Freedom® Index 2015 Instl Prem	0.08%	0.00%	0.08%	438%
3404976	T. Rowe Price Retirement 2020	0.43%	0.00%	0.43%	FIWTX	Fidelity Freedom® Index 2020 Instl Prem	0.08%	0.00%	0.08%	438%
3404974	T. Rowe Price Retirement 2025	0.43%	0.00%	0.43%	FFEDX	Fidelity Freedom® Index 2025 Instl Prem	0.08%	0.00%	0.08%	438%
3404971	T. Rowe Price Retirement 2030	0.43%	0.00%	0.43%	FFEGX	Fidelity Freedom® Index 2030 Instl Prem	0.08%	0.00%	0.08%	438%
3404972	T. Rowe Price Retirement 2035	0.43%	0.00%	0.43%	FFEZX	Fidelity Freedom® Index 2035 Instl Prem	0.08%	0.00%	0.08%	438%
3404973	T. Rowe Price Retirement 2040	0.43%	0.00%	0.43%	FFIZX	Fidelity Freedom® Index 2040 Instl Prem	0.08%	0.00%	0.08%	438%
3404978	T. Rowe Price Retirement 2045	0.43%	0.00%	0.43%	FFOLX	Fidelity Freedom® Index 2045 Instl Prem	0.08%	0.00%	0.08%	438%
3404979	T. Rowe Price Retirement 2050	0.43%	0.00%	0.43%	FFOPX	Fidelity Freedom® Index 2050 Instl Prem	0.08%	0.00%	0.08%	438%
3404983	T. Rowe Price Retirement 2055	0.43%	0.00%	0.43%	FFLDX	Fidelity Freedom® Index 2055 Instl Prem	0.08%	0.00%	0.08%	438%
3404988	T. Rowe Price Retirement 2060	0.43%	0.00%	0.43%	FFLEX	Fidelity Freedom® Index 2060 Instl Prem	0.08%	0.00%	0.08%	438%
<i>Average</i>		0.43%	0.03%	0.40%	<i>Average</i>		0.07%	0.00%	0.07%	599.61%

190. During the Class Period and based on the charts above, the average Net Investment Expense to Retirement Plans of the investments selected and made available to Plan Participants by the Plan Fiduciaries identified above was 0.40%, or 40 basis points.

191. During the Class Period and based on the charts above, the investment options selected by the Plan Fiduciaries were 599.61% more expensive than prudent alternative and less expensive options covering the same asset category.

1 192. During the Class Period, Defendants did not engage in an objectively reasonable
2 process when selecting funds for the Plan.

3 193. During the Class Period and because Defendants did not engage in an objectively
4 reasonable process when selecting funds for the Plan, Defendants actually selected the funds
5 identified in the “Defendants’ Investment” column in the charts above.

6 194. During the Class Period and had Defendants engaged in an objectively reasonable
7 process when selecting funds for the Plan, Defendants would not have selected the funds identified
8 in the “Defendants’ Investment” column in the charts above.

9 195. During the Class Period and had Defendants been acting in the best interests of the
10 Plan’s Participants, Defendants would not have selected the funds identified in the “Defendants’
11 Investment” column in the charts above.

12 196. During the Class Period and had Defendants been acting in the best interests of the
13 Plan’s Participants, Defendants would have selected funds with lower expense ratios than those funds
14 actually selected by Defendants as identified in the “Defendants’ Investment” column in the charts
15 above.

16 197. During the Class Period and had Defendants been acting in the best interests of the
17 Plan’s Participants, Defendants would have selected the funds identified in the “Prudent Alternative
18 Investments” column in the charts above.

19 198. During the Class Period, Plaintiff had no knowledge of Defendants’ process for
20 selecting investments and regularly monitoring them to ensure they remained prudent.

21 199. During the Class Period, Plaintiff had no knowledge of how the fees charged to and
22 paid by the Plan Participants compared to any other funds.

23 200. During the Class Period, Plaintiff did not know about the availability of lower-cost
24 and better-performing (and other essentially identical) investment options that Defendants failed to
25 reasonably offer because Defendants provided no comparative information to allow Plaintiff to
26 evaluate and compare Defendants’ investment options.

1 201. During the Class Period, Defendants failed to reasonably and properly evaluate the
2 true cost of the services of each portfolio manager under the fee structure negotiated with Fidelity,
3 thereby paying fees that were more than necessary to the detriment of Plaintiff and the Plan's
4 Participants.

5 202. During the Class Period and had Defendants chosen investment options similar or
6 identical to the funds identified in the "Prudent Alternative Investments" column in the charts above,
7 the Plan's Participants would have been received the exact same portfolio management services but
8 at a lower cost.

9 203. During the Class Period and because Defendants imprudently chose investment
10 options that were not similar or identical to the funds identified in the "Prudent Alternative
11 Investments" column in the charts above, Defendants' caused unreasonable and unnecessary losses
12 to Plaintiff and Plan's Participants.

13 204. During the Class Period, Defendants failed to consider materially similar but cheaper
14 alternatives to the Plan's investment options. The chart above demonstrates that the expense ratios
15 of the Plan's investment options between the years 2015 to 2020 were more expensive by significant
16 multiples of comparable actively managed and passively managed alternative funds in the same
17 investment style. A reasonable investigation would have revealed the existence of these lower-cost
18 alternatives.

19 205. During the Class Period and because Defendants failed to act in the best interests of
20 the Plan's Participants by engaging in an objectively reasonable investigation process when selecting
21 its investments, resulting in the selection of funds identified in the "Defendants' Investment" column
22 in the charts above, Plaintiff and the Plan's Participants incurred actual expenses and costs as
23 identified in the "Actual Investment Lineup" portion of the chart below.

24 206. During the Class Period and had Defendants acted in the best interests of the Plan's
25 Participants by engaging in an objectively reasonable investigation process when selecting its
26 investments, Defendants would have prudently chosen lower-cost investment alternatives as
27 identified in the "Alternative Investment Lineup" portion of the chart below.

207. During the Class Period and because Defendants failed to act in the best interests of the Plan's Participants by engaging in an objectively reasonable investigation process when selecting its investments, Defendants caused objectively unreasonable and unnecessary losses to Plaintiff and the Plan's Participants in the amount of approximately \$21,607,734 through 2019 and as detailed in the following chart:

Actual Investment Lineup					
	2015	2016	2017	2018	2019
Net Investment Expense to Retirement Plans	\$4,085,210	\$4,538,024	\$5,749,947	\$5,303,635	\$6,504,381
Prudent Alternative Investments					
Net Investment Expense to Retirement Plans	\$1,501,700	\$1,718,371	\$2,111,067	\$2,006,107	\$2,550,864
Est. Investment Damages	\$2,583,511	\$2,819,653	\$3,638,879	\$3,297,528	\$3,953,516
Compounding Percentage (VIIIIX)		11.95%	21.82%	-4.41%	31.48%
Est. Cumulative Investment Damages	\$2,583,511	\$5,711,893	\$10,597,107	\$13,427,303	\$21,607,734

208. The underlying data and information reflected in the chart above is truthful, accurate, and derived from publicly available information, which was equally as available to Defendants during the Class Period, including but not limited to Plaintiff's Plan quarterly statements, the Plan's Summary Description, and the Plan's participant fee disclosures.

209. During the entirety of the Class Period and by failing to engage in an objectively reasonable investigation process when selecting its investments, Defendants breached their fiduciary duties of loyalty and prudence to Plaintiff and Plan Participants.

THE PLAN’S FIDUCIARIES DID NOT EFFECTIVELY MONITOR MANAGED ACCOUNT SERVICE FEES AND, AS A RESULT, THE PLAN PAID UNREASONABLE MANAGED ACCOUNT SERVICE FEES

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210. Defendants retained Fidelity’s own subsidiary Strategic Advisors, Inc. (“SAI”)—one of the largest managed account service providers in in the industry—to provide managed account services to the Plan.

211. According to Defendants’ Participant fee disclosure documents, SAI purported to provide participants with an asset allocation mix of funds available within the Plan.

212. Plan participants were charged 65 basis points on an annual basis for using SAI, which is also labelled Personalized Planning & Advice on the participant financial disclosures.

213. For this service, Defendants required participants to pay an annual fee of at least 0.65%.

214. Companies are not required to publicly disclose the fee rates for managed account services making it difficult to obtain marketplace data.

215. Nevertheless, there are a number of other managed account providers whose services are virtually identical to the services provided to Plan participants through SAI and whose publicly-known fees range from 0.25% to 0.30% on all assets, e.g., Betterment, Vanguard, and Charles Schwab, for plans much smaller than the Plan. These companies represent the normal range of fees for what is typically charged for managed account services.

216. Similarly, the Kimberly-Clark 401(k) Profit Sharing and Retirement Plan, a similar mega Plan to Juniper, provided in 2020 managed account services through Fidelity/SAI to its participants at a much lower price on the following schedule: no fee up to the first \$5000, 0.25% up to \$100,000, 0.15% on the next \$150,000, and 0.10% on assets greater than \$250,000.

217. The fee rates paid by the Plan participants to SAI therefore were excessive and not reasonable given the Plan’s massive size and negotiating power.

218. The Plan’s managed account services added no material value to participants to warrant any additional fees. The asset allocations created by the managed account services were not

1 materially different than the asset allocations provided by the age-appropriate target date options
2 ubiquitously available to Defendants in the market and already available to participants in the Juniper
3 Plan.

4 219. As the GAO recognized in its reports on managed accounts, “Similar advantages ...
5 can be achieved through other retirement investment vehicles outside of a managed account and
6 without paying the additional managed account fee. For example, in one recent study, a record keeper
7 that offers managed accounts through its platform showed that there are other ways to diversify using
8 professionally managed allocations, such as target date funds, which can be less costly.” THE
9 UNITED STATES GOVERNMENT ACCOUNTABILITY OFFICE (“GAO”), *401(K) PLANS:
10 Improvements Can Be Made to Better Protect Participants in Managed Accounts*, at 32 (June 2014), available at
11 <https://www.gao.gov/assets/670/664391.pdf>.

12 220. As a result, based on the value provided, the reasonable fee for Plan’s managed
13 account service was zero or very close to zero.

14 221. Additionally, a prudent fiduciary would have conducted periodic cost benchmarking
15 and taken other measures (including issuing an RFP or RFI, if necessary), as well as evaluating the
16 incremental value provided to Plan participants, to ensure that the amounts paid by the Plan for
17 managed account services were reasonable.

18 222. Based on the excessive amounts paid by the Plan for managed account services, it is
19 reasonable to infer that Defendants failed to prudently monitor and manage the Plan’s managed
20 account services.

21 223. Alternatively, the excessive fees paid by Plan Participants using the managed account
22 service were not warranted and did not provide any material value or benefit to those Plan Participants

23 224. The excessive fees paid for the Plan’s managed account service cost resulted in Plan
24 Participants paying excessive and unreasonable fees and constitutes a separate and independent
25 breach of fiduciary duty.

1 **FAILURE TO FULLY DISCLOSE FEES CHARGED OR CREDITED TO THE PLAN**
2 **INVESTMENTS AND ACCURATE PERFORMANCE INFORMATION OF**
3 **INVESTMENT OPTIONS**

4 225. ERISA imposes a duty on plan administrators to provide to plan participants on a
5 “regular and periodic basis . . . sufficient information regarding the plan, including fees and expenses,
6 and regarding designated investment alternatives, including fees and expenses attendant thereto, to
7 make informed decisions with regard to the management of their individual accounts.” 29 C.F.R.
8 § 2550-404a-5(a).

9 226. In order to satisfy this requirement, a plan administrator must provide (among other
10 things) (1) an “identification of any designated investment managers,” (2) “an explanation of any fees
11 and expenses that may be charged against the individual account of a participant or beneficiary ...
12 not reflected in the total annual operation expenses of any designated investment alternatives,” and
13 (3) “at least quarterly, a statement” reflecting the dollar amount and nature of those expenses “actually
14 charged,” along with a “description of the services to which the charges relate.” 29 C.F.R. § 2550-
15 404a-5(b)-(d).

16 227. Defendants failed to properly disclose the fees charged to Participants in the Plan in
17 their quarterly statements and 404a-5 participant fee disclosure documents.

18 228. The Plan’s recordkeeper collected revenue sharing on several of the investment
19 options made available to Participants.

20 229. The Defendants failed to disclose the revenue sharing rates of each investment option
21 to the Participants in its 404a-5 participant fee disclosure documents. *See, e.g., Juniper 2021 Participant*
22 *Fee Disclosure Document*, attached hereto as Exhibit A.

23 230. As a result, Plan Participants are not able to determine how much they actually paid
24 for the RPS provided by the Defendants’ RPSP nor can Plan Participants therefore calculate the net
25 fee they paid for designated investment alternatives.

26 231. As a result, the Participants were unable to determine the actual Net Investment
27 Expense paid by Retirement Plan Participants for each of their investment options.
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1 232. Moreover, some of the investment options in the plan have different revenue sharing
2 rates than others and some even had no revenue sharing at all.

3 233. Without knowing the portion of the expense ratio allocable to the RPS services
4 received by the Participants, each Participant could not make “informed decisions with regard to the
5 management of their individual accounts.” 29 C.F.R. § 2550-404a-5(a).

6 234. The Defendants’ failure to disclose the revenue sharing rates associated with each
7 investment option in its 404a-5 participant fee disclosure documents prevented Participants from
8 making “informed decisions with regard to the management of their individual accounts.” 29 C.F.R.
9 § 2550-404a-5(a).

10 235. For example, if it is critical for a Participant to know the total expense ratio and
11 performance history in order to make an informed investment decision, then it is also critical to know
12 the amount of any credits that could be returned to Participants or could be used to pay for the Plan’s
13 administrative expenses. When a rebate is available to reduce the “sticker” price of a product or
14 service, the failure to provide the amount of the rebate prevents a buyer from understanding the net
15 cost of the product or service. It is obvious a prudent buyer of the product or service would need to
16 know whether rebates were available and, if so, the amount of the rebate.

17 236. The Defendants’ incomplete disclosures are a clear violation of the ERISA disclosure
18 requirements imposed on all Plan administrators and are also evidence that the Defendants were
19 imprudent in the administration of the plan.

20 237. Plaintiffs have been harmed by the Defendants’ failure to abide by the requirement
21 to disclose all the information a Participant would need to make an informed investment decision.

22 238. The failure to disclose all the information a Participant would need to make an
23 informed investment decision, as required under 29 C.F.R. § 2550-404a-5(a), breached the fiduciary
24 obligations of prudence and loyalty that Defendants owed to Plaintiffs and members of the Class.

25 239. For example, in their Participant Fee Disclosure document, Defendants specifically
26 disclosed that the “Plan’s administrative services may also be paid for through offsets and/or
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1 payments associated with one or more of the Plan’s investment options.” Thus, some of the
2 investment options in the plan were paying for RPS while others were not.

3 240. Moreover, some or all of the revenue sharing was returned to the Plan Participants as
4 a rebate. In that case the performance of the investment options presented in the Participant Fee
5 Disclosure understates the actual performance of some of the investment options selected by the
6 Plan Fiduciaries.

7 241. Similarly, in their Participant Fee Disclosure document, Defendants specifically state
8 that “the cumulative effect of fees and expenses can substantially reduce the growth of your
9 retirement savings, [sic] but is only one of many factors to consider when you decide to invest in an
10 option.” Defendants therefore acknowledge the importance of fees yet fail to provide information
11 on fee rebates which have the effect of reducing the fees paid by Plan Participants.

12 242. Defendants’ failure to disclose the revenue sharing rates clearly violates Defendants’
13 duty to provide (among other things) “(2) an explanation of any fees and expenses that may be
14 charged against the individual account of a participant or beneficiary ... not reflected in the total
15 annual operation expenses of any designated investment alternatives.” A fee rebate can be viewed as
16 a negative fee, and it incontrovertibly improves the performance of the investment option and is “not
17 reflected in the total annual operation expense of that designated investment alternative.” 29 C.F.R.
18 § 2550- 404a-5(b)-(d).

19 243. Plan Participants have thus been damaged through Defendants’ incomplete and
20 erroneous disclosures, which breached Defendants’ fiduciary duties to Plaintiff and members of the
21 Class.

22 **CLASS ACTION ALLEGATIONS**

23 244. 29 U.S.C. § 1132(a)(2) authorizes any participant or beneficiary of the Plan to bring
24 an action individually on behalf of the Plan to enforce a breaching fiduciary’s liability to the Plan
25 under 29 U.S.C. § 1109(a).

1 245. In acting in this representative capacity, Plaintiff seeks to certify this action as a class
2 action on behalf of all participants and beneficiaries of the Plan. Plaintiff seeks to certify, and to be
3 appointed as representatives of, the following Class:

4 All participants and beneficiaries of the Juniper Networks, Inc. 401(k)
5 Plan (excluding the Defendants or any participant/beneficiary who is
6 a fiduciary to the Plan) beginning August 11, 2015, and running
7 through the date of judgment.

8 246. The Class includes almost 7,000 members and is so large that joinder of all its
9 members is impracticable, pursuant to Federal Rule of Civil Procedure 23(a)(1).

10 247. There are questions of law and fact common to this Class pursuant to Federal Rule
11 of Civil Procedure 23(a)(2), because Defendants owes fiduciary duties to the Plan and took the actions
12 and omissions alleged as to the Plan and not as to any individual participant. Common questions of
13 law and fact include but are not limited to the following:

- 14 • Whether Defendants are fiduciaries liable for the remedies provided by 29 U.S.C.
15 § 1109(a);
- 16 • Whether Defendants breached their fiduciary duties to the Plan;
- 17 • What are the losses to the Plan resulting from each breach of fiduciary duty; and
- 18 • What Plan-wide equitable and other relief the Court should impose in light of
19 Defendants' breach of duty.

20 248. Plaintiff's claims are typical of the claims of the Class pursuant to Federal Rule of
21 Civil Procedure 23(a)(3), because Plaintiff was a Participant during the time period at issue and all
22 Participants in the Plan were harmed by Defendants' misconduct.

23 249. Plaintiff will adequately represent the Class pursuant to Federal Rule of Civil
24 Procedure 23(a)(4), because he was a Participant in the Plan during the Class period, has no interest
25 that conflicts with the Class, is committed to the vigorous representation of the Class, and has
26 engaged experienced and competent lawyers to represent the Class.

27 250. Certification is appropriate under Federal Rule of Civil Procedure 23(b)(1), because
28 prosecution of separate actions for these breaches of fiduciary duties by individual participants and

1 beneficiaries would create the risk of (1) inconsistent or varying adjudications that would establish
2 incompatible standards of conduct for Defendant concerning its discharge of fiduciary duties to the
3 Plan and personal liability to the Plan under 29 U.S.C. § 1109(a), and (2) adjudications by individual
4 participants and beneficiaries regarding these breaches of fiduciary duties and remedies for the Plan
5 would, as a practical matter, be dispositive of the interests of the participants and beneficiaries who
6 are not parties to the adjudication, or would substantially impair those participants' and beneficiaries'
7 ability to protect their interests.

8 251. Certification is also appropriate under Federal Rule of Civil Procedure 23(b)(2)
9 because Defendants have acted or refused to act on grounds that apply generally to the Class, so that
10 final injunctive relief or corresponding declaratory relief is appropriate respecting the Class as a whole.

11 252. Plaintiff's attorney is experienced in complex ERISA and class litigation and will
12 adequately represent the Class.

13 253. The claims brought by the Plaintiff arise from fiduciary breaches as to the Plan in its
14 entirety and do not involve mismanagement of individual accounts. The claims asserted on behalf of
15 the Plans in this case fall outside the scope of any exhaustion language in the Plan. Exhaustion is
16 intended to serve as an administrative procedure for participants and beneficiaries whose claims have
17 been denied and not where a participant or beneficiary brings suit on behalf of a Plan for breaches
18 of fiduciary duty.

19 254. Under ERISA, an individual "participant" or "beneficiary" are distinct from an
20 ERISA Plan. A participant's obligation – such as a requirement to exhaust administrative remedies –
21 does not, by itself, bind the Plan.

22 255. Any administrative appeal would be futile because the entity hearing the appeal (the
23 Plan Administrator) is the same Plan Administrator that made the decisions that are at issue in this
24 lawsuit. Policy supporting exhaustion of administrative remedies in certain circumstances – that the
25 Court should review and where appropriate defer to a Plan administrator's decision – does not exist
26 here because courts will not defer to Plan administrator's legal analysis and interpretation.

FIRST CLAIM FOR RELIEF

**Breaches of Duties of Loyalty and Prudence of ERISA, as Amended
(Plaintiff, on behalf of himself and Class, Against All Defendants – RPS Fees)**

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3 256. Plaintiff restates the above allegations as if fully set forth herein.

4 257. Defendants are fiduciaries of the Plan under 29 U.S.C. §§ 1002(21) and/or 1102(a)(1).

5 258. 29 U.S.C. § 1104 imposes fiduciary duties of prudence and loyalty upon Defendants
6 in their administration of the Plan.

7 259. Defendants, as fiduciaries of the Plan, are responsible for selecting a RPSP that
8 charges reasonable RPS fees.

9 260. During the Class Period, Defendants had fiduciary duties to do all of the following:
10 ensure that the Plan's RPS fees were reasonable; manage the assets of the Plan for the sole and
11 exclusive benefit of Plan Participants and beneficiaries; defray reasonable expenses of administering
12 the Plan; and act with the care, skill, diligence, and prudence required by ERISA.

13 261. During the Class Period, Defendants breached their fiduciary duties of prudence and
14 loyalty to Plan Participants, including Plaintiff, by failing to: ensure that the Plan's RPS fees were
15 reasonable, manage the assets of the Plan for the sole and exclusive benefit of Plan Participants and
16 beneficiaries, defray reasonable expenses of administering the Plan, and act with the care, skill,
17 diligence, and prudence required by ERISA.

18 262. During the Class Period, Defendants further had a continuing duty to regularly
19 monitor and evaluate the Plan's RPSP to make sure it was providing the contracted services at
20 reasonable costs, given the highly competitive market surrounding RPS and the significant bargaining
21 power the Plan had to negotiate the best fees.

22 263. During the Class Period, Defendants breached their duty to Plan Participants,
23 including Plaintiff, by failing to employ a prudent and loyal process and by failing to critically or
24 objectively evaluate the cost and performance of the Plan's RPSP in comparison to other RPSP
25 options.
26
27
28

1 264. Through these actions and omissions, Defendants breached their fiduciary duties of
2 prudence and loyalty with respect to the Plan in violation 29 U.S.C. § 1104(a)(1)(A), (B).

3 265. Defendants' failure to discharge their duties with respect to the Plan with the care,
4 skill, prudence, and diligence under the circumstances then prevailing that a prudent person acting in
5 a like capacity and familiar with such matters would have used in the conduct of an enterprise of like
6 character and with like aims, breaching its duties under 29 U.S.C. § 1104(a)(1)(B).

7 266. As a result of Defendants' breach of fiduciary duty of prudence and loyalty with
8 respect to the Plan, the Plaintiff and Plan Participants suffered objectively unreasonable and
9 unnecessary monetary losses.

10 267. Defendants are liable under 29 U.S.C. §§ 1109(a) and 1132(a)(2) to make good to the
11 Plan the losses resulting from the breaches, to restore to the Plan any profits defendants made
12 through the use of Plan assets, and to restore to the Plan any profits resulting from the breaches of
13 fiduciary duties alleged in this Count. In addition, Defendants are subject to other equitable relief
14 pursuant to 29 U.S.C. §§ 1109(a) and 1132(a)(2).

15 **SECOND CLAIM FOR RELIEF**
16 **Breaches of Duties of Loyalty and Prudence of ERISA, as Amended**
17 **(Plaintiff, on behalf of himself and Class,**
Against All Defendants – Managed Account Service Fees)

18 268. Plaintiff restates the above allegations as if fully set forth herein.

19 269. Defendants are fiduciaries of the Plan under 29 U.S.C. §§ 1002(21) and/or 1102(a)(1).

20 270. 29 U.S.C. § 1104 imposes fiduciary duties of prudence and loyalty upon Defendants
21 in their administration of the Plan.

22 271. Defendants, as fiduciaries of the Plan, are responsible for selecting a managed account
23 service provider that charges reasonable managed account service fees.

24 272. During the Class Period, Defendants had a fiduciary duty to do all of the following:
25 ensure that the Plan's managed account service fees were reasonable; manage the assets of the Plan
26

1 for the sole and exclusive benefit of Plan Participants and beneficiaries; defray reasonable expenses
2 of administering the Plan; and act with the care, skill, diligence, and prudence required by ERISA.

3 273. During the Class Period, among other things, Defendants imprudently caused the
4 Plan to pay excessive managed account service fees and failed to properly monitor and control those
5 expenses. Each of the actions and omissions described above and elsewhere in this Complaint
6 demonstrate that Defendants failed to defray reasonable expenses of the Plan, and with the care, skill,
7 prudence, and diligence under the circumstances then prevailing that a prudent person acting in a like
8 capacity and familiar with such matters would have used in the conduct of an enterprise of like
9 character and with like aims, in violation of their fiduciary.

10 274. During the Class Period, Defendants further had a continuing duty to regularly
11 monitor and evaluate the Plan's managed account providers to make sure they were providing the
12 contracted services at reasonable costs, given the highly competitive market surrounding managed
13 account services and the significant bargaining power the Plan had to negotiate the best fees.

14 275. During the Class Period, Defendants breached their duty to Plan Participants,
15 including Plaintiff, by failing to employ a prudent and loyal process by failing to critically or
16 objectively evaluate the cost and performance of the Plan's managed account providers in
17 comparison to other managed account options.

18 276. Through these actions and omissions, Defendants breached their fiduciary duties of
19 prudence and loyalty with respect to the Plan in violation 29 U.S.C. § 1104(a)(1)(A).

20 277. Defendants' failure to discharge their duties with respect to the Plan with the care,
21 skill, prudence, and diligence under the circumstances then prevailing that a prudent person acting in
22 a like capacity and familiar with such matters would have used in the conduct of an enterprise of like
23 character and with like aims, breaching its duties under 29 U.S.C. § 1104(a)(1)(B).

24 278. As a result of Defendants' breach of fiduciary duty of prudence and loyalty with
25 respect to the Plan, the Plaintiff and Plan Participants suffered objectively unreasonable and
26 unnecessary monetary losses.

1 279. Defendants are liable under 29 U.S.C. §§ 1109(a) and 1132(a)(2) to make good to the
2 Plan the losses resulting from the breaches, to restore to the Plan any profits defendants made
3 through the use of Plan assets, and to restore to the Plan any profits resulting from the breaches of
4 fiduciary duties alleged in this Count. In addition, Defendants are subject to other equitable relief
5 pursuant to 29 U.S.C. §§ 1109(a) and 1132(a)(2).

6 **THIRD CLAIM FOR RELIEF**
7 **Breaches of Duties of Loyalty and Prudence of ERISA, as Amended**
8 **(Plaintiff, on behalf of himself and Class,**
9 **Against All Defendants – Investment Management Fees)**

10 280. Plaintiff restates the above allegations as if fully set forth herein.

11 281. Defendants are fiduciaries of the Plan under 29 U.S.C. §§ 1002(21) and/or 1102(a)(1).

12 282. 29 U.S.C. § 1104 imposes fiduciary duties of prudence and loyalty upon Defendants
13 in managing the investments of the Plan.

14 283. Defendants, as fiduciaries of the Plan, are responsible for selecting prudent
15 investment options, ensuring that those options charge only reasonable fees, and taking any other
16 necessary steps to ensure that the Plan's assets are invested prudently.

17 284. During the Class Period, Defendants had a fiduciary duty to do all of the following:
18 manage the assets of the Plan for the sole and exclusive benefit of Plan Participants and beneficiaries;
19 defray reasonable expenses of administering the Plan; and act with the care, skill, diligence, and
20 prudence required by ERISA.

21 285. During the Class Period, Defendants breached their fiduciary duties of prudence and
22 loyalty to Plan Participants, including Plaintiff, by failing to manage the assets of the Plan for the sole
23 and exclusive benefit of Plan Participants and beneficiaries, defray reasonable expenses of
24 administering the Plan, act with the care, skill, diligence, and prudence required by ERISA.

25 286. Defendants, as fiduciaries of the Plan, had a continuing duty to regularly monitor and
26 independently assess whether the Plan's investments were prudent choices for the Plan and to remove
27 imprudent investment options regardless of how long said investments had been in the Plan.

1 287. During the Class Period, Defendants breached their fiduciary duties of prudence and
2 loyalty to Plan Participants, including Plaintiff, by failing to engage in a prudent process for
3 monitoring the Plan’s investments and removing imprudent ones within a reasonable period.

4 288. Defendants were directly responsible for ensuring that the Plan’s investment
5 management fees were reasonable, selecting investment options in a prudent fashion in the best
6 interest of Plan Participants, prudently evaluating and monitoring the Plan’s investments on an
7 ongoing basis and eliminating funds or share classes that did not serve the best interest of Plan
8 Participants, and taking all necessary steps to ensure that the Plan’s assets were invested prudently
9 and appropriately.

10 289. Defendants failed to employ a prudent and loyal process by failing to critically or
11 objectively evaluate the cost and performance of the Plan’s investments and fees in comparison to
12 other investment options. Defendants selected and retained for years as Plan investment options
13 mutual funds with high expenses relative to other investment options that were readily available to
14 the Plan at all relevant times.

15 290. Through these actions and omissions, Defendants breached their fiduciary duties of
16 prudence and loyalty with respect to the Plan in violation 29 U.S.C. § 1104(a)(1)(A), (B).

17 291. Defendants failure to discharge their duties with respect to the Plan with the care,
18 skill, prudence, and diligence under the circumstances then prevailing that a prudent person acting in
19 a like capacity and familiar with such matters would have used in the conduct of an enterprise of like
20 character and with like aims, breaching its duties under 29 U.S.C. § 1104(a)(1)(B).

21 292. As a result of Defendants’ breach of their fiduciary duties of prudence and loyalty
22 with respect to the Plan, as aforesaid, the Plaintiff and Plan Participants suffered unreasonable and
23 unnecessary monetary losses.

24 293. Defendants are liable under 29 U.S.C. §§ 1109(a) and 1132(a)(2) to make good to the
25 Plan the losses resulting from the breaches, to restore to the Plan any profits defendants made
26 through the use of Plan assets, and to restore to the Plan any profits resulting from the breaches of
27

1 fiduciary duties alleged in this Count. In addition, Defendants are subject to other equitable relief
2 pursuant to 29 U.S.C. §§ 1109(a) and 1132(a)(2).

3 **FOURTH CLAIM FOR RELIEF**
4 **Failure to Adequately Monitor Other Fiduciaries under ERISA, as Amended**
5 **(Plaintiff, on behalf of himself and Class,**
6 **Against Defendants Juniper and Board – RPS Fees)**

7 294. Plaintiff restates the above allegations as if fully set forth herein.

8 295. Defendants Juniper and Board had the authority to appoint and remove members or
9 individuals on the Committee responsible for Plan RPS fees and knew or should have known that
10 these fiduciaries had critical responsibilities for the Plan.

11 296. In light of this authority, Defendants Juniper and Board had a duty to monitor those
12 individuals on the Committee responsible for Plan RPS fees to ensure that they were adequately
13 performing their fiduciary obligations, and to take prompt and effective action to protect the Plan in
14 the event that these individuals were not fulfilling those duties.

15 297. Defendants Juniper and Board had a duty to ensure that the individuals responsible
16 for Plan administration possessed the needed qualifications and experience to carry out their duties
17 (or use qualified advisors and service providers to fulfill their duties); had adequate financial resources
18 and information; maintained adequate records of the information on which they based their decisions
19 and analysis with respect to the Plan's investments; and reported regularly to Defendants Juniper and
20 Board.

21 298. The excessive RPS fees paid by the Plan inferentially suggest that Juniper and the
22 Board breached their duty to monitor the Committee by, among other things:

- 23 a. Failing to monitor and evaluate the performance of individuals responsible for Plan
24 RPS fees or have a system in place for doing so, standing idly by as the Plan suffered
25 significant losses in the form of unreasonably high RPS expenses;
- 26 b. Failing to monitor the process by which the Plan's RPSP were evaluated and failing
27 to investigate the availability of lower-cost RPSP; and
28

1 c. Failing to remove individuals responsible for Plan RPS fees whose performance was
2 inadequate in that these individuals continued to pay the same RPS costs even though
3 benchmarking and using other similar comparators would have showed that
4 maintaining Fidelity as the RPSP at the contracted price was imprudent, excessively
5 costly, all to the detriment of the Plan and Plan Participants' retirement savings.

6 299. As the consequences of the foregoing breaches of the duty to monitor for RPS fees
7 the Plaintiff and Plan Participants suffered unreasonable and unnecessary monetary losses.

8 300. Pursuant to 29 U.S.C. §§ 1109(a) and 1132(a)(2), Defendants Juniper and Board are
9 liable to restore to the Plan all loses caused by their failure to adequately monitor individuals
10 responsible for Plan RPS fees. In addition, Plaintiffs are entitled to equitable relief and other
11 appropriate relief as set forth in the Prayer for Relief.

12 **FIFTH CLAIM FOR RELIEF**
13 **Failure to Adequately Monitor Other Fiduciaries under ERISA, as Amended**
14 **(Plaintiff, on behalf of himself and Class,**
against Defendants Juniper and Board – Managed Account Service Fees)

15 301. Plaintiff restates the above allegations as if fully set forth herein.

16 302. Defendant Juniper, through its Board, had the authority to appoint and remove some
17 of the members or individuals on the Committee responsible for Plan managed account service fees
18 and knew or should have known that these fiduciaries had critical responsibilities for the Plan.

19 303. In light of this authority, Juniper, through its Board, had a duty to monitor those
20 individuals on the Committee responsible for Plan managed account service fees to ensure that they
21 were adequately performing their fiduciary obligations, and to take prompt and effective action to
22 protect the Plan in the event that these individuals were not fulfilling those duties.

23 304. Juniper, through its Board, had a duty to ensure that the individuals responsible for
24 Plan administration on the Committee possessed the needed qualifications and experience to carry
25 out their duties (or use qualified advisors and service providers to fulfill their duties); had adequate
26 financial resources and information; maintained adequate records of the information on which they
27

1 based their decisions and analysis with respect to the Plan’s investments; and reported regularly to
2 Juniper.

3 305. The excessive managed account fees paid by the Plan inferentially suggest that Juniper
4 and the Board breach their duty to monitor the individuals they appointed to the Committee, by,
5 among other things:

- 6 a. Failing to monitor and evaluate the performance of individuals responsible for Plan
7 managed account service fees or have a system in place for doing so, standing idly by
8 as the Plan suffered significant losses in the form of unreasonably high managed
9 account service expenses;
- 10 b. Failing to monitor the process by which Plan managed account providers were
11 evaluated and failing to investigate the availability of lower-cost managed account
12 providers; and
- 13 c. Failing to remove individuals responsible for Plan managed account service fees
14 whose performance was inadequate in that these individuals continued to pay the
15 same managed account service costs even though benchmarking and using other
16 similar comparators would have showed that maintaining their managed account
17 providers was imprudent, excessively costly, all to the detriment of the Plan and Plan
18 Participants’ retirement savings.

19 306. As the consequences of the foregoing breaches of the duty to monitor for managed
20 account service fees, the Plaintiff and Plan Participants suffered unreasonable and unnecessary
21 monetary losses.

22 307. Pursuant to 29 U.S.C. §§ 1109(a) and 1132(a)(2), Defendants Juniper and Board are
23 liable to restore to the Plan all loses caused by their failure to adequately monitor individuals
24 responsible for Plan managed account service fees. In addition, Plaintiffs are entitled to equitable
25 relief and other appropriate relief as set forth in the Prayer for Relief.

26 **SIXTH CLAIM FOR RELIEF**
27 **Failure to Adequately Monitor Other Fiduciaries under ERISA, as Amended**

1 (Plaintiff, on behalf of himself and Class,
2 Against Defendants Juniper and Board – Investment Management Fees)

3 308. Plaintiff restates the above allegations as if fully set forth herein.

4 309. Juniper, through its Board, had the authority to appoint and remove members or
5 individuals on the Committee responsible for Plan investment management and were aware that
6 these fiduciaries had critical responsibilities for the Plan.

7 310. In light of this authority, Juniper, through its Board, had a duty to monitor those
8 individuals responsible for Plan investment management on the Committee to ensure that they were
9 adequately performing their fiduciary obligations, and to take prompt and effective action to protect
10 the Plan in the event that these individuals were not fulfilling those duties.

11 311. Juniper, through its Board, had a duty to ensure that the individuals responsible for
12 Plan investment management on the Committee possessed the needed qualifications and experience
13 to carry out their duties (or use qualified advisors and service providers to fulfill their duties); had
14 adequate financial resources and information; maintained adequate records of the information on
15 which they based their decisions and analysis with respect to the Plan's investments; and reported
16 regularly to Defendants Juniper and Board.

17 312. The excessive investment management fees paid by the Plan, in the form of improper
18 share classes and high cost funds, inferentially suggest that Juniper and the Board breached their duty
19 to monitor the individuals they appointed to the Committee, by, among other things:

- 20 a. Failing to monitor and evaluate the performance of individuals responsible for Plan
21 investment management or have a system in place for doing so, standing idly by as
22 the Plan suffered significant losses in the form of unreasonably high expenses with
23 regard to share classes, and inefficient fund management styles that adversely affected
24 the investment performance of the funds' and their Participants' assets as a result of
25 these individuals responsible for Plan imprudent actions and omissions;

1 b. Failing to monitor the process by which Plan investments were evaluated, failing to
2 investigate the availability of lower-cost share classes, and failing to investigate the
3 availability of lower-cost funds and collective trusts; and

4 c. Failing to remove individuals responsible for Plan administration whose performance
5 was inadequate in that they continued to maintain imprudent, excessively costly, and
6 poorly performing investments within the Plan, all to the detriment of the Plan and
7 Plan Participants' retirement savings.

8 313. As a result of Defendants Juniper and Board's foregoing breaches of the duty to
9 monitor, the Plaintiff and Plan Participants suffered unreasonable and unnecessary monetary losses.

10 314. Pursuant to 29 U.S.C. §§ 1109(a) and 1132(a)(2), Defendants Juniper and Board are
11 liable to restore to the Plan all losses caused by their failure to adequately monitor individuals
12 responsible for Plan administration. In addition, Plaintiffs are entitled to equitable relief and other
13 appropriate relief as set forth in the Prayer for Relief.

14 **WHEREFORE**, Plaintiff prays that judgment be entered against Defendants on all claims
15 and requests that the Court award the following relief:

- 16 A. A determination that this action may proceed as a class action under Rule 23(b)(1), or
17 in the alternative Rule 23(b)(2), of the Federal Rules of Civil Procedure;
- 18 B. Designation of Plaintiff as Class Representative and designation of Plaintiff's counsel
19 as Class Counsel;
- 20 C. A Declaration the Defendants have breached their fiduciary duties under ERISA;
- 21 D. An Order compelling the Defendants to make good to the Plan all losses to the Plan
22 resulting from Defendants' breaches of fiduciary duty, including restoring to the Plan
23 all losses resulting from imprudent investment of the Plan's assets, restoring to the
24 Plan all profits the Defendants made through use of the Plan's assets, and restoring to
25 the Plan all profits which the Participants would have made if the Defendants had
26 fulfilled their fiduciary obligation;
- 27 E. An Order requiring Defendant Juniper to disgorge all profits received from, or in
28 respect of, the Plan, and/or equitable relief pursuant to 29 U.S.C. § 1132(a)(3) in the
form of an accounting for profits, imposition of constructive trust, or surcharge
against Juniper as necessary to effectuate relief, and to prevent Juniper' unjust
enrichment;

- 1 F. An Order enjoining Defendants from any further violation of their ERISA fiduciary
- 2 responsibilities, obligations, and duties;
- 3 G. Other equitable relief to redress Defendants’ illegal practices and to enforce the
- 4 provisions of ERISA as may be appropriate, including appointment of an independent
- 5 fiduciary or fiduciaries to run the Plan and removal of Plan Fiduciaries deemed to have
- 6 breached their fiduciary duties;
- 7 H. An award of pre-judgment interest;
- 8 I. An award of attorneys’ fees and costs pursuant to 29 U.S.C. § 1132(g) and the common
- 9 fund doctrine; and
- 10 J. Such other and further relief as the Court deems equitable and just.

Dated this 11th day of August, 2021

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