IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND
(Northern Division)

MARGARET E. KELLY
13342 LONG GREEN PIKE
HYDES, MD 21082
BALTIMORE COUNTY,

KATRINA ALLEN
23 FLAXLEAF COURT
MIDDLE RIVER, MD 21221
BALTIMORE COUNTY,

JEREMIAH M. DALEY, JR.
27 CODY AVENUE
PARKVILLE, MD 21234
BALTIMORE COUNTY,

TREVA N. BONEY
1110 REECE ROAD
SEVERN, MD 21144
ANNE ARUNDEL COUNTY,

TRACY L. MCCRACKEN
4304 SPRINGWOOD AVENUE
BALTIMORE, MD 21206
BALTIMORE CITY,

JERRELL BAKER
4124 BROOKSIDE OAKS
OWINGS MILLS, MD 21117
BALTIMORE COUNTY,

LOURDES CORDERO
1505 AVENNEL WAY
CROFTON, MD 21114
ANNE ARUNDEL COUNTY, AND

FRANCINE LAMPROS-KLEIN
408 N. CHAPEL STREET
BALTIMORE, MD 21231
BALTIMORE CITY,

Civil Action No. 1:16-cv-2835

COMPLAINT—CLASS ACTION

JURY TRIAL DEMANDED

individually and as representatives of a class of participants and beneficiaries on behalf of the Johns Hopkins University 403(b) Plan,

Plaintiffs,

v.

THE JOHNS HOPKINS UNIVERSITY
CHARLES & 34TH STREET
BALTIMORE, MD 21218
BALTIMORE CITY,

Serve on Resident Agent:
ARTHUR P. PINEAU
INTERIM GENERAL COUNSEL
113 GARLAND HALL
3400 N. CHARLES ST.
BALTIMORE, MD 21218

Defendant.

1. Plaintiffs Margaret E. Kelly, Katrina Allen, Jeremiah M. Daley, Jr., Treva N. Boney, Tracy L. McCracken, Jerrell Baker, Lourdes Cordero, and Francine Lampros-Klein, individually and as representatives of a class of participants and beneficiaries of the Johns Hopkins University 403(b) Plan ("Plan") bring this action under 29 U.S.C. §1132(a)(2) and (3) on behalf of the Plan against Defendant The Johns Hopkins University for breach of fiduciary duties under ERISA.[1]

2. The duties of loyalty and prudence are "the highest known to the law" and require fiduciaries to have "an eye single to the interests of the participants and

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

beneficiaries." *Donovan v. Bierwirth*, 680 F.2d 263, 271, 272 n.8 (2d Cir. 1982). As a fiduciary to the Plan, Defendant is obligated to act for the exclusive benefit of participants and beneficiaries, and to ensure that Plan expenses are reasonable and the Plan's investments are prudent. Because the marketplace for retirement plan services is established and competitive, and because the Plan has over $4 billion in assets, the Plan has tremendous bargaining power to demand low-cost administrative and investment management services. Instead of leveraging the Plan's massive bargaining power to benefit participants and beneficiaries, Defendant caused the Plan to pay unreasonable and excessive fees for recordkeeping, administrative, and investment services. Further, Defendant selected and retained investment options for the Plan that historically and consistently underperformed their benchmarks and charged excessive investment management fees.

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

JURISDICTION AND VENUE

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

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

PARTIES

Johns Hopkins University 403(b) Plan

6. The Johns Hopkins University 403(b) Plan is a defined contribution, individual account, employee pension benefit plan under 29 U.S.C. §1002(2)(A) and §1002(34).

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

8. Faculty and staff members of The Johns Hopkins University are eligible to participate in the Plan. The Plan provides the only source of retirement income for many employees of The Johns Hopkins University, which is based upon deferrals of employee compensation, employer matching contributions, and performance of investment options net of fees and expenses.

9. As of June 30, 2015, the Plan held $4.3 billion in assets and had 24,561 participants with account balances. As such, it is one of the largest defined contribution plans in the United States, ranking in the top 1% of all defined contribution plans based on total plan assets that filed a Form 5500 with the Department of Labor. Plans of such great size are commonly referred to as "jumbo plans."

Plaintiffs

10. Margaret E. Kelly resides in Hydes, Maryland, and is a participant in the Plan under 29 U.S.C. §1002(7) because she and her beneficiaries are or may become eligible to receive benefits under the Plan.

11. Katrina Allen resides in Middle River, Maryland, and is a participant in the Plan under 29 U.S.C. §1002(7) because she and her beneficiaries are or may become eligible to receive benefits under the Plan.

12. Jeremiah M. Daley, Jr. resides in Baltimore, Maryland, and is a participant in the Plan under 29 U.S.C. §1002(7) because he and his beneficiaries are or may become eligible to receive benefits under the Plan.

13. Treva N. Boney resides in Severn, Maryland, and is a participant in the Plan under 29 U.S.C. §1002(7) because she and her beneficiaries are or may become eligible to receive benefits under the Plan.

14. Tracy L. McCracken resides in Baltimore, Maryland, and is a participant in the Plan under 29 U.S.C. §1002(7) because she and her beneficiaries are or may become eligible to receive benefits under the Plan.

15. Jerrell Baker resides in Owings Mills, Maryland, and is a participant in the Plan under 29 U.S.C. §1002(7) because he and his beneficiaries are or may become eligible to receive benefits under the Plan.

16. Lourdes Cordero resides in Crofton, Maryland, and is a participant in the Plan under 29 U.S.C. §1002(7) because she and her beneficiaries are or may become eligible to receive benefits under the Plan.

17. Francine Lampros-Klein resides in Baltimore, Maryland, and is a participant in the Plan under 29 U.S.C. §1002(7) because she and her beneficiaries are or may become eligible to receive benefits under the Plan.

Defendant

18. Johns Hopkins University (the "University" or "Defendant") is a non-profit corporation organized under Maryland law with its principal place of business in Baltimore, Maryland. The University is governed by a Board of Trustees, which currently has 38 members.

19. The University is the Plan Administrator under 29 U.S.C. §1002(16)(A)(i), and upon information and belief, with exclusive responsibility and complete discretionary authority to control the operation, management and administration of the Plan, with all powers necessary to enable it properly to carry out such responsibilities, including the selection and compensation of the providers of administrative services to the Plan and the selection, monitoring, and removal of the investment options made available to participants for the investment of their contributions and provision of their retirement income.

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

FACTS APPLICABLE TO ALL COUNTS

I. Plan investments

21. Defendant exercised and continues to exercise discretionary authority over the investment options that are included in the Plan. The Plan's investments are designated by Defendant as available investment alternatives offered under the Plan.

22. Prior to January 2016, Defendant provided over *440* different mutual funds or insurance company products from the Plan's *five* recordkeepers: American Century ("American Century"), Teachers Insurance and Annuity Association of America and College Retirement Equities Fund ("TIAA-CREF"), Fidelity Investments Institutional Operations Company ("Fidelity"), the Variable Annuity Life Insurance Company of America ("VALIC"), and the Vanguard Group, Inc. ("Vanguard").

23. Among the available investments, 76 were American Century options holding $256 million in Plan assets, 25 were TIAA-CREF options holding $1.9 billion, 193 were Fidelity options holding $764 million, 62 were VALIC options holding $85 million, and 89 were Vanguard options holding $1.3 billion.

24. The Plan's investment options included mutual funds, insurance separate accounts, variable annuity options, and fixed annuity options. The mutual fund options included *retail* share class mutual funds, despite the massive size of the Plan. These retail share class mutual funds are designed for small individual investors and are identical in every respect to institutional share classes, except for much higher fees.

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

26. The TIAA Traditional Annuity has severe restrictions and penalties for withdrawal if participants wish to change their investments in the Plan. For example, some participants who invest in the TIAA Traditional Annuity must pay a 2.5% surrender charge if they withdraw their investment in a single lump sum within 120 days of termination of employment. Rather than being available to participants if they wish to liquidate their funds earlier, the only way for participants to withdraw or change their investment in the TIAA Traditional Annuity is to spread the withdrawal over a *ten-year period,* unless a substantial penalty is paid. Thus, participants who wish to withdraw their investment without penalty can only do so over ten years.

27. The Plan's CREF Stock Account, CREF Global Equities Account, CREF Equity Index Account, CREF Growth Account, CREF Social Choice Account, CREF Money Market Account, CREF Inflation-Linked Bond Account, and CREF Bond Market Account are variable annuities that invest in underlying securities for a given investment style. The value of the Plan's investment in these variable annuities changes over time based on investment performance and expenses of the accounts.

28. The expense ratio of the CREF variable annuity accounts is made up of multiple layers of expense charges consisting of the following:

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

b. “distribution expense” charge (9.5 bps);

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

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

29. The TIAA Real Estate Account is an insurance separate account maintained by TIAA-CREF. An insurance separate account is an investment vehicle that aggregates assets from more than one retirement plan for a given investment strategy, but those assets are segregated from the insurance company’s general account assets. Similar to the CREF variable annuity accounts, the expense ratio of the TIAA Real Estate Account is made up of multiple layers of expense charges. As of May 1, 2013, these charges consisted of the following:

a. “administrative expense” charge (26.5 bps);

b. “distribution expense” charge (8 bps);

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

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

e. “investment management expense” charge (36.5 bps).

30. The remaining TIAA-CREF funds are registered investment companies under the Investment Company Act of 1940, known as mutual funds. The TIAA-

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

CREF mutual funds charge varying amounts for investment management, but also charge distribution, marketing, and other expenses, depending on the type of investment and share class.

31. The American Century, Fidelity, and Vanguard investment options offered to Plan participants are exclusively mutual funds that charge varying amounts for investment management, distribution, marketing, and other expenses.

32. Mutual funds have shareholders who are not participants in the Plan, or any retirement plan, and who purchase shares as a result of marketing the fund. However, all shareholders in the mutual funds, including participants in the Plan, pay these expenses set forth in ¶¶30–31.

33. VALIC issued a fixed and variable insurance annuity program to the Plan, from which participants could direct their contributions among various fixed and variable return account options. The value of each participant's investment in these variable accounts will change over time based on the investment experience and expenses applied to the accounts. The variable accounts include insurance company pooled separate accounts that invest in underlying mutual funds advised by VALIC or other mutual fund companies, such as Vanguard. For these options, VALIC charges fees *in addition to* the expense ratio of the underlying mutual funds, which can reach *multiples* of the total fees charged by the mutual funds. For instance, VALIC charged 120 bps for the VALIC Vanguard LifeStrategy Conservative Growth Fund when the underlying Vanguard LifeStrategy

Conservative Growth Fund (VSCGX) charged 15 bps, an increase of *700%.* See infra ¶55.

34. The VALIC fixed accounts invest in the general account of VALIC and depend upon the claims-paying ability of VALIC. These options offer a fixed rate of return to participants

35. In January 2016, Defendant reduced the Plan's recordkeeping and administrative service providers from five to three. Despite this change, and as set forth in further detail below, Defendant continues to include high-priced investment options in the Plan, and continues to allow excessive recordkeeping fees to be charged to the Plan.

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

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

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

38. The cost of recordkeeping and administrative services depends on the number of participants. The cost does not depend on the asset balance of the plan or the amount of savings held in a participant's account. Thus, the cost of providing recordkeeping services to a plan with an average account balance of $50,000 is the same as the cost of recordkeeping for a plan with the same number of participants and a $5,000 average account balance. For this reason, prudent fiduciaries of defined contribution plans negotiate recordkeeping fees based on a fixed dollar amount per participant rather than as a percentage of plan assets. Otherwise, as plan assets increase through participant contributions or investment gains, the recordkeeping revenue increases without any change in the services provided.

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

40. A practice called revenue sharing occurs when a mutual fund or other investment vehicle directs a portion of its asset-based expense ratio to the plan's recordkeeper, putatively for providing recordkeeping and administrative services for the investment. Because revenue sharing arrangements provide asset-based compensation for the recordkeeper, prudent fiduciaries monitor the total amount of revenue sharing a recordkeeper receives to ensure that the recordkeeper's compensation is reasonable for the services provided. A prudent fiduciary must

ensure that the recordkeeper rebates to the plan all revenue sharing payments that exceed a reasonable, negotiated recordkeeping fee. Because revenue sharing payments are asset-based, they often bear no relation to a reasonable recordkeeping fee and can provide excessive compensation, or may be used as kickbacks to induce recordkeepers to have their high-priced funds included as plan investment options.

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

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

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

> **1. The choices are overwhelming**. Numerous studies have demonstrated that when people are given too many choices of anything, they lose confidence or make no decision.

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

> **2. The multi-recordkeeper platform is inefficient**. It does not allow sponsors to leverage total plan assets and receive appropriate pricing based on aggregate assets.

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

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

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

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

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

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

AonHewitt, *How 403(b) Plans are Wasting Nearly $10 Billion Annually, and What Can Be Done to Fix It* (Jan. 2016).[6]

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

> high investment and administrative costs, and complex choices for plan participants in terms of the number of vendors and the array of investment options. Additionally, this complexity has made it difficult for employers to monitor available choices and provide ongoing oversight . . . . Such designs typically are expensive and fail to leverage plan size. They can also be confusing to the average plan participant, who is likely to fall short of achieving retirement readiness and would benefit from more guidance.

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

47. Others in the industry agree. See, e.g., Kristen Heinzinger, *Paring Down Providers: A 403(b) Sponsor's Experience,* PLANSPONSOR (Dec. 6, 2012)("One advantage of consolidating to a single provider was an overall drop in administrative fees and expenses. Recordkeeping basis points returned to the plan sponsors rather than to the vendor. All plan money aggregated into a single platform, and participants were able to save on fee structure. This also eliminated

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[6]Available at https://retirementandinvestmentblog.aon.com/getattachment/36ff81a4-db35-4bc0-aac1-1685d2a64078/How_403(b)_Plans_are_Wasting_Nearly_$10_Billion_Annually_Whitepaper_FINAL.pdf.aspx.

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

the complications and confusion of having three different recordkeepers.”);[8] Paul B. Lasiter, *Single Provider, Multiple Choices*, BUSINESS OFFICER (Mar. 2010)(identifying, among other things, the key disadvantages of maintaining a multi-provider platform including the fact that it is “cumbersome and costly to continue overseeing multiple vendors”).[9] Use of a single recordkeeper is also less confusing to participants and avoids excessive recordkeeping fees charged to the Plan. *Vendor Consolidation in Higher Education: Getting More from Less*, PLANSPONSOR (July 29, 2010) (recognizing the following benefits, among others: “The plan participant experience is better” because “employees are benefiting from less confusion as a result of fewer vendors in the mix”; “Administrative burden is lessened” by “bringing new efficiencies to the payroll”; and “Costs can be reduced” because “[w]ith a reduced number of vendors in the equation, plan sponsors are better able to negotiate fees” and many are “reporting lower overall cost resulting in an improved cost-per-participant ratio”).[10]

48. Despite the long-recognized benefits of a single recordkeeper for a defined contribution plan, Defendant continues to contract with *three* recordkeepers (TIAA-CREF, Fidelity, and Vanguard). Prior to January 2016, Defendant also contracted with American Century and VALIC, for a total of *five* recordkeepers for

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

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

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

the Plan. The inefficient and costly structure maintained by Defendant has caused Plan participants to pay and continue to pay duplicative, excessive, and unreasonable fees for Plan recordkeeping and administrative services. There is no loyal or prudent reason for Defendant's failure to engage in a process to reduce duplicative services and the fees charged to the Plan before January 2016, as well as before 2009, or to continue with three recordkeepers to the present.

49. Each of the Plan's recordkeepers received or currently receives compensation from revenue sharing payments and other sources of indirect and direct compensation from the Plan and its investments for providing these duplicative services.

50. Upon information and belief and according to industry experts, the amounts of revenue sharing kicked back to the TIAA-CREF recordkeeping entity for the Plan's TIAA-CREF investments are:

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

51. Fidelity and Vanguard are compensated for recordkeeping services based on internal revenue sharing they receive from their proprietary Fidelity or Vanguard mutual funds. Similarly, American Century and VALIC were compensated based on revenue sharing payments from their proprietary investment options.

52. In addition, the Plan's recordkeepers receive additional indirect compensation, including revenue sharing for non-proprietary funds, float, securities-lending revenue, distribution fees, mortality and expense charges, surrender charges, spread, and redemption fees.

53. Based on information currently available to Plaintiffs regarding the Plan's features, the nature of the administrative services provided by the Plan's recordkeepers, the Plan's participant level (roughly 25,000), and the recordkeeping market, a reasonable recordkeeping fee for the Plan would have been a fixed amount between $500,000 and $850,000 (approximately $35 per participant with an account balance).

54. Based on the direct and indirect compensation levels shown on the Plan's Form 5500s filed with the Department of Labor, and according to the internal revenue share allocated to each of the Plan's recordkeepers from their proprietary investment options, the Plan paid at least $4.5 million to $6.1 million (or approximately $225–$340 per participant per year from 2010 to 2015), over 860% higher than a reasonable fee for these services, resulting in millions of dollars in excessive recordkeeping fees each year.

55. This is a *very* conservative total because this amount excludes asset-based revenue sharing payments VALIC received for recordkeeping and administrative services from the VALIC variable and fixed accounts. This information was not disclosed to Plan participants. These asset-based payments are substantial. For instance, on each of the variable accounts, VALIC charged fees *48%*

to 700% higher than the fees actually charged by the underlying mutual funds, and received additional compensation through revenue sharing payments from the underlying proprietary mutual funds and other third-party mutual funds. Based on information presently available to Plaintiffs, as of 2015, the amounts charged by VALIC on its variable annuity products and the expenses of the underlying mutual funds are set forth below.

VALIC Variable Annuity	Plan Fee	Underlying Mutual Fund	Underlying Mutual Fund Fee	Percentage Added by VALIC Above Mutual Fund Fee
VALIC American Beacon Holland Large Cap Growth Fund	196 bps	American Beacon Holland Large Cap Growth (Inv) (LHGFX)	124 bps	58.06%
VALIC Ariel Appreciation Fund	192 bps	Ariel Appreciation (Inv) (CAAPX)	112 bps	71.43%
VALIC Ariel Fund	183 bps	Ariel Fund (Inv) (ARGFX)	102 bps	79.41%
VALIC SunAmerica 2020 High Watermark (A) Fund	223 bps	SunAmerica 2020 High Watermark (A) (HWKAX)	85 bps	162.35%
VALIC Asset Allocation Fund	151 bps	VALIC Company I Asset Allocation (VCAAX)	68 bps	122.06%
VALIC Blue Chip Growth Fund	163 bps	VALIC Company I Blue Chip Growth (VCBCX)	83 bps	96.39%
VALIC Broad Cap Value Income Fund	165 bps	VALIC Company I Broad Cap Value Income (VBCVX)	85 bps	94.12%

VALIC Variable Annuity	Plan Fee	Underlying Mutual Fund	Underlying Mutual Fund Fee	Percentage Added by VALIC Above Mutual Fund Fee
VALIC Capital Conservation Fund	144 bps	VALIC Company I Capital Conservation (VCCCX)	63 bps	128.57%
VALIC Core Equity Fund	160 bps	VALIC Company I Core Equity (VCCEX)	80 bps	100.00%
VALIC Dividend Value Fund	162 bps	VALIC Company I Dividend Value (VCIGX)	82 bps	97.56%
VALIC Emerging Economies Fund	175 bps	VALIC Company I Emerging Economies (VCGEX)	94 bps	86.17%
VALIC Foreign Value Fund	160 bps	VALIC Company I Foreign Value (VCFVX)	79 bps	102.53%
VALIC Global Real Estate Fund	166 bps	VALIC Company I Global Real Estate (VGREX)	85 bps	95.29%
VALIC Global Social Awareness Fund	144 bps	VALIC Company I Global Social Awareness (VCSOX)	62 bps	132.26%
VALIC Global Strategy Fund	144 bps	VALIC Company I Global Strategy (VGLSX)	64 bps	125.00%
VALIC Government Securities Fund	145 bps	VALIC Company I Government Securities (VCGSX)	64 bps	126.56%
VALIC Growth & Income Fund	165 bps	VALIC Company I Growth & Income (VCGAX)	85 bps	94.12%
VALIC Growth Fund	161 bps	VALIC Company I Growth (VCULX)	80 bps	101.25%

VALIC Variable Annuity	Plan Fee	Underlying Mutual Fund	Underlying Mutual Fund Fee	Percentage Added by VALIC Above Mutual Fund Fee
VALIC Health Sciences Fund	191 bps	VALIC Company I Health Sciences (VCHSX)	109 bps	75.23%
VALIC Inflation Protected Fund	139 bps	VALIC Company I Inflation Protected (VCTPX)	58 bps	139.66%
VALIC International Equities Index Fund	126 bps	VALIC Company I International Equities Index (VCIEX)	44 bps	186.36%
VALIC International Government Bond Fund	145 bps	VALIC Company I International Government Bond (VCIFX)	65 bps	123.08%
VALIC International Growth Fund	181 bps	VALIC Company I International Growth (VCINX)	101 bps	79.21%
VALIC Large Cap Core Fund	164 bps	VALIC Company I Large Cap Core (VLCCX)	82 bps	100.00%
VALIC Large Capital Growth Fund	156 bps	VALIC Company I Large Capital Growth (VLCGX)	75 bps	108.00%
VALIC Mid Cap Index Fund	116 bps	VALIC Company I Mid Cap Index (VMIDX)	36 bps	222.22%
VALIC Mid Cap Strategic Growth Fund	162 bps	VALIC Company I Mid Cap Strategic Growth (VMSGX)	80 bps	102.50%
VALIC Money Market I Fund	131 bps	VALIC Company I Money Market I (VCIXX)	14 bps	835.71%
VALIC NASDAQ-100 Index Fund	133 bps	VALIC Company I Nasdaq-100 Index (VCNIX)	53 bps	150.94%

VALIC Variable Annuity	Plan Fee	Underlying Mutual Fund	Underlying Mutual Fund Fee	Percentage Added by VALIC Above Mutual Fund Fee
VALIC Science & Technology Fund	179 bps	VALIC Company I Science & Technology (VCSTX)	97 bps	84.54%
VALIC Small Cap Fund	173 bps	VALIC Company I Small Cap (VCSMX)	92 bps	88.04%
VALIC Small Cap Aggressive Growth Fund	179 bps	VALIC Company I Small Cap Aggressive Growth (VSAGX)	99 bps	80.81%
VALIC Small Cap Index Fund	120 bps	VALIC Company I Small Cap Index (VCSLX)	40 bps	200.00%
VALIC Small Cap Special Value Fund	168 bps	VALIC Company I Small Cap Special Values (VSSVX)	86 bps	95.35%
VALIC Small-Mid Growth Fund	180 bps	VALIC Company I Small-Mid Growth (VSSGX)	99 bps	81.82%
VALIC Stock Index Fund	115 bps	VALIC Company I Stock Index (VSTIX)	34 bps	238.24%
VALIC Value Fund	165 bps	VALIC Company I Value (VAVAX)	85 bps	94.12%
VALIC Aggressive Growth Lifestyle Fund	143 bps	VALIC Company II Aggressive Growth Lifestyle (VAGLX)	85 bps	68.24%
VALIC Capital Appreciation Fund	140 bps	VALIC Company II Capital Appreciation (VCCAX)	84 bps	66.67%

VALIC Variable Annuity	Plan Fee	Underlying Mutual Fund	Underlying Mutual Fund Fee	Percentage Added by VALIC Above Mutual Fund Fee
VALIC Conservative Growth Lifestyle Fund	143 bps	VALIC Company II Conservative Growth Lifestyle (VCGLX)	87 bps	64.37%
VALIC Core Bond Fund	132 bps	VALIC Company II Core Bond (VCCBX)	77 bps	71.43%
VALIC High Yield Bond Fund	151 bps	VALIC Company II High Yield Bond (VCHYX)	96 bps	57.29%
VALIC International Opportunities Fund	155 bps	VALIC Company II International Opportunities (VISEX)	99 bps	56.57%
VALIC Large Cap Value Fund	136 bps	VALIC Company II Large Cap Value (VACVX)	80 bps	70.00%
VALIC Mid Cap Growth Fund	140 bps	VALIC Company II Mid Cap Growth (VAMGX)	84 bps	66.67%
VALIC Mid Cap Value Fund	160 bps	VALIC Company II Mid Cap Value (VMCVX)	105 bps	52.38%
VALIC Moderate Growth Lifestyle Fund	142 bps	VALIC Company II Moderate Growth Lifestyle (VMGLX)	85 bps	67.06%
VALIC Money Market II Fund	110 bps	VALIC Company II Money Market II (VIIXX)	15 bps	633.33%
VALIC Small Cap Growth Fund	171 bps	VALIC Company II Small Cap Growth (VASMX)	115 bps	48.70%

VALIC Variable Annuity	Plan Fee	Underlying Mutual Fund	Underlying Mutual Fund Fee	Percentage Added by VALIC Above Mutual Fund Fee
VALIC Small Cap Value Fund	150 bps	VALIC Company II Small Cap Value (VCSVX)	95 bps	57.89%
VALIC Socially Responsible Fund	116 bps	VALIC Company II Socially Responsible (VCSRX)	56 bps	107.14%
VALIC Strategic Bond Fund	140 bps	VALIC Company II Strategic Bond (VCSBX)	87 bps	60.92%
VALIC Vanguard LifeStrategy Conservative Growth Fund	120 bps	Vanguard LifeStrategy Conservative Growth (Inv) (VSCGX)	15 bps	700.00%
VALIC Vanguard LifeStrategy Moderate Growth Fund	121 bps	Vanguard LifeStrategy Moderate Growth (Inv) (VSMGX)	16 bps	656.25%
VALIC Vanguard Long-Term Investment-Grade Fund	102 bps	Vanguard Long-Term Investment-Grade (Inv) (VWESX)	22 bps	363.64%
VALIC Vanguard Long-Term Treasury Fund	100 bps	Vanguard Long-Term Treasury (Inv) (VUSTX)	20 bps	400.00%
VALIC Vanguard Wellington Fund	131 bps	Vanguard Wellington (Inv) (VWELX)	26 bps	403.85%
VALIC Vanguard Windsor II Fund	141 bps	Vanguard Windsor II (Inv) (VWNFX)	34 bps	314.71%

56. The impact of excessive fees on employees' and retirees' retirement assets is dramatic. The U.S. Department of Labor has noted that a 1% higher level of fees over a 35-year period makes a 28% difference in retirement assets at the end of a participant's career. U.S. Dep't of Labor, *A Look at 401(k) Plan Fees,* at 1–2 (Aug. 2013).[11]

57. Defendant also failed to control recordkeeping costs as Plan assets grew. From June 30, 2009 to June 30, 2015, the Plan's assets increased from $2.1 billion to over $4.2 billion, an increase of *100%.* Because revenue sharing payments are asset-based, the already excessive compensation paid to the Plan's recordkeepers became even more excessive as the Plan's assets grew, even though the administrative services provided to the Plan remained the same. Defendant could have capped the amount of revenue sharing to ensure that any excessive amounts were returned to the Plan as other loyally and prudently administered plans do, but failed to do so.

58. Upon information and belief, Defendant also failed to conduct a competitive bidding process for the Plan's recordkeeping services. A competitive bidding process for the Plan's recordkeeping services would have produced a reasonable recordkeeping fee for the Plan. This competitive bidding process would have enabled Defendant to select a recordkeeper charging reasonable fees, obtain a substantial reduction in recordkeeping fees, and rebate any excess expenses paid by participants for recordkeeping services.

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

59. Defendant failed to prudently monitor and control the compensation paid by the Plan for recordkeeping and administrative services, particularly the asset-based revenue sharing received by the Plan's recordkeepers. Had Defendant monitored the compensation paid to the Plan's recordkeepers and ensured that participants were only charged reasonable fees for administrative and recordkeeping services, Plan participants would not have lost in excess of $35 million of their retirement savings in the last six years alone.[12]

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

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

60. Nobel Prize winners in economics have concluded that virtually no investment manager consistently beats the market over time after fees are taken into account. "Properly measured, the average actively managed dollar must underperform the average passively managed dollar, net of costs." William F. Sharpe, *The Arithmetic of Active Management,* 47 FIN. ANALYSTS J. 7, 8 (Jan./Feb. 1991);[13] Eugene F. Fama & Kenneth R. French, *Luck Versus Skill in the Cross-Section of Mutual Fund Returns*, 65 J. FIN. 1915, 1915 (2010)("After costs . . . in terms of net returns to investors, active investment must be a negative sum game.").

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

62. Even if an individual high-cost mutual fund exhibits market-beating performance over a short period of time, studies demonstrate that outperformance during a particular period is not predictive of whether a mutual fund will perform

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

well in the future. Laurent Barras et al., *False Discoveries in Mutual Fund Performance: Measuring Luck in Estimated Alphas*, 65 J. FIN. 179, 181 (2010); Mark M. Carhart, *On Persistence in Mutual Fund Performance*, 52 J. FIN. 57, 57, 59 (1997)(measuring 31 years of mutual fund returns and concluding that "persistent differences in mutual fund expenses and transaction costs explain almost all of the predictability in mutual fund returns"). However, the *worst-performing* mutual funds show a strong, persistent tendency to continue their poor performance. Carhart, *On Persistence in Mutual Fund Performance*, at 57.

63. Accordingly, investment costs are of paramount importance to prudent investment selection, and a prudent investor will not select higher-cost actively managed funds unless there has been a documented process leading to the realistic conclusion that the fund is likely to be that extremely rare exception, if one even exists, that will outperform its benchmark over time, net of investment expenses.

64. Moreover, jumbo retirement plans have enormous bargaining power to obtain low fees for investment management services:

> The fiduciaries also must consider the size and purchasing power of their plan and select the share classes (or alternative investments) that a fiduciary who is knowledgeable about such matters would select under the circumstances. In other words, the "prevailing circumstances"—such as the size of the plan—are a part of a prudent decisionmaking process. The failure to understand the concepts and to know about the alternatives could be a costly fiduciary breach.

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

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

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

> [T]he empirical evidence implies that superior management is not priced through higher expense ratios. On the contrary, it appears that the effect of expenses on after-expense performance (even after controlling for funds' observable characteristics) is more than one-to-one, which would imply that low-quality funds charge higher fees. Price and quality thus seem to be inversely related in the market for actively managed mutual funds.

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

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

67. Minimum investment thresholds for institutional share classes are routinely waived by the investment provider if not reached by a single fund based

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

68. Despite these far lower-cost options, Defendant selected and continues to retain Plan investment options with far higher costs than were and are available for the Plan based on its size, such as separate accounts and collective trusts. Moreover, for the *exact same mutual fund option*, the Defendant selected and continues to offer much higher-cost share classes of identical mutual funds than were available to the Plan. The following table lists the significantly lower-cost share classes that were available to the Plan since 2010 but were not used:

Plan Mutual Fund	Plan Fee	Identical Lower-Cost Mutual Fund	Identical Lower-Cost Mutual Fund Fee	Plan's Excess Cost
Amana Growth (Inv) (AMAGX)	109 bps	Amana Growth (Inst) (AMIGX)	87 bps	25.29%
American Century All Capital Growth (Inv) (TWGTX)	100 bps	American Century All Capital Growth (Inst) (ACAJX)	80 bps	25.00%
American Century Alternatives Equity Market Neutral (Inv) (ALHIX)	309 bps	American Century Alternatives Equity Market Neutral (Inst) (ALISX)	289 bps	6.92%
American Century Alternatives Market Neutral Value (Inv) (ACVVX)	160 bps	American Century Alternatives Market Neutral Value (Inst) (ACVKX)	140 bps	14.29%

Plan Mutual Fund	Plan Fee	Identical Lower-Cost Mutual Fund	Identical Lower-Cost Mutual Fund Fee	Plan's Excess Cost
American Century Balanced (Inv) (TWBIX)	91 bps	American Century Balanced (Inst) (ABINX)	71 bps	28.17%
American Century Capital Value (Inv) (ACTIX)	109 bps	American Century Capital Value (Inst) (ACPIX)	89 bps	22.47%
American Century Core Equity Plus (Inv) (ACPVX)	130 bps	American Century Core Equity Plus (Inst) (ACPKX)	110 bps	18.18%
American Century Disciplined Growth (Inv) (ADSIX)	105 bps	American Century Disciplined Growth (Inst) (ADCIX)	85 bps	23.53%
American Century Disciplined Growth Plus (Inv) (ACDJX)	146 bps	American Century Disciplined Growth Plus (Inst) (ACDKX)	126 bps	15.87%
American Century Diversified Bond (Inv) (ADFIX)	58 bps	American Century Diversified Bond (Inst) (ACBPX)	38 bps	52.63%
American Century Emerging Markets (Inv) (TWMIX)	172 bps	American Century Emerging Markets (Inst) (AMKIX)	152 bps	13.16%
American Century Emerging Markets Value (Inv) (AEVVX)	146 bps	American Century Emerging Markets Value (Inst) (AEVNX)	126 bps	15.87%
American Century Equity Growth (Inv) (BEQGX)	70 bps	American Century Equity Growth (Inst) (AMEIX)	50 bps	40.00%
American Century Equity Income (Inv) (TWEIX)	97 bps	American Century Equity Income (Inst) (ACIIX)	77 bps	25.97%
American Century Equity Income (Inv) (TWEIX)	93 bps	American Century Equity Income (R6) (AEUDX)	58 bps	60.34%

Plan Mutual Fund	Plan Fee	Identical Lower-Cost Mutual Fund	Identical Lower-Cost Mutual Fund Fee	Plan's Excess Cost
American Century Equity Index (Inv) (ACIVX)	49 bps	American Century Equity Index (Inst) (ACQIX)	29 bps	68.97%
American Century Focused Growth (Inv) (AFSIX)	102 bps	American Century Focused Growth (Inst) (AFGNX)	82 bps	24.39%
American Century Fundamental Equity (Inv) (AFDIX)	102 bps	American Century Fundamental Equity (Inst) (AFEIX)	82 bps	24.39%
American Century Ginnie Mae (Inv) (BGNMX)	54 bps	American Century Ginnie Mae (Inst) (AGMNX)	34 bps	58.82%
American Century Global Bonds (Inv) (AGBVX)	96 bps	American Century Global Bonds (Inst) (AGBNX)	76 bps	26.32%
American Century Global Bonds (Inv) (AGBVX)	96 bps	American Century Global Bonds (R6) (AGBDX)	71 bps	35.21%
American Century Global Gold (Inv) (BGEIX)	69 bps	American Century Global Gold (Inst) (AGGNX)	49 bps	40.82%
American Century Global Growth (Inv) (TWGGX)	116 bps	American Century Global Growth (Inst) (AGGIX)	96 bps	20.83%
American Century Global Growth (Inv) (TWGGX)	108 bps	American Century Global Growth (R6) (AGGDX)	73 bps	47.95%
American Century Global Real Estate (Inv) (ARYVX)	121 bps	American Century Global Real Estate (Inst) (ARYNX)	101 bps	19.80%
American Century Government Bond (Inv) (CPTNX)	48 bps	American Century Government Bond (Inst) (ABTIX)	28 bps	71.43%

Plan Mutual Fund	Plan Fee	Identical Lower-Cost Mutual Fund	Identical Lower-Cost Mutual Fund Fee	Plan's Excess Cost
American Century Growth (Inv) (TWCGX)	100 bps	American Century Growth (Inst) (TWGIX)	80 bps	25.00%
American Century Heritage (Inv) (TWHIX)	101 bps	American Century Heritage (Inst) (ATHIX)	81 bps	24.69%
American Century Heritage (Inv) (TWHIX)	100 bps	American Century Heritage (R6) (ATHDX)	65 bps	53.85%
American Century High-Yield (Inv) (ABHIX)	77 bps	American Century High-Yield (Inst) (ACYIX)	57 bps	35.09%
American Century High-Yield (Inv) (ABHIX)	85 bps	American Century High-Yield (R6) (AHYDX)	60 bps	41.67%
American Century High-Yield Municipal (Inv) (ABHYX)	61 bps	American Century High-Yield Municipal (Inst) (AYMIX)	41 bps	48.78%
American Century Income and Growth (Inv) (BIGRX)	70 bps	American Century Income and Growth (Inst) (AMGIX)	50 bps	40.00%
American Century Inflation Adjusted Bond (Inv) (ACITX)	48 bps	American Century Inflation Adjusted Bond (Inst) (AIANX)	28 bps	71.43%
American Century Inflation Protection Bond (Inv) (APOIX)	51 bps	American Century Inflation Protection Bond (Inst) (APISX)	30 bps	70.00%
American Century Inflation Protection Bond (Inv) (APOIX)	57 bps	American Century Inflation Protection Bond (R6) (APODX)	32 bps	78.13%
American Century International Bond (Inv) (BEGBX)	82 bps	American Century International Bond (Inst) (AIDIX)	62 bps	32.26%

Plan Mutual Fund	Plan Fee	Identical Lower-Cost Mutual Fund	Identical Lower-Cost Mutual Fund Fee	Plan's Excess Cost
American Century International Core Equity (Inv) (ACIMX)	118 bps	American Century International Core Equity (Inst) (ACIUX)	98 bps	20.41%
American Century International Growth (Inv) (TWIEX)	135 bps	American Century International Growth (Inst) (TGRIX)	115 bps	17.39%
American Century International Growth (Inv) (TWIEX)	118 bps	American Century International Growth (R6) (ATGDX)	83 bps	42.17%
American Century International Opportunities (Inv) (AIOIX)	189 bps	American Century International Opportunities (Inst) (ACIOX)	169 bps	11.83%
American Century International Value (Inv) (ACEVX)	132 bps	American Century International Value (Inst) (ACVUX)	112 bps	17.86%
American Century International Value (Inv) (ACEVX)	130 bps	American Century International Value (R6) (ACVDX)	95 bps	36.84%
American Century Large Company Value (Inv) (ALVIX)	85 bps	American Century Large Company Value (Inst) (ALVSX)	65 bps	30.77%
American Century Large Company Value (Inv) (ALVIX)	85 bps	American Century Large Company Value (R6) (ALVDX)	50 bps	70.00%
American Century Legacy Focused Large Cap (Inv) (ACFOX)	111 bps	American Century Legacy Focused Large Cap (Inst) (ACFSX)	91 bps	21.98%
American Century Legacy Large Cap (Inv) (ACGOX)	111 bps	American Century Legacy Large Cap (Inst) (ACGHX)	91 bps	21.98%

Plan Mutual Fund	Plan Fee	Identical Lower-Cost Mutual Fund	Identical Lower-Cost Mutual Fund Fee	Plan's Excess Cost
American Century Legacy Multi Cap (Inv) (ACMNX)	116 bps	American Century Legacy Multi Cap (Inst) (ACMHX)	96 bps	20.83%
American Century Livestrong 2015 (R) (ARFRX)	130 bps	American Century Livestrong 2015 (Inst) (ARNIX)	60 bps	116.67%
American Century Livestrong 2020 (Inv) (ARBVX)	83 bps	American Century Livestrong 2020 (Inst) (ARBSX)	63 bps	31.75%
American Century Livestrong 2025 (Inv) (ARWIX)	86 bps	American Century Livestrong 2025 (Inst) (ARWFX)	66 bps	30.30%
American Century Livestrong 2030 (Inv) (ARCVX)	89 bps	American Century Livestrong 2030 (Inst) (ARCSX)	69 bps	28.99%
American Century Livestrong 2035 (Inv) (ARYIX)	91 bps	American Century Livestrong 2035 (Inst) (ARLIX)	71 bps	28.17%
American Century Livestrong 2040 (Inv) (ARDVX)	94 bps	American Century Livestrong 2040 (Inst) (ARDSX)	74 bps	27.03%
American Century Livestrong 2045 (Inv) (AROIX)	95 bps	American Century Livestrong 2045 (Inst) (AOOIX)	75 bps	26.67%
American Century Livestrong 2050 (Inv) (ARFVX)	95 bps	American Century Livestrong 2050 (Inst) (ARFSX)	75 bps	26.67%
American Century Livestrong 2055 (Inv) (AREVX)	101 bps	American Century Livestrong 2055 (Inst) (ARENX)	81 bps	24.69%
American Century Livestrong Income Retirement (Inv) (ARTOX)	77 bps	American Century Livestrong Income Retirement (Inst) (ATTIX)	57 bps	35.09%

Plan Mutual Fund	Plan Fee	Identical Lower-Cost Mutual Fund	Identical Lower-Cost Mutual Fund Fee	Plan's Excess Cost
American Century Midcap Value (Inv) (ACMVX)	100 bps	American Century Midcap Value (Inst) (AVUAX)	80 bps	25.00%
American Century Midcap Value (Inv) (ACMVX)	100 bps	American Century Midcap Value (R6) (AMDVX)	65 bps	53.85%
American Century New Opportunities (Inv) (TWNOX)	150 bps	American Century New Opportunities (Inst) (TWNIX)	130 bps	15.38%
American Century Real Estate (Inv) (REACX)	116 bps	American Century Real Estate (Inst) (REAIX)	96 bps	20.83%
American Century Real Estate (Inv) (REACX)	114 bps	American Century Real Estate (R6) (AREDX)	79 bps	44.30%
American Century Select (Inv) (TWCIX)	101 bps	American Century Select (Inst) (TWSIX)	81 bps	24.69%
American Century Select (Inv) (TWCIX)	100 bps	American Century Select (R6) (ASDEX)	65 bps	53.85%
American Century Short Duration (Inv) (ACSNX)	61 bps	American Century Short Duration (Inst) (ACSUX)	41 bps	48.78%
American Century Short Term Government (Inv) (TWUSX)	56 bps	American Century Short Term Government (Inst) (TWUOX)	36 bps	55.56%
American Century Small Cap Growth (Inv) (ANOIX)	142 bps	American Century Small Cap Growth (Inst) (ANONX)	122 bps	16.39%
American Century Small Cap Growth (Inv) (ANOIX)	140 bps	American Century Small Cap Growth (R6) (ANODX)	107 bps	30.84%

Plan Mutual Fund	Plan Fee	Identical Lower-Cost Mutual Fund	Identical Lower-Cost Mutual Fund Fee	Plan's Excess Cost
American Century Small Cap Value (Inv) (ASVIX)	125 bps	American Century Small Cap Value (Inst) (ACVIX)	105 bps	19.05%
American Century Small Cap Value (Inv) (ASVIX)	122 bps	American Century Small Cap Value (R6) (ASVDX)	87 bps	40.23%
American Century Small Company (Inv) (ASQIX)	90 bps	American Century Small Company (Inst) (ASCQX)	70 bps	28.57%
American Century Strategic Allocation Aggressive (Inv) (TWSAX)	121 bps	American Century Strategic Allocation Aggressive (Inst) (AAAIX)	101 bps	19.80%
American Century Strategic Allocation Aggressive (Inv) (TWSAX)	117 bps	American Century Strategic Allocation Aggressive (R6) (AAAUX)	80 bps	46.25%
American Century Strategic Allocation Conservative (Inv) (TWSCX)	100 bps	American Century Strategic Allocation Conservative (Inst) (ACCIX)	80 bps	25.00%
American Century Strategic Allocation Conservative (Inv) (TWSCX)	99 bps	American Century Strategic Allocation Conservative (R6) (AACDX)	64 bps	54.69%
American Century Strategic Allocation Moderate (Inv) (TWSMX)	107 bps	American Century Strategic Allocation Moderate (Inst) (ASAMX)	87 bps	22.99%
American Century Strategic Allocation Moderate (Inv) (TWSMX)	106 bps	American Century Strategic Allocation Moderate (R6) (ASMDX)	71 bps	49.30%

Plan Mutual Fund	Plan Fee	Identical Lower-Cost Mutual Fund	Identical Lower-Cost Mutual Fund Fee	Plan's Excess Cost
American Century Strategic Inflation Opportunities (Inv) (ASIOX)	109 bps	American Century Strategic Inflation Opportunities (Inst) (ASINX)	89 bps	22.47%
American Century Ultra (Inv) (TWCUX)	100 bps	American Century Ultra (Inst) (TWUIX)	80 bps	25.00%
American Century Ultra (Inv) (TWCUX)	100 bps	American Century Ultra (R6) (AULDX)	65 bps	53.85%
American Century Value (Inv) (TWVLX)	1943 bps	American Century Value (Inst) (AVLIX)	80 bps	2328.75%
American Century Value (Inv) (TWVLX)	98 bps	American Century Value (R6) (AVUDX)	62 bps	58.06%
American Century Veedot (Inv) (AMVIX)	126 bps	American Century Veedot (Inst) (AVDIX)	106 bps	18.87%
American Century Vista (A) (TWVAX)	126 bps	American Century Vista (Inst) (TWVIX)	81 bps	55.56%
Fidelity Balanced (FBALX)	61 bps	Fidelity Balanced (K) (FBAKX)	47 bps	29.79%
Fidelity Blue Chip Growth (FBGRX)	93 bps	Fidelity Blue Chip Growth (K) (FBGKX)	74 bps	25.68%
Fidelity Capital Appreciation (FDCAX)	86 bps	Fidelity Capital Appreciation (K) (FCAKX)	68 bps	26.47%
Fidelity China Region (FHKCX)	98 bps	Fidelity China Region (I) (FHKIX)	93 bps	5.38%
Fidelity Conservative Income Bond (FCONX)	40 bps	Fidelity Conservative Income Bond (Inst) (FCNVX)	30 bps	33.33%

Plan Mutual Fund	Plan Fee	Identical Lower-Cost Mutual Fund	Identical Lower-Cost Mutual Fund Fee	Plan's Excess Cost
Fidelity Contrafund (FCNTX)	91 bps	Fidelity Contrafund (K) (FCNKX)	78 bps	16.67%
Fidelity Disciplined Equity (FDEQX)	68 bps	Fidelity Disciplined Equity (K) (FDEKX)	51 bps	33.33%
Fidelity Diversified International (FDIVX)	96 bps	Fidelity Diversified International (K) (FDIKX)	77 bps	24.68%
Fidelity Dividend Growth (FDGFX)	92 bps	Fidelity Dividend Growth (K) (FDGKX)	71 bps	29.58%
Fidelity Emerging Europe, Middle East, Africa (EMEA) (FEMEX)	125 bps	Fidelity Emerging Europe, Middle East, Africa (EMEA) (I) (FIEMX)	119 bps	5.04%
Fidelity Emerging Markets (FEMKX)	109 bps	Fidelity Emerging Markets (K) (FKEMX)	84 bps	29.76%
Fidelity Emerging Markets Discovery (FEDDX)	144 bps	Fidelity Emerging Markets Discovery (Inst) (FEDIX)	143 bps	0.70%
Fidelity Equity Income II (FEQTX)	69 bps	Fidelity Equity Income II (K) (FETKX)	54 bps	27.78%
Fidelity Equity-Income (FEQIX)	74 bps	Fidelity Equity-Income (K) (FEIKX)	54 bps	37.04%
Fidelity Europe (FIEUX)	101 bps	Fidelity Europe (I) (FHJMX)	96 bps	5.21%
Fidelity Export & Multinational (FEXPX)	84 bps	Fidelity Export & Multinational (K) (FEXKX)	64 bps	31.25%
Fidelity Freedom 2000 (FFFBX)	51 bps	Fidelity Freedom K 2000 (FFKBX)	43 bps	18.60%
Fidelity Freedom 2005 (FFFVX)	64 bps	Fidelity Freedom K 2005 (FFKVX)	52 bps	23.08%

Plan Mutual Fund	Plan Fee	Identical Lower-Cost Mutual Fund	Identical Lower-Cost Mutual Fund Fee	Plan's Excess Cost
Fidelity Freedom 2010 (FFFCX)	67 bps	Fidelity Freedom K 2010 (FFKCX)	53 bps	26.42%
Fidelity Freedom 2015 (FFVFX)	68 bps	Fidelity Freedom K 2015 (FKVFX)	54 bps	25.93%
Fidelity Freedom 2020 (FFFDX)	74 bps	Fidelity Freedom K 2020 (FFKDX)	57 bps	29.82%
Fidelity Freedom 2025 (FFTWX)	76 bps	Fidelity Freedom K 2025 (FKTWX)	59 bps	28.81%
Fidelity Freedom 2030 (FFFEX)	79 bps	Fidelity Freedom K 2030 (FFKEX)	61 bps	29.51%
Fidelity Freedom 2035 (FFTHX)	81 bps	Fidelity Freedom K 2035 (FKTHX)	61 bps	32.79%
Fidelity Freedom 2040 (FFFFX)	81 bps	Fidelity Freedom K 2040 (FFKFX)	62 bps	30.65%
Fidelity Freedom 2045 (FFFGX)	82 bps	Fidelity Freedom K 2045 (FFKGX)	62 bps	32.26%
Fidelity Freedom 2050 (FFFHX)	84 bps	Fidelity Freedom K 2050 (FFKHX)	63 bps	33.33%
Fidelity Freedom 2055 (FDEEX)	78 bps	Fidelity Freedom K 2055 (FDENX)	64 bps	21.88%
Fidelity Freedom Income (FFFAX)	50 bps	Fidelity Freedom K Income (FFKAX)	42 bps	19.05%
Fidelity Fund (FFIDX)	60 bps	Fidelity Fund (K) (FFDKX)	43 bps	39.53%
Fidelity Global Commodity Stock (FFGCX)	109 bps	Fidelity Global Commodity Stock (I) (FFGIX)	107 bps	1.87%
Fidelity Growth & Income (FGRIX)	74 bps	Fidelity Growth & Income (K) (FGIKX)	53 bps	39.62%
Fidelity Growth Company (FDGRX)	89 bps	Fidelity Growth Company (K) (FGCKX)	72 bps	23.61%
Fidelity Growth Discovery (FDSVX)	75 bps	Fidelity Growth Discovery (K) (FGDKX)	52 bps	44.23%

Plan Mutual Fund	Plan Fee	Identical Lower-Cost Mutual Fund	Identical Lower-Cost Mutual Fund Fee	Plan's Excess Cost
Fidelity Growth Strategies (FDEGX)	77 bps	Fidelity Growth Strategies (K) (FAGKX)	51 bps	50.98%
Fidelity Independence (FDFFX)	92 bps	Fidelity Independence (K) (FDFKX)	77 bps	19.48%
Fidelity International Discovery (FIGRX)	100 bps	Fidelity International Discovery (K) (FIDKX)	79 bps	26.58%
Fidelity International Growth (FIGFX)	104 bps	Fidelity International Growth (Z) (FZAJX)	88 bps	18.18%
Fidelity International Real Estate (FIREX)	114 bps	Fidelity International Real Estate (Inst) (FIRIX)	109 bps	4.59%
Fidelity International Small Cap (FISMX)	142 bps	Fidelity International Small Cap (Inst) (FIXIX)	131 bps	8.40%
Fidelity International Small Cap Opportunities (FSCOX)	89 bps	Fidelity International Small Cap Opportunities (Inst) (FOPIX)	88 bps	1.14%
Fidelity Japan (FJPNX)	80 bps	Fidelity Japan (I) (FJPIX)	75 bps	6.67%
Fidelity Large Cap Growth (FSLGX)	86 bps	Fidelity Large Cap Growth (Inst) (FLNOX)	74 bps	16.22%
Fidelity Latin America (FLATX)	103 bps	Fidelity Latin America (Inst) (FLFIX)	101 bps	1.98%
Fidelity Leveraged Company Stock (FLVCX)	88 bps	Fidelity Leveraged Company Stock (K) (FLCKX)	69 bps	27.54%
Fidelity Low-Priced Stock (FLPSX)	99 bps	Fidelity Low-Priced Stock (K) (FLPKX)	85 bps	16.47%

Plan Mutual Fund	Plan Fee	Identical Lower-Cost Mutual Fund	Identical Lower-Cost Mutual Fund Fee	Plan's Excess Cost
Fidelity Magellan (FMAGX)	74 bps	Fidelity Magellan (K) (FMGKX)	58 bps	27.59%
Fidelity Mega Cap Stock (FGRTX)	68 bps	Fidelity Mega Cap Stock (Z) (FZALX)	54 bps	25.93%
Fidelity Mid Cap Growth (FSMGX)	70 bps	Fidelity Mid Cap Growth (Inst) (FGCOX)	59 bps	18.64%
Fidelity Mid-Cap Stock (FMCSX)	64 bps	Fidelity Mid-Cap Stock (K) (FKMCX)	41 bps	56.10%
Fidelity OTC (FOCPX)	104 bps	Fidelity OTC (K) (FOCKX)	88 bps	18.18%
Fidelity Overseas (FOSFX)	85 bps	Fidelity Overseas (K) (FOSKX)	66 bps	28.79%
Fidelity Puritan (FPURX)	61 bps	Fidelity Puritan (K) (FPUKX)	47 bps	29.79%
Fidelity Real Estate Income (FRIFX)	92 bps	Fidelity Real Estate Income (I) (FRIRX)	89 bps	3.37%
Fidelity Select Gold (FSAGX)	94 bps	Fidelity Select Gold (I) (FGDIX)	91 bps	3.30%
Fidelity Select Materials (FSDPX)	94 bps	Fidelity Select Materials (I) (FMFEX)	93 bps	1.08%
Fidelity Small Cap Independence (FDSCX)	106 bps	Fidelity Small Cap Independence (I) (FCDIX)	105 bps	0.95%
Fidelity Spartan 500 Index (Adv) (FUSVX)	6 bps	Fidelity Spartan 500 Index (Adv Inst) (FXAIX)	2 bps	200.00%
Fidelity Spartan 500 Index (Inv) (FUSEX)	10 bps	Fidelity Spartan 500 Index (Adm) (FUSVX)	7 bps	42.86%
Fidelity Spartan Emerging Markets Index (Adv) (FPMAX)	22 bps	Fidelity Spartan Emerging Markets Index (Adv Inst) (FPADX)	12 bps	83.33%

Plan Mutual Fund	Plan Fee	Identical Lower-Cost Mutual Fund	Identical Lower-Cost Mutual Fund Fee	Plan's Excess Cost
Fidelity Spartan Extended Market Index (Adv) (FSEVX)	7 bps	Fidelity Spartan Extended Market Index (Adv Inst) (FSMAX)	6 bps	16.67%
Fidelity Spartan Extended Market Index (Inv) (FSEMX)	10 bps	Fidelity Spartan Extended Market Index (Adv Inst) (FSMAX)	6 bps	66.67%
Fidelity Spartan Global ex-US Index (Adv) (FSGDX)	18 bps	Fidelity Spartan Global ex-US Index (Adv Inst) (FSGGX)	10 bps	80.00%
Fidelity Spartan Inflation-Protected Index (Adv) (FSIYX)	10 bps	Fidelity Spartan Inflation-Protected Index (Adv Inst) (FIPDX)	5 bps	100.00%
Fidelity Spartan International Index (Adv) (FSIVX)	12 bps	Fidelity Spartan International Index (Adv Inst) (FSPSX)	6 bps	100.00%
Fidelity Spartan International Index (Inv) (FSIIX)	10 bps	Fidelity Spartan International Index (Adm) (FSIVX)	7 bps	42.86%
Fidelity Spartan Long Term Treasury Bond Index (Inv) (FLBIX)	20 bps	Fidelity Spartan Long Term Treasury Bond Index (Adm) (FLBAX)	10 bps	100.00%
Fidelity Spartan Mid Cap Index (Adv) (FSCKX)	12 bps	Fidelity Spartan Mid Cap Index (Adv Inst) (FSMDX)	6 bps	100.00%
Fidelity Spartan Real Estate Index (Adv) (FSRVX)	9 bps	Fidelity Spartan Real Estate Index (Inst) (FSRNX)	7 bps	28.57%
Fidelity Spartan Short Term Treasury Index (Inv) (FSBIX)	20 bps	Fidelity Spartan Short Term Treasury Index (Adm) (FSBAX)	10 bps	100.00%

Plan Mutual Fund	Plan Fee	Identical Lower-Cost Mutual Fund	Identical Lower-Cost Mutual Fund Fee	Plan's Excess Cost
Fidelity Spartan Small Cap Index (Adv) (FSSVX)	17 bps	Fidelity Spartan Small Cap Index (Adv Inst) (FSSNX)	11 bps	54.55%
Fidelity Spartan Total Market Index (Adv) (FSTVX)	7 bps	Fidelity Spartan Total Market Index (Adv Inst) (FSKAX)	5 bps	40.00%
Fidelity Spartan Total Market Index (Inv) (FSTMX)	10 bps	Fidelity Spartan Total Market Index (Adm) (FSTVX)	7 bps	42.86%
Fidelity Spartan Total Market Index (Inv) (FSTMX)	10 bps	Fidelity Spartan Total Market Index (Adv Inst) (FSKAX)	5 bps	100.00%
Fidelity Spartan U.S. Bond Index (Adv) (FSITX)	10 bps	Fidelity Spartan U.S. Bond Index (Adv Inst) (FXNAX)	5 bps	100.00%
Fidelity Spartan US Bond Index (Inv) (FBIDX)	32 bps	Fidelity Spartan US Bond Index (F) (FUBFX)	22 bps	45.45%
Fidelity Spartan US Bond Index (Inv) (FBIDX)	22 bps	Fidelity Spartan US Bond Index (Adv Inst) (FXNAX)	5 bps	340.00%
Fidelity Stock Selector (FDSSX)	86 bps	Fidelity Stock Selector (K) (FSSKX)	66 bps	30.30%
Fidelity Stock Selector Small Cap (FDSCX)	72 bps	Fidelity Stock Selector Small Cap (I) (FCDIX)	62 bps	16.13%
Fidelity Total Bond (FTBFX)	45 bps	Fidelity Total Bond (Z) (FBKWX)	36 bps	25.00%
Fidelity Value (FDVLX)	63 bps	Fidelity Value (K) (FVLKX)	46 bps	36.96%

Plan Mutual Fund	Plan Fee	Identical Lower-Cost Mutual Fund	Identical Lower-Cost Mutual Fund Fee	Plan's Excess Cost
Fidelity Value Discovery (FVDFX)	95 bps	Fidelity Value Discovery (K) (FVDKX)	74 bps	28.38%
Fidelity Value Strategies (FSLSX)	80 bps	Fidelity Value Strategies (K) (FVSKX)	56 bps	42.86%
Strategic Advisers Core Multi-Manager (FLAUX)	97 bps	Strategic Advisers Core Multi-Manager (F) (FHJSX)	87 bps	11.49%
Strategic Advisers International Multi-Manager (FMJDX)	116 bps	Strategic Advisers International Multi-Manager (F) (FMBKX)	107 bps	8.41%
Strategic Advisers Small Mid Cap Multi- Manager (FNAPX)	116 bps	Strategic Advisers Small Mid Cap Multi- Manager (F) (FARMX)	106 bps	9.43%
Strategic Advisers Value Multi-Manager (FKMOX)	97 bps	Strategic Advisers Value Multi-Manager (F) (FGWBX)	87 bps	11.49%
TIAA-CREF International Equity (Ret) (TRERX)	78 bps	TIAA-CREF International Equity (Inst) (TIIEX)	57 bps	36.84%
TIAA-CREF Lifecycle 2010 (Ret) (TCLEX)	65 bps	TIAA-CREF Lifecycle 2010 (Inst) (TCTIX)	40 bps	62.50%
TIAA-CREF Lifecycle 2015 (Ret) (TCLIX)	67 bps	TIAA-CREF Lifecycle 2015 (Inst) (TCNIX)	42 bps	59.52%
TIAA-CREF Lifecycle 2020 (Ret) (TCLTX)	67 bps	TIAA-CREF Lifecycle 2020 (Inst) (TCWIX)	42 bps	59.52%
TIAA-CREF Lifecycle 2025 (Ret) (TCLFX)	69 bps	TIAA-CREF Lifecycle 2025 (Inst) (TCYIX)	44 bps	56.82%

Plan Mutual Fund	Plan Fee	Identical Lower-Cost Mutual Fund	Identical Lower-Cost Mutual Fund Fee	Plan's Excess Cost
TIAA-CREF Lifecycle 2030 (Ret) (TCLNX)	71 bps	TIAA-CREF Lifecycle 2030 (Inst) (TCRIX)	46 bps	54.35%
TIAA-CREF Lifecycle 2035 (Ret) (TCLRX)	72 bps	TIAA-CREF Lifecycle 2035 (Inst) (TCIIX)	47 bps	53.19%
TIAA-CREF Lifecycle 2040 (Ret) (TCLOX)	72 bps	TIAA-CREF Lifecycle 2040 (Inst) (TCOIX)	47 bps	53.19%
TIAA-CREF Lifecycle 2045 (Ret) (TTFRX)	70 bps	TIAA-CREF Lifecycle 2045 (Inst) (TTFIX)	45 bps	55.56%
TIAA-CREF Lifecycle 2050 (Ret) (TLFRX)	70 bps	TIAA-CREF Lifecycle 2050 (Inst) (TFTIX)	45 bps	55.56%
TIAA-CREF Lifecycle 2055 (Ret) (TTRLX)	74 bps	TIAA-CREF Lifecycle 2055 (Inst) (TTRIX)	49 bps	51.02%
TIAA-CREF Lifecycle Retirement Income (Ret) (TLIRX)	63 bps	TIAA-CREF Lifecycle Retirement Income (Inst) (TLRIX)	38 bps	65.79%
TIAA-CREF Small-Cap Equity (Ret) (TRSEX)	80 bps	TIAA-CREF Small-Cap Equity (Inst) (TISEX)	55 bps	45.45%
Vanguard 500 Index (Signal) (VIFSX)	7 bps	Vanguard Institutional Index (Inst Pl) (VIIIX)	2 bps	250.00%
Vanguard Asset Allocation (Inv) (VAAPX)	27 bps	Vanguard Asset Allocation (Adm) (VAARX)	19 bps	42.11%
Vanguard Balanced Index (Inv) (VBINX)	26 bps	Vanguard Balanced Index (Inst) (VBAIX)	8 bps	225.00%
Vanguard Capital Opportunity (Inv) (VHCOX)	48 bps	Vanguard Capital Opportunity (Adm) (VHCAX)	41 bps	17.07%

Plan Mutual Fund	Plan Fee	Identical Lower-Cost Mutual Fund	Identical Lower-Cost Mutual Fund Fee	Plan's Excess Cost
Vanguard Developed Markets Index (Inv) (VDMIX)	20 bps	Vanguard Developed Markets Index (Inst Pl) (VDMPX)	6 bps	233.33%
Vanguard Dividend Appreciation Index (Inv) (VDAIX)	20 bps	Vanguard Dividend Appreciation Index (Adm) (VDADX)	10 bps	100.00%
Vanguard Emerging Markets Stock Index (Inv) (VEIEX)	35 bps	Vanguard Emerging Markets Stock Index (Inst) (VEMIX)	15 bps	133.33%
Vanguard Energy (Inv) (VGENX)	38 bps	Vanguard Energy (Adm) (VGELX)	31 bps	22.58%
Vanguard Equity-Income (Inv) (VEIPX)	31 bps	Vanguard Equity-Income (Adm) (VEIRX)	22 bps	40.91%
Vanguard European Stock Index (Inv) (VEURX)	26 bps	Vanguard European Stock Index (Inst) (VESIX)	10 bps	160.00%
Vanguard European Stock Index (Inv) (VEURX)	26 bps	Vanguard European Stock Index (Inst Pl) (VEUPX)	8 bps	225.00%
Vanguard Explorer (Inv) (VEXPX)	49 bps	Vanguard Explorer (Adm) (VEXRX)	32 bps	53.13%
Vanguard Extended Market Index (Inv) (VEXMX)	26 bps	Vanguard Extended Market Index (Inst) (VIEIX)	8 bps	225.00%
Vanguard Extended Market Index (Inv) (VEXMX)	24 bps	Vanguard Extended Market Index (Inst Pl) (VEMPX)	6 bps	300.00%
Vanguard FTSE All-World ex-US Index (Inv) (VFWIX)	35 bps	Vanguard FTSE All-World ex-US Index (Inst) (VFWSX)	15 bps	133.33%

Plan Mutual Fund	Plan Fee	Identical Lower-Cost Mutual Fund	Identical Lower-Cost Mutual Fund Fee	Plan's Excess Cost
Vanguard FTSE All-World ex-US Small-Cap Index (Inv) (VFSVX)	55 bps	Vanguard FTSE All-World ex-US Small-Cap Index (Inst) (VFSNX)	30 bps	83.33%
Vanguard FTSE Social Index (Inv) (VFTSX)	29 bps	Vanguard FTSE Social Index (Inst) (VFTNX)	16 bps	81.25%
Vanguard GNMA (Inv) (VFIIX)	23 bps	Vanguard GNMA (Adm) (VFIJX)	13 bps	76.92%
Vanguard Growth & Income (Inv) (VQNPX)	32 bps	Vanguard Growth & Income (Adm) (VGIAX)	21 bps	52.38%
Vanguard Health Care (Inv) (VGHCX)	36 bps	Vanguard Health Care (Adm) (VGHAX)	29 bps	24.14%
Vanguard High-Yield Corporate (Inv) (VWEHX)	28 bps	Vanguard High-Yield Corporate (Adm) (VWEAX)	15 bps	86.67%
Vanguard Inflation-Protected Securities (Inv) (VIPSX)	22 bps	Vanguard Inflation-Protected Securities (Inst) (VIPIX)	7 bps	214.29%
Vanguard Institutional Index (Inst) (VINIX)	4 bps	Vanguard Institutional Index (Inst Pl) (VIIIX)	2 bps	100.00%
Vanguard Intermediate-Term Bond Index (Inv) (VBIIX)	22 bps	Vanguard Intermediate-Term Bond Index (Inst) (VBIMX)	7 bps	214.29%
Vanguard Intermediate-Term Bond Index (Inv) (VBIIX)	20 bps	Vanguard Intermediate-Term Bond Index (Inst Pl) (VBIUX)	5 bps	300.00%
Vanguard Intermediate-Term Investment-Grade (Inv) (VFICX)	24 bps	Vanguard Intermediate-Term Investment-Grade (Adm) (VFIDX)	11 bps	118.18%

Plan Mutual Fund	Plan Fee	Identical Lower-Cost Mutual Fund	Identical Lower-Cost Mutual Fund Fee	Plan's Excess Cost
Vanguard Intermediate-Term Treasury (Inv) (VFITX)	25 bps	Vanguard Intermediate-Term Treasury (Adm) (VFIUX)	12 bps	108.33%
Vanguard International Growth (Inv) (VWIGX)	49 bps	Vanguard International Growth (Adm) (VWILX)	33 bps	48.48%
Vanguard Large-Cap Index (Inv) (VLACX)	26 bps	Vanguard Large-Cap Index (Inst) (VLISX)	8 bps	225.00%
Vanguard Long-Term Bond Index (Inv) (VBLTX)	22 bps	Vanguard Long-Term Bond Index (Inst) (VBLLX)	7 bps	214.29%
Vanguard Long-Term Bond Index (Inv) (VBLTX)	20 bps	Vanguard Long-Term Bond Index (Inst Pl) (VBLIX)	5 bps	300.00%
Vanguard Long-Term Investment-Grade (Inv) (VWESX)	26 bps	Vanguard Long-Term Investment-Grade (Adm) (VWETX)	13 bps	100.00%
Vanguard Long-Term Treasury (Inv) (VUSTX)	25 bps	Vanguard Long-Term Treasury (Adm) (VUSUX)	12 bps	108.33%
Vanguard Mid Cap Index (Inv) (VIMSX)	26 bps	Vanguard Mid Cap Index (Inst) (VMCIX)	8 bps	225.00%
Vanguard Mid Cap Index (Inv) (VIMSX)	24 bps	Vanguard Mid Cap Index (Inst Pl) (VMCPX)	6 bps	300.00%
Vanguard Mid-Cap Growth Index (Inv) (VMGIX)	24 bps	Vanguard Mid-Cap Growth Index (Adm) (VMGMX)	10 bps	140.00%
Vanguard Mid-Cap Value Index (Inv) (VMVIX)	24 bps	Vanguard Mid-Cap Value Index (Adm) (VMVAX)	10 bps	140.00%

Plan Mutual Fund	Plan Fee	Identical Lower-Cost Mutual Fund	Identical Lower-Cost Mutual Fund Fee	Plan's Excess Cost
Vanguard Morgan Growth (Inv) (VMRGX)	43 bps	Vanguard Morgan Growth (Adm) (VMRAX)	29 bps	48.28%
Vanguard Pacific Stock Index (Inv) (VPACX)	26 bps	Vanguard Pacific Stock Index (Inst) (VPKIX)	10 bps	160.00%
Vanguard Prime Money Market (Inv) (VMMXX)	23 bps	Vanguard Prime Money Market (Adm) (VMRXX)	9 bps	155.56%
Vanguard PRIMECAP (Inv) (VPMCX)	45 bps	Vanguard PRIMECAP (Adm) (VPMAX)	36 bps	25.00%
Vanguard REIT Index (Inv) (VGSIX)	26 bps	Vanguard REIT Index (Inst) (VGSNX)	9 bps	188.89%
Vanguard Short-Term Bond Index (Inv) (VBISX)	22 bps	Vanguard Short-Term Bond Index (Adm) (VBIRX)	11 bps	100.00%
Vanguard Short-Term Bond Index (Inv) (VBISX)	20 bps	Vanguard Short-Term Bond Index (Inst Pl) (VBIPX)	5 bps	300.00%
Vanguard Short-Term Federal (Inv) (VSGBX)	22 bps	Vanguard Short-Term Federal (Adm) (VSGDX)	12 bps	83.33%
Vanguard Short-Term Investment-Grade (Inv) (VFSTX)	24 bps	Vanguard Short-Term Investment-Grade (Inst) (VFSIX)	9 bps	166.67%
Vanguard Short-Term Treasury (Inv) (VFISX)	22 bps	Vanguard Short-Term Treasury (Adm) (VFIRX)	12 bps	83.33%
Vanguard Small Cap Growth Index (Inv) (VISGX)	26 bps	Vanguard Small Cap Growth Index (Inst) (VSGIX)	8 bps	225.00%
Vanguard Small Cap Index (Inv) (NAESX)	26 bps	Vanguard Small Cap Index (Inst) (VSCIX)	8 bps	225.00%

Plan Mutual Fund	Plan Fee	Identical Lower-Cost Mutual Fund	Identical Lower-Cost Mutual Fund Fee	Plan's Excess Cost
Vanguard Small Cap Value Index (Inv) (VISVX)	26 bps	Vanguard Small Cap Value Index (Inst) (VSIIX)	8 bps	225.00%
Vanguard Tax-Managed International (Inv) (VDVIX)	20 bps	Vanguard Tax-Managed International (Inst) (VTMNX)	7 bps	185.71%
Vanguard Tax-Managed International (Inv) (VDVIX)	20 bps	Vanguard Tax-Managed International (Inst Pl) (VDIPX)	6 bps	233.33%
Vanguard Total Bond Market Index (Inst) (VBTIX)	7 bps	Vanguard Total Bond Market Index (Inst Pl) (VBMPX)	5 bps	40.00%
Vanguard Total Bond Market Index (Signal) (VBTSX)	12 bps	Vanguard Total Bond Market Index (Inst) (VBTIX)	7 bps	71.43%
Vanguard Total Bond Market Index (Signal) (VBTSX)	11 bps	Vanguard Total Bond Market Index (Inst Pl) (VBMPX)	5 bps	120.00%
Vanguard Total International Stock Index (Inv) (VGTSX)	22 bps	Vanguard Total International Stock Index (Inst Pl) (VTPSX)	10 bps	120.00%
Vanguard Total Stock Market Index (Inst) (VITSX)	4 bps	Vanguard Institutional Total Stock Market Index (Inst Pl) (VITPX)	2 bps	100.00%
Vanguard Total Stock Market Index (Inv) (VTSMX)	17 bps	Vanguard Institutional Total Stock Market Index (Inst Pl) (VITPX)	2 bps	750.00%
Vanguard Total World Stock Index (Inv) (VTWSX)	45 bps	Vanguard Total World Stock Index (Inst) (VTWIX)	23 bps	95.65%

Plan Mutual Fund	Plan Fee	Identical Lower-Cost Mutual Fund	Identical Lower-Cost Mutual Fund Fee	Plan's Excess Cost
Vanguard Total World Stock Index (Inv) (VTWSX)	35 bps	Vanguard Total World Stock Index (Inst) (VTWIX)	17 bps	105.88%
Vanguard U.S. Growth (Inv) (VWUSX)	45 bps	Vanguard U.S. Growth (Adm) (VWUAX)	29 bps	55.17%
Vanguard Value Index (Inv) (VIVAX)	26 bps	Vanguard Value Index (Adm) (VIVIX)	8 bps	225.00%
Vanguard Wellesley Income (Inv) (VWINX)	28 bps	Vanguard Wellesley Income (Adm) (VWIAX)	21 bps	33.33%
Vanguard Wellington (Inv) (VWELX)	30 bps	Vanguard Wellington (Adm) (VWENX)	22 bps	36.36%
Vanguard Windsor II (Inv) (VWNFX)	35 bps	Vanguard Windsor II (Adm) (VWNAX)	27 bps	29.63%
Vanguard Windsor (Inv) (VWNDX)	33 bps	Vanguard Windsor (Adm) (VWNEX)	22 bps	50.00%

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

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

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

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

72. Defendant provided a dizzying array of duplicative funds in the same investment style, thereby depriving the Plan of its bargaining power associated with offering a single fund in each investment style, which would significantly reduce investment fees, and leading to "decision paralysis" for participants. Defendant included over 400 investment options for the following asset classes: target date and asset allocation funds, large cap domestic equities, mid cap domestic equities, small cap domestic equities, international equities, real estate, fixed income, money market, and stable value.

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

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

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

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

76. Within each asset class and investment style in the plan, prudent fiduciaries must make a reasoned determination and select a prudent investment option. Unlike the Defendant, prudent fiduciaries do not select and retain numerous, duplicative investment options for a single asset class and investment style. When many investment options in a single investment style are plan options, fiduciaries lose the bargaining power to obtain much lower investment management expenses for that style.

77. In addition, providing multiple options in a single investment style adds unnecessary complexity to the investment lineup, and leads to decision paralysis. See The Standard, *Fixing Your 403(b) Plan: Adopting a Best Practices Approach*, at 2 (Nov. 2009)("Numerous studies have demonstrated that when people

are given too many choices of anything, they lose confidence or make no decision."); Michael Liersch, *Choice in Retirement Plans: How Participant Behavior Differs in Plans Offering Advice, Managed Accounts, and Target-Date Investments,* T. ROWE PRICE RETIREMENT RESEARCH, at 2 (Apr. 2009)("Offering too many choices to consumers can lead to decision paralysis, preventing consumers from making decisions.").[16]

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

79. Since 2010, the Plan included and continues to include duplicative investments in every major asset class and investment style, including balanced/asset allocation (37–38 options), fixed income and high yield bond (62–71 options), international (52–61 options), large cap domestic equities (87–93 options), mid cap domestic equities (30–33 options), small cap domestic equities (22–24 options), real estate (7–9 options), money market (17 options), and target date investments (4 fund families). Such a dizzying array of duplicative funds in a single investment style violates the well-recognized industry principle that too many choices harm participants and can lead to decision paralysis.

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

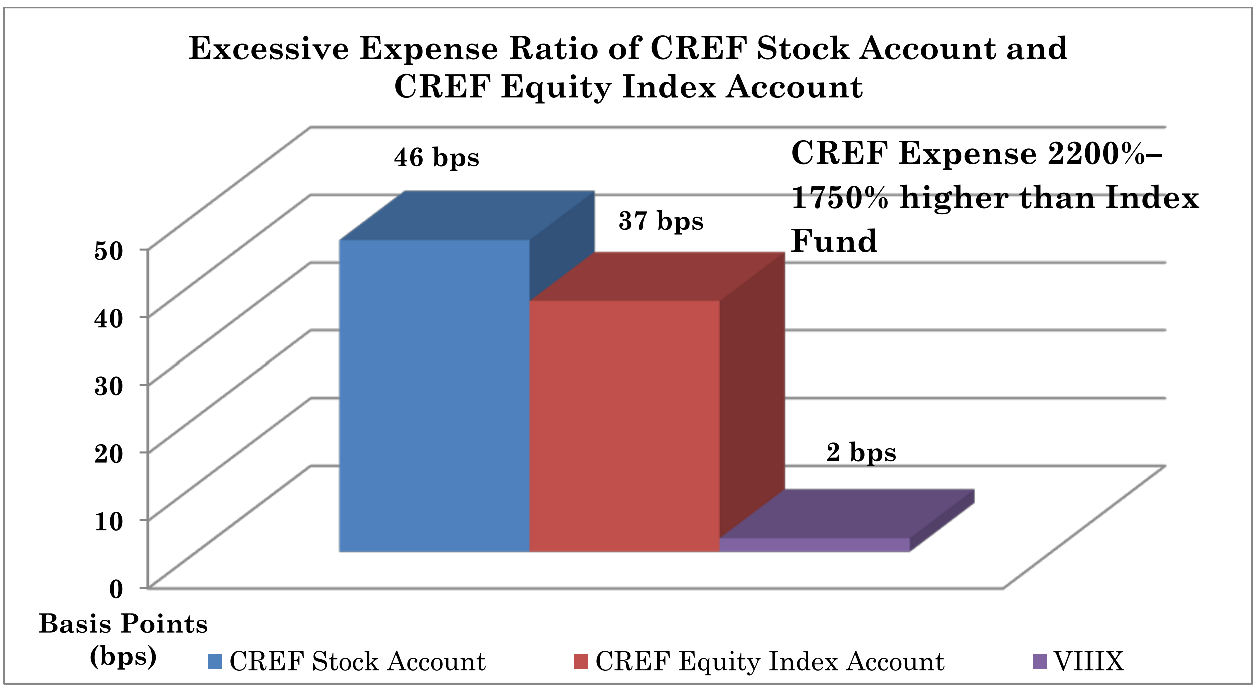
80. For illustration purposes, in the large cap blend investment style for the Plan, Defendant included 24 actively managed or passively managed investment options for a combined asset amount of $692 million as of June 30, 2015. Those investments are summarized below and compared to a single lower-cost investment alternative that was available to the Plan, the Vanguard Institutional Index Fund (Inst Plus) (VIIIX), which mirrors the market and has an expense ratio of 2 bps.

Investment	Plan Assets	Fee	Institutional Index Fund (VIIIX)	Percentage Excess Paid by Plan
Amana Income (Inst)	$116,446	87 bps	2 bps	4250%
American Century Core Equity Plus (Inv)	$136,759	130 bps	2 bps	6400%
American Century Equity Growth (Inv)	$5,960,378	67 bps	2 bps	3250%
American Century Fundamental Equity (Inv)	$209,378	99 bps	2 bps	4850%
American Century Legacy Focused Large Cap (Inv)	$29,765	111 bps	2 bps	5450%
American Century Veedot (Inv)	$882,392	126 bps	2 bps	6200%
CREF Equity Index	$72,825,074	37 bps	2 bps	1750%
CREF Stock	$455,814,787	46 bps	2 bps	2175%
Fidelity Disciplined Equity (K)	$1,409,766	79 bps	2 bps	3850%
Fidelity Growth & Income (K)	$8,914,870	52 bps	2 bps	2500%

Investment	Plan Assets	Fee	Institutional Index Fund (VIIIX)	Percentage Excess Paid by Plan
Fidelity Large Cap Core Enhanced Index	$124,370	45 bps	2 bps	2150%
Fidelity Large Cap Stock	$2,016,719	88 bps	2 bps	4300%
Fidelity Mega Cap Stock	$1,903,614	67 bps	2 bps	3250%
Fidelity Spartan 500 Index (Adv)	$20,490,140	5 bps	2 bps	150%
Fidelity Spartan Total Market Index (Adv)	$9,582,498	5 bps	2 bps	150%
Strategic Advisers Core Multi-Manager	$6,349	97 bps	2 bps	4750%
VALIC Growth & Income	$184,976	165 bps	2 bps	8150%
VALIC Large Cap Core	$139,232	164 bps	2 bps	8100%
VALIC Stock Index	$6,733,421	115 bps	2 bps	5650%
Vanguard Growth & Income (Inv)	$12,506,802	34 bps	2 bps	1600%
Vanguard Institutional Index (Inst)	$13,256,205	4 bps	2 bps	100%
Vanguard Large-Cap Index (Inv)	$13,462,592	20 bps	2 bps	900%
Vanguard PRIMECAP Core (Inv)	$11,642,022	47 bps	2 bps	2250%

Investment	Plan Assets	Fee	Institutional Index Fund (VIIIX)	Percentage Excess Paid by Plan
Vanguard Total Stock Market Index (Inst)	$54,507,154	4 bps	2 bps	100%
Total Assets	**$692,855,709**			

81. With over *$500 million* held in the CREF Stock Account and the CREF Equity Index Account, these large cap blend options were *23 and 18 times* more expensive than the lower-cost Vanguard option with an expense ratio of 2 bps, respectively.



82. Many other large cap index funds are also available at far lower costs than the Plan's large cap blend funds. If those investments were consolidated into a single investment for the large cap domestic blend asset category, the Plan would have saved millions of dollars in investment management expenses. Had the

amounts invested in the Plan's large cap blend options been consolidated into a single large cap blend investment, such as the Vanguard Institutional Index Fund (Inst Plus), Plan participants would have avoided losing in excess of $3 million in fees for Plan-year 2014 alone, and many more millions since 2010.

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

84. For example, in the large cap blend investment style, Defendant provided ten index funds that have similar investment strategies designed to generate investment results that correspond to the return of the U.S. equity market and do not involve stock selection.

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

index would pick the same stocks in the same proportions as the index. Thus, there is no value in offering separate index funds in the same investment style.

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

87. Overall, Defendant failed to pool the assets invested in duplicative investment options for the same investment style into a single investment option, as set forth in ¶79, which caused Plan participants to pay millions of dollars in unreasonable investment expenses, thereby depleting their retirement assets.

V. Defendant imprudently retained historically underperforming Plan investments.

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

a. CREF Stock Account

89. The CREF Stock Account is one of the largest, by asset size, investment options in the Plan with almost $500 million in assets, and has been included in the Plan from 2010 to date. In its fund fact sheets and participant disclosures, TIAA-CREF classifies the CREF Stock Account as a domestic equity investment in the large cap blend Morningstar category. This option has, for years, historically underperformed and continues to underperform its benchmark and

lower-cost actively and passively managed investments that were available to the Plan.

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

91. As is generally understood in the investment community, passively managed investment options should be used or, at a minimum, thoroughly analyzed and considered in efficient markets such as large capitalization U.S. stocks. This is because it is difficult and extremely unlikely to find actively managed mutual funds that outperform a passive index, net of fees, particularly on a persistent basis, as set forth in ¶¶60–62. This extreme unlikelihood is even greater in the large cap market because such big companies are the subject of many analysts' coverage, unlike smaller stocks that are not covered by many analysts leading to potential inefficiencies in pricing.

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

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

Burton G. Malkiel, *Returns from Investing in Equity Mutual Funds 1971 to 1991*, 50 J. FIN. 549, 571 (1995).[17]

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

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

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

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

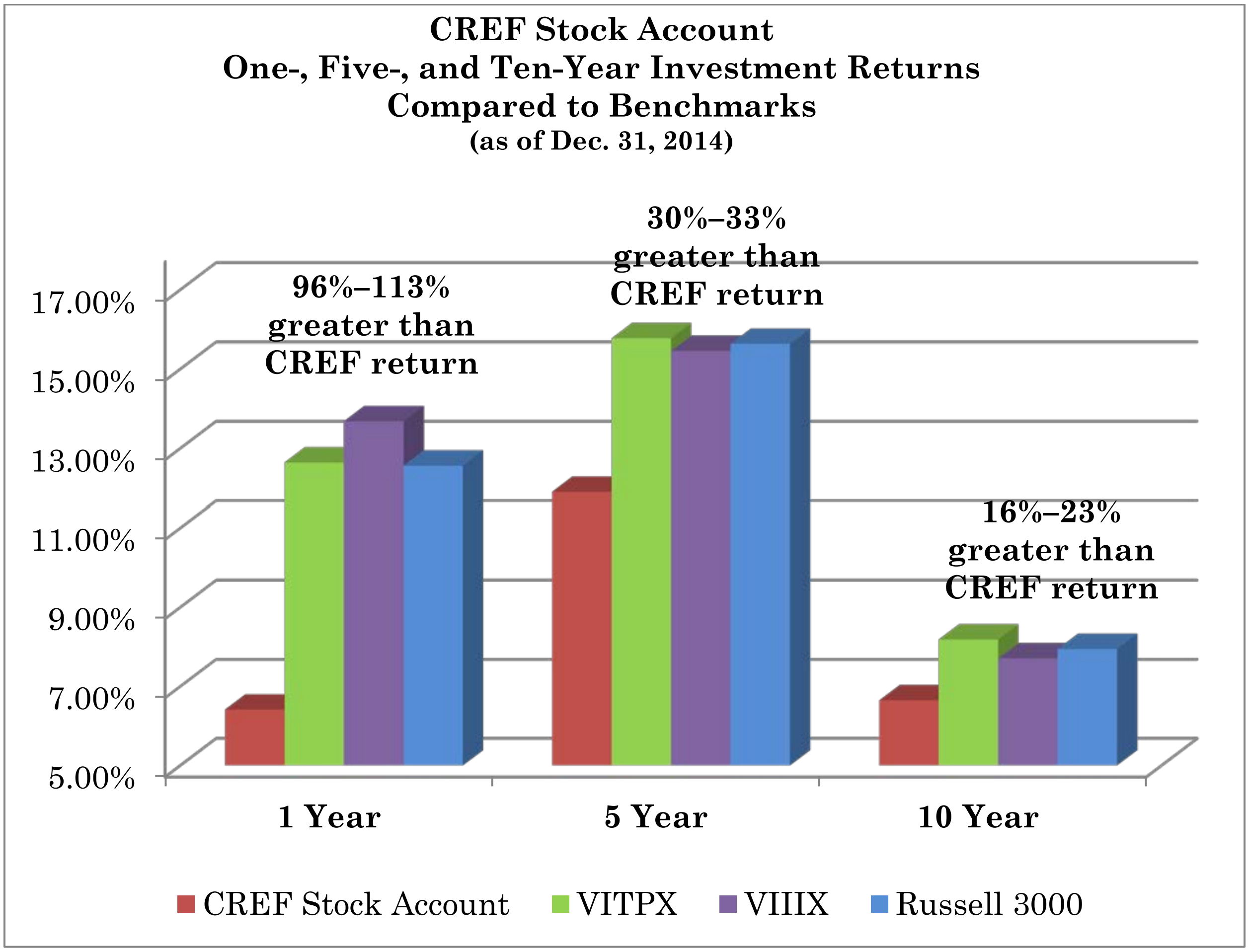
94. Prudent fiduciaries of large defined contribution plans must conduct an analysis to determine whether actively managed funds, particularly large cap, will outperform their benchmark, net of fees. Prudent fiduciaries then make a reasoned decision as to whether it would be in the participants' best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

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

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

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

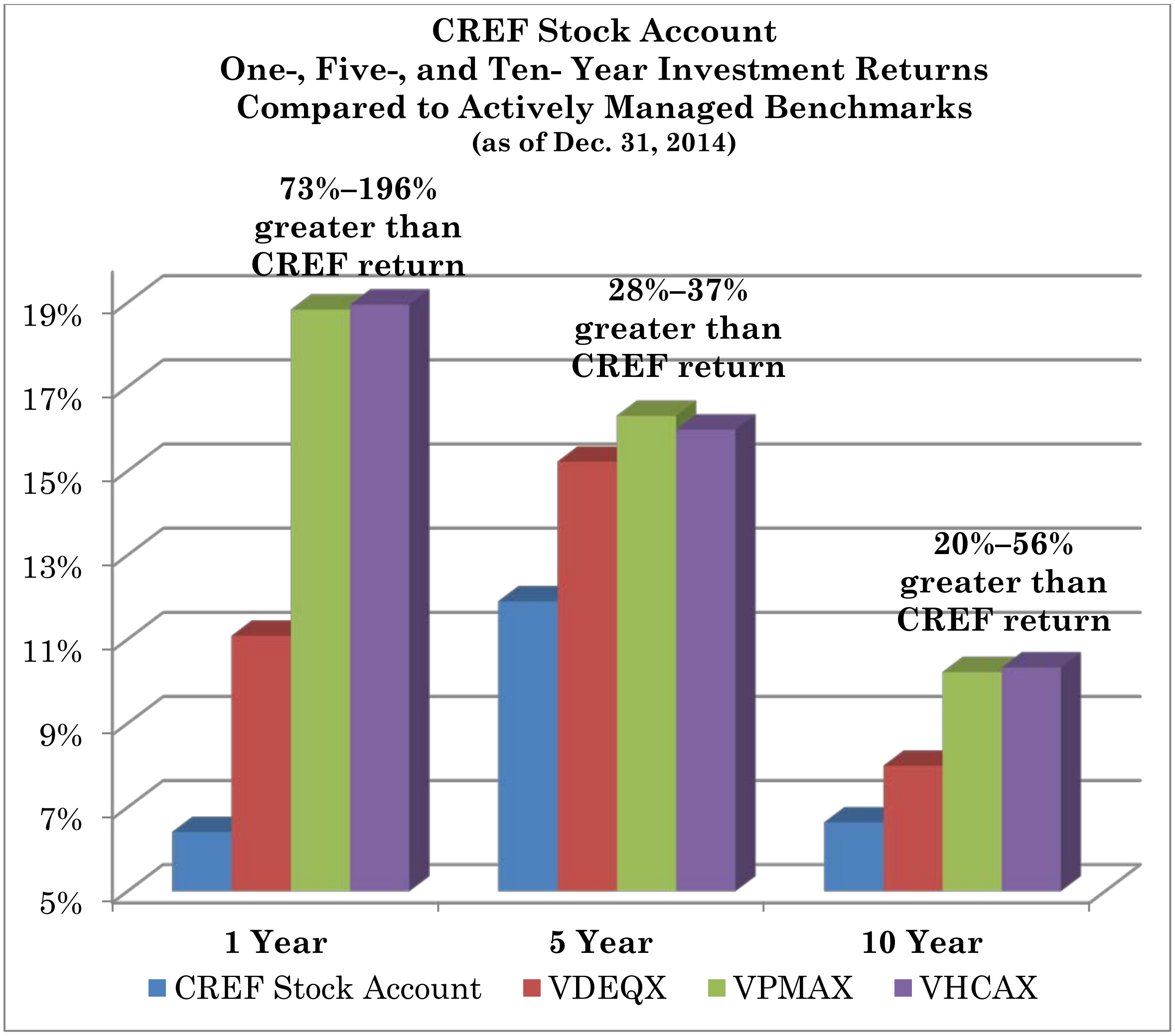
The following performance chart compares the investment returns of the CREF Stock Account to its benchmark and two other passively managed index funds in the same investment style for the one-, five-, and ten-year periods ending December 31, 2014.[18] The passively managed index funds used for comparison purposes are the Vanguard Total Stock Market Index Fund (Inst Pl) (VITPX) and the Vanguard Institutional Index (Inst Pl) (VIIIX). Like the CREF Stock Account, these options are large cap blend investments. For each comparison, the CREF Stock Account dramatically underperformed the benchmark and index alternatives.



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

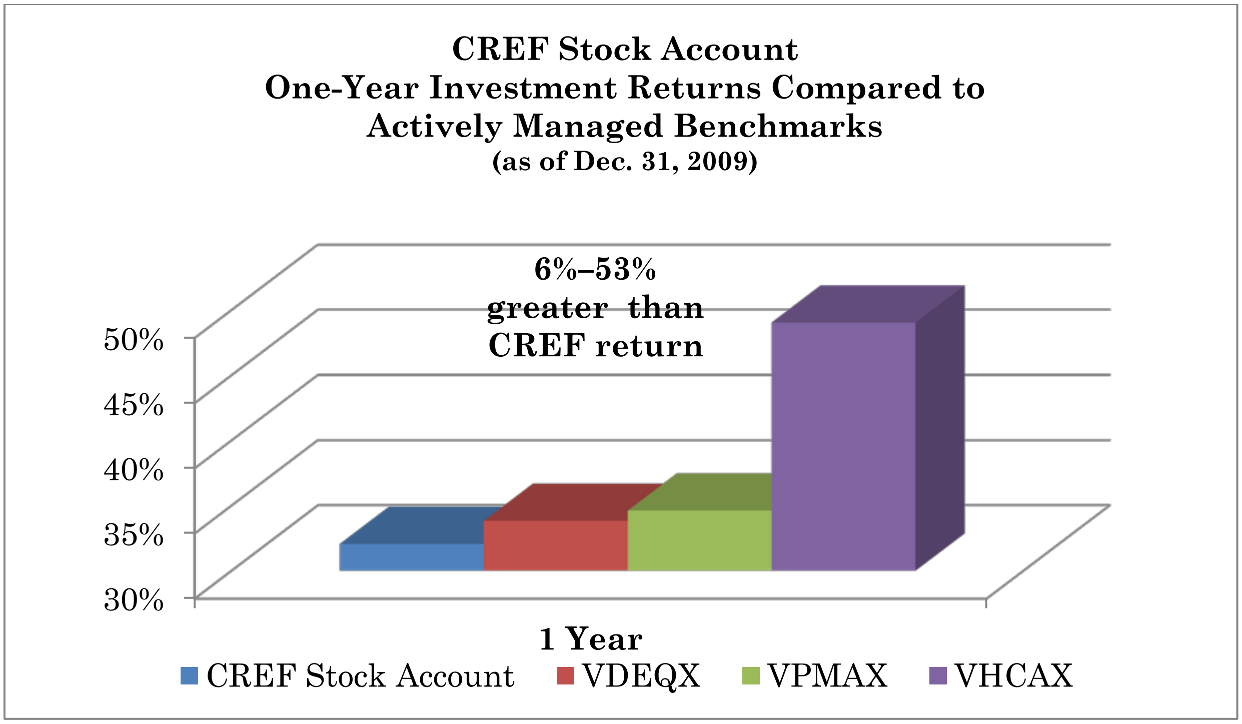
98. The CREF Stock Account, with an expense ratio of 46 bps as of December 31, 2014, was and is dramatically more expensive than far better performing index alternatives: the Vanguard Total Stock Market Index Fund (Inst Plus) (2 bps) and the Vanguard Institutional Index (Inst Plus) (2 bps).

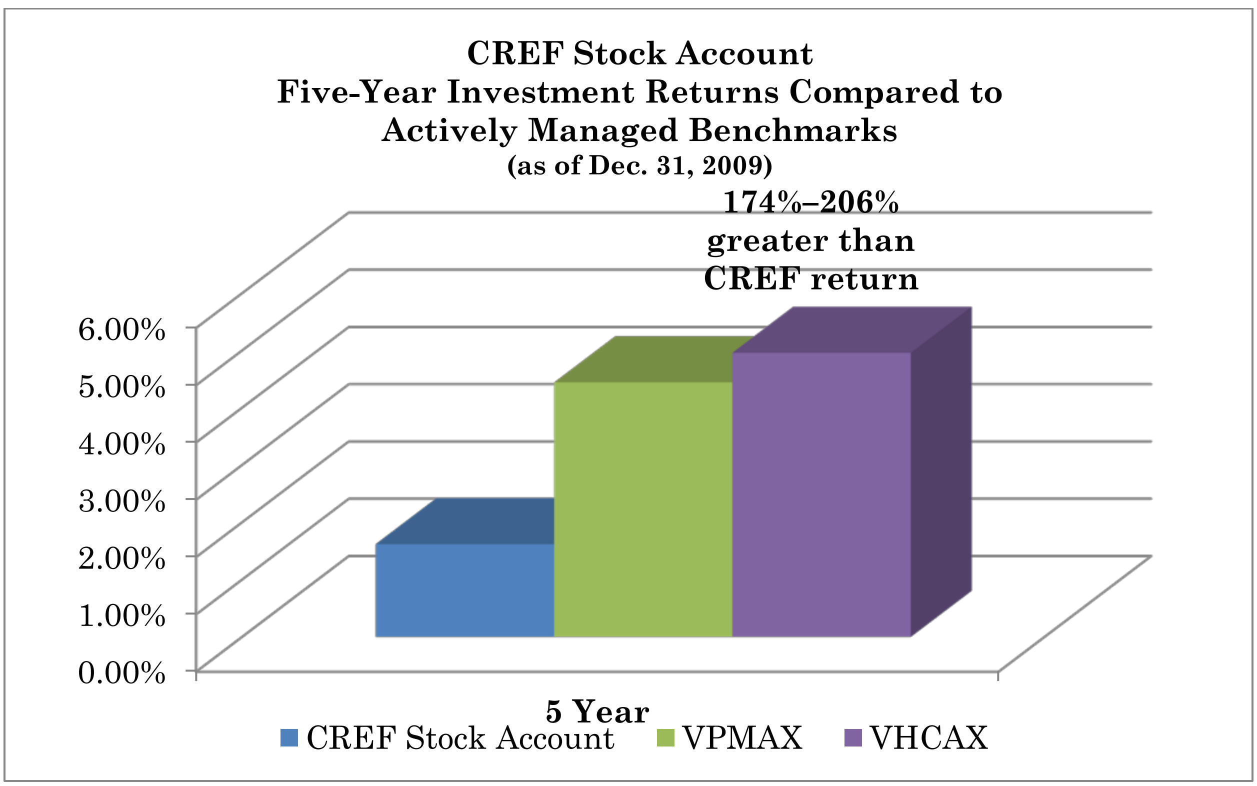
99. Apart from underperforming passively managed index funds, the fund also significantly underperformed comparable actively managed funds over the one-, five-, and ten-year periods ending December 31, 2014. These large cap alternatives with similar underlying asset allocations to the CREF Stock Account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

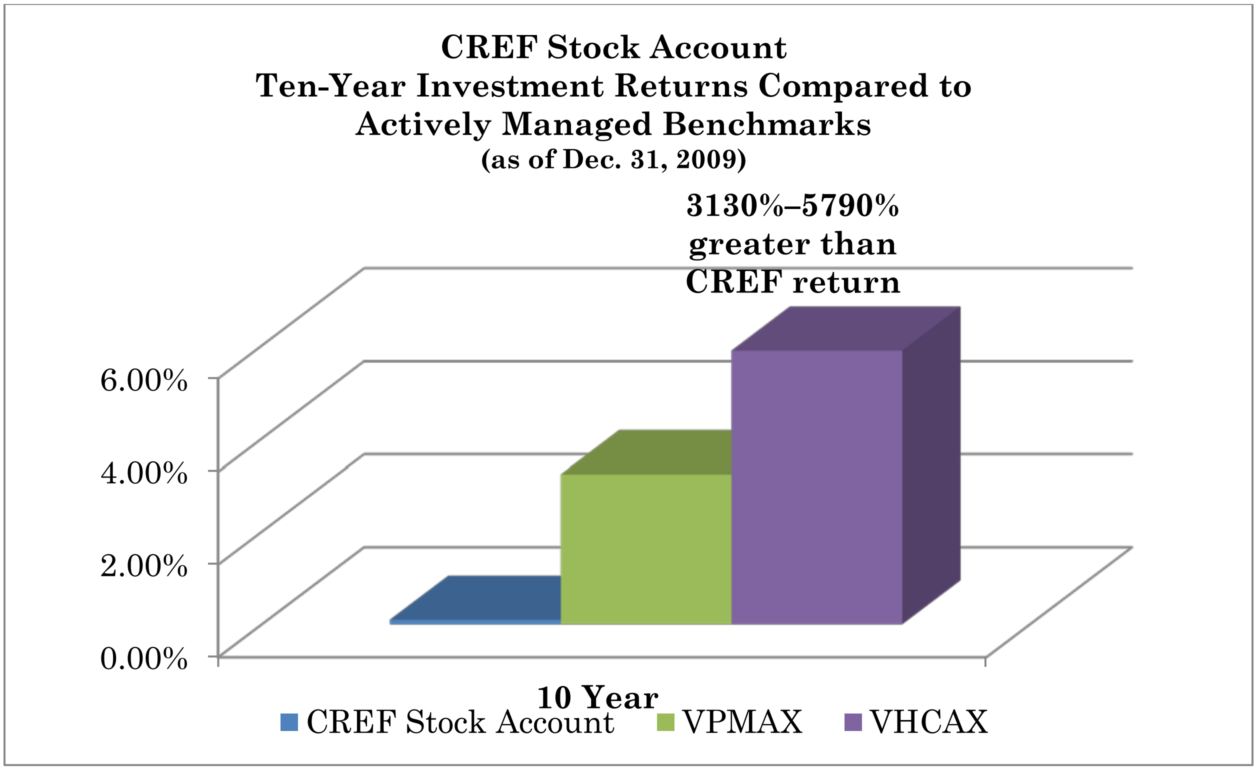


100. The CREF Stock Account also had a long history of substantial underperformance compared to these actively managed alternatives over the one-, five-, and ten-year periods ending December 31, 2009.[19]

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


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


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



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

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

2012).[20] This recommendation was due to numerous factors, including the historical underperformance, high turnover of asset management executives and portfolio managers, and the fund's over 60 separate underlying investment strategies, greatly reducing the fund's ability to generate excess returns over any substantial length of time. *Id*. at 4–5.

103. The Supreme Court has recently and unanimously ruled that ERISA fiduciaries have "a continuing duty to monitor investments and remove imprudent ones[.]" *Tibble v. Edison Int'l*, 135 S. Ct. 1823, 1829 (2015). In contrast to the conduct of a prudent fiduciary, Defendant failed to conduct a prudent process to monitor the CREF Stock Account and continues to retain the fund despite its continuing underperformance compared to lower-cost investment alternatives readily available to the Plan.

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

105. Had the Defendant removed the CREF Stock Account and the amounts been invested in any of the actively managed lower-cost alternatives or the

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

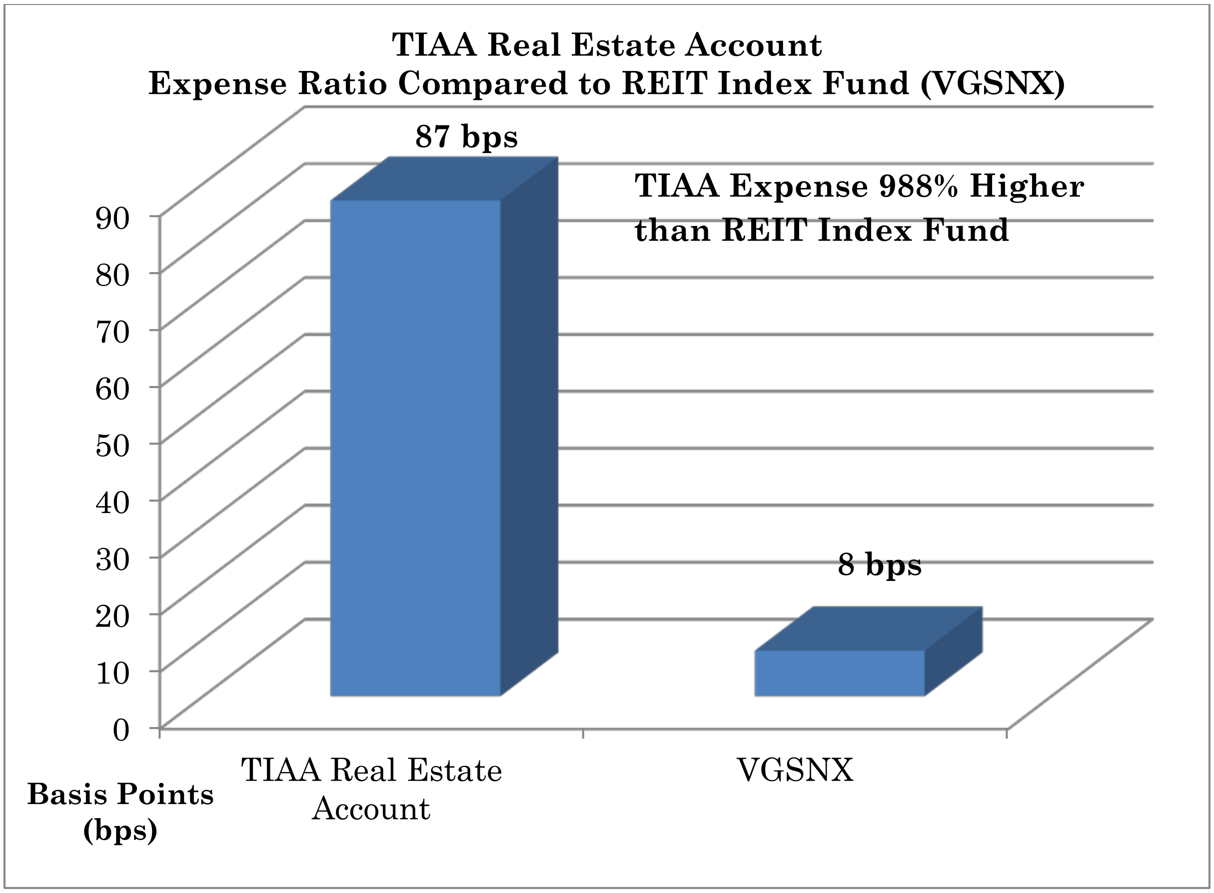
passively managed lower-cost alternatives, as set forth in ¶¶97 and 99, Plan participants would not have lost in excess of $142 million of their retirement savings.[21]

B. TIAA Real Estate Account

106. Defendant selected and continues to offer the TIAA Real Estate Account as a real estate investment option in the Plan. The fund has far greater fees than are reasonable, has historically underperformed, and continues to consistently underperform comparable real estate investment alternatives, including the Vanguard REIT Index (Inst) (VGSNX).

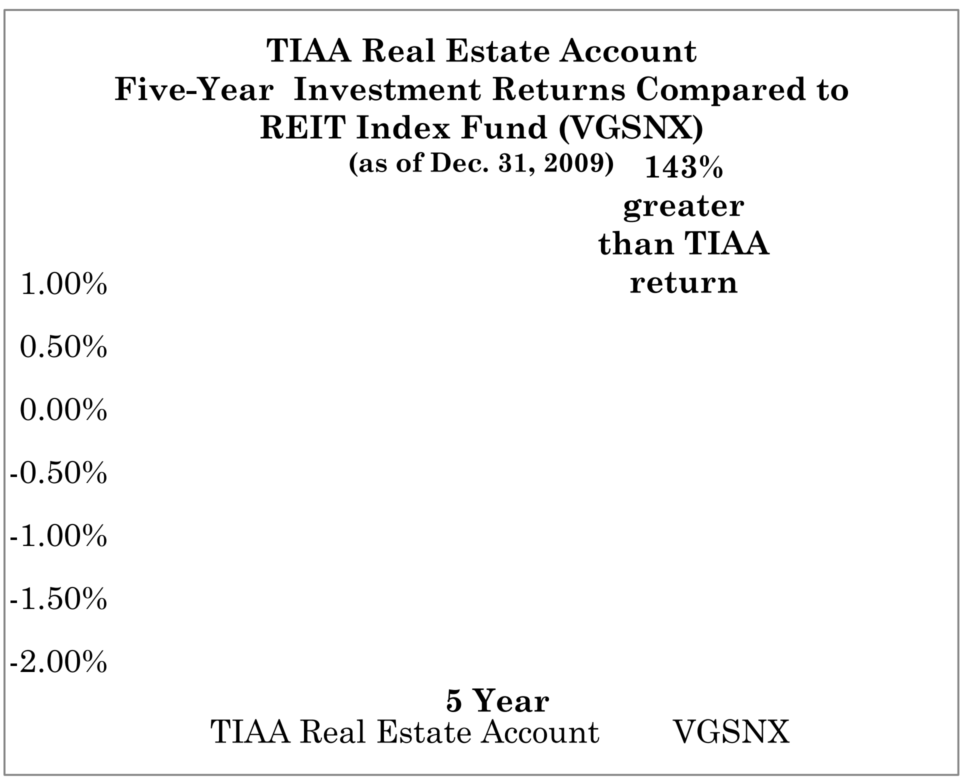
107. With an expense ratio of 87 bps as of December 31, 2014, the TIAA Real Estate Account is also over *10 times more expensive* than the Vanguard REIT Index (Inst) with an expense ratio of 8 bps.

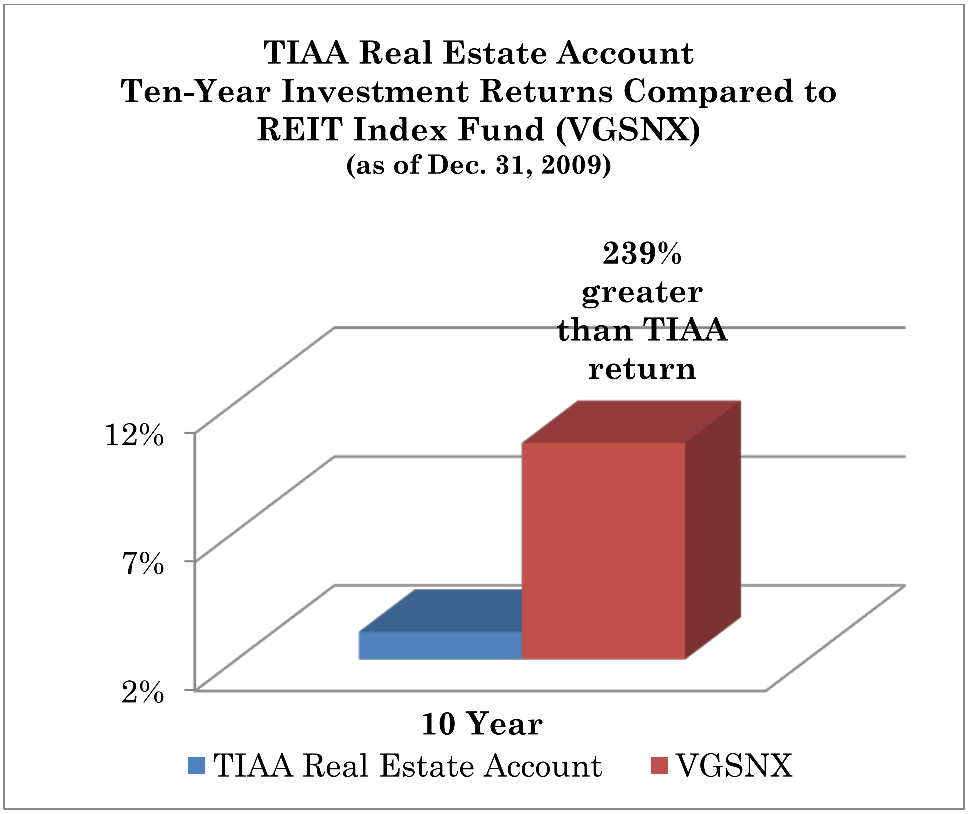
[21] Plan losses have been brought forward to the present value using the investment returns of the lower-cost alternatives to compensate participants who have not been reimbursed for their losses.



108. The TIAA Real Estate Account had a long history of substantial underperformance relative to the Vanguard REIT Index over the one-, five-, and ten-year periods ending December 31, 2009.[22] Despite this, Defendant selected and continues to retain it in the Plan.

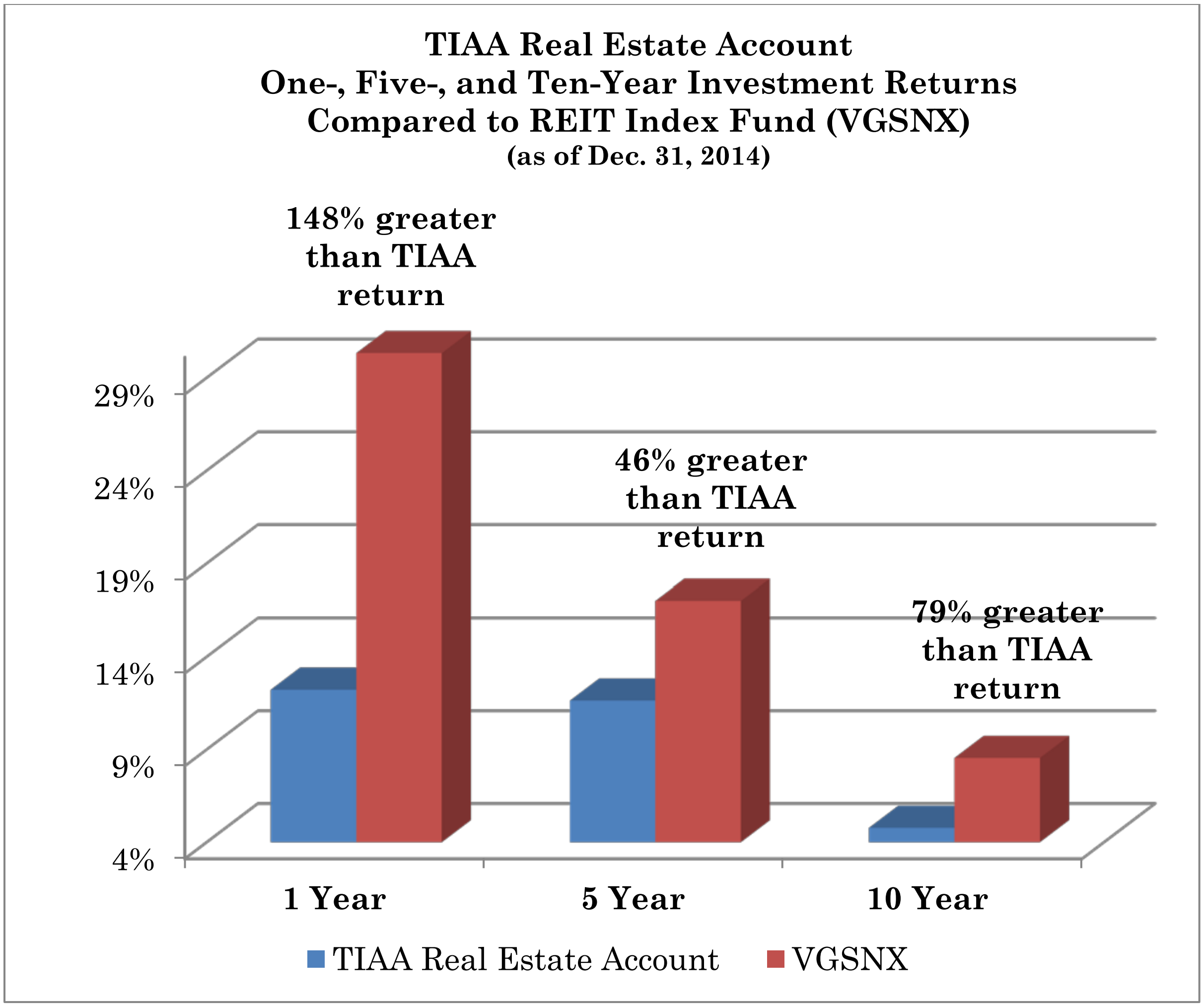
[22] The return of the investor share class was used for ten-year performance because the institutional share class was not offered until December 2, 2003. The return since inception for the Vanguard REIT Index (Inst) was 5.49%.


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



109. This underperformance occurred for years before 2009 and has continued afterward. The TIAA Real Estate Account vastly underperformed the Vanguard REIT Index (Inst) over the one-, five-, and ten-year periods ending December 31, 2014.[23]

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



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

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

Index, Plan participants would not have lost in excess of $23 million of their retirement savings.[24]

ERISA'S FIDUCIARY STANDARDS

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

> [A] fiduciary shall discharge his duties with respect to a plan solely in the interest of the participants and beneficiaries and –
>
> (A) for the exclusive purpose of:
>
> (i) providing benefits to participants and their beneficiaries; and
> (ii) defraying reasonable expenses of administering the plan; [and]
>
> (B) with the care, skill, prudence, and diligence under the circumstances then prevailing that a prudent man acting in a like capacity and familiar with such matters would use in the conduct of an enterprise of like character and with like aims.

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

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

[24] Plan losses have been brought forward to the present value using the investment returns of the Vanguard REIT Index (Inst) to compensate participants who have not been reimbursed for their losses.

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

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

> In addition to any liability which he may have under any other provisions of this part, a fiduciary with respect to a plan shall be liable for a breach of fiduciary responsibility of another fiduciary with respect to the same plan in the following circumstances:
>
> (1) if he participates knowingly in, or knowingly undertakes to conceal, an act or omission of such other fiduciary, knowing such act or omission is a breach; [or]
>
> (2) if, by his failure to comply with section 1104(a)(1) of this title in the administration of his specific responsibilities which give rise to his status as a fiduciary, he has enabled such other fiduciary to commit a breach; or
>
> (3) if he has knowledge of a breach by such other fiduciary, unless he makes reasonable efforts under the circumstances to remedy the breach.

116. 29 U.S.C. §1132(a)(2) authorizes a plan participant to bring a civil action for appropriate relief under 29 U.S.C. §1109. Section 1109(a) provides in relevant part:

> Any person who is a fiduciary with respect to a plan who breaches any of the responsibilities, obligations, or duties imposed upon fiduciaries by this subchapter shall be personally liable to make good to such plan any losses to the plan resulting

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

CLASS ACTION ALLEGATIONS

117. 29 U.S.C. §1132(a)(2) authorizes any participant or beneficiary of the Plan to bring an action individually on behalf of the Plan to enforce a breaching fiduciary's liability to the plan under 29 U.S.C. §1109(a).

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

> All participants and beneficiaries of The Johns Hopkins University 403(b) Plan from August 11, 2010, through the date of judgment, excluding the Defendant or any participant who is a fiduciary to the Plan.

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

a. The Class includes over 24,000 members and is so large that joinder of all its members is impracticable.

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

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

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

e. Prosecution of separate actions for these breaches of fiduciary duties by individual participants and beneficiaries would create the risk of (A) inconsistent or varying adjudications that would establish incompatible standards of conduct for Defendant in respect to the discharge of their fiduciary duties to the Plan and personal liability to the Plan under 29 U.S.C. §1109(a), and (B) adjudications by individual participants and beneficiaries regarding these breaches of fiduciary duties and remedies for the Plan would, as a practical matter, be dispositive of the interests of the participants and beneficiaries not parties to the adjudication or would substantially impair or impede those participants' and beneficiaries' ability to protect their interests. Therefore, this action should be certified as a class action under Rule 23(b)(1)(A) or (B).

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

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

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

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

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

> of the highest caliber and committed to the interests of the participants and beneficiaries of the General Dynamics 401(k) Plan.

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

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

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

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

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

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

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

High Court Ruling Adds Protections for Investors in 401(k) Plans, WALL ST. J. (May 18, 2015); [30] Jim Zarroli, *Lockheed Martin Case Puts 401(k) Plans on Trial*, NPR (Dec. 15, 2014);[31] Mark Miller, *Are 401(k) Fees Too High? The High Court May Have an Opinion*, REUTERS (May 1, 2014);[32] Greg Stohr, *401(k) Fees at Issue as Court Takes Edison Worker Appeal*, BLOOMBERG (Oct. 2, 2014).[33]

COUNT I

Breach of Duties of Loyalty and Prudence—Unreasonable Administrative Fees

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

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

124. If a defined contribution plan overpays for recordkeeping services due to the fiduciaries' "failure to solicit bids" from other recordkeepers, the fiduciaries

[30] Available at http://www.wsj.com/articles/high-court-ruling-adds-protections-for-investors-in-401-k-plans-1431974139.

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

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

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

have breached their duty of prudence. See *George v. Kraft Foods Global, Inc.*, 641 F.3d 786, 798–99 (7th Cir. 2011). Similarly, "us[ing] revenue sharing to benefit [the plan sponsor and recordkeeper] at the Plan's expense" while "failing to monitor and control recordkeeping fees" and "paying excessive revenue sharing" is a breach of fiduciary duties. *Tussey,* 746 F.3d at 336.

125. Defendant failed to engage in a prudent and loyal process for selecting a recordkeeper. Rather than consolidating the Plan's administrative and recordkeeping services under a single service provider, Defendant retained five and then three vendors to provide recordkeeping services. This failure to consolidate the recordkeeping services eliminated the Plan's ability to obtain the same services at a lower cost with a single recordkeeper. This conduct was a breach of the duties of loyalty and prudence.

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

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

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

COUNT II

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

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

130. The scope of the fiduciary duties and responsibilities of the Defendant includes managing the assets of the Plan for the sole and exclusive benefit of Plan participants and beneficiaries, defraying reasonable expenses of administering the Plan, and acting with the care, skill, diligence, and prudence required by ERISA. Defendant is directly responsible for ensuring that the Plan's fees are reasonable, selecting prudent investment options, evaluating and monitoring the Plan's investments on an ongoing basis and eliminating imprudent ones, and taking all necessary steps to ensure that the Plan's assets are invested prudently.

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

132. Defendant selected and retained as Plan investment options mutual funds and insurance company variable annuities with far higher expenses and poor performance relative to other investment options that were readily available to the Plan at all relevant times.

133. Rather than consolidating the Plan's over 400 investment options into a core investment lineup in which prudent investments were selected for a given asset class and investment style, as is the case with most defined contribution plans, Defendant retained duplicative investment options in each asset class and investment style, thereby depriving the Plan of its ability to qualify for lower-cost share classes of certain investments, while violating the well-known principle for fiduciaries that such a high number of investment options causes participant confusion. In addition, Defendant, as the fiduciary charged with operating as prudent financial expert, *Katsaros v. Cody*, 744 F.2d 270, 279 (2d Cir. 1984), knew or should have known that providing numerous actively managed duplicative funds in the same investment style would produce a "shadow index" return before accounting for much higher fees than index fund fees, thereby resulting in significant underperformance. The Plan's investment offerings included the use of mutual funds and variable annuities with expense ratios far in excess of other lower-cost options available to the Plan, including lower-cost share class mutual funds with the identical investment manager and investments, and lower-cost insurance company variable annuities and insurance company separate accounts. In so doing, Defendant failed to make Plan investment decisions based solely on the

merits of the investment funds and what was in the interest of participants. Defendant, therefore, failed to discharge its duties with respect to the Plan solely in the interest of the participants and beneficiaries and for the exclusive purpose of providing benefits to participants and their beneficiaries and defraying reasonable expenses of administering the Plan. Therefore, the Defendant breached its fiduciary duty of loyalty under 29 U.S.C. §1104(a)(1)(A).

134. The same conduct by the Defendant shows a failure to discharge its duties with respect to the Plan with the care, skill, prudence, and diligence under the circumstances then prevailing that a prudent man acting in a like capacity and familiar with such matters would use in the conduct of an enterprise of like character and with like aims. Defendant, therefore, breached its fiduciary duty of prudence under 29 U.S.C. §1104(a)(1)(B).

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

136. <u>CREF Stock Account</u>: Defendant selected and retained the CREF Stock Account despite its excessive cost and historical underperformance compared to both passively managed investments and actively managed investments with similar underlying asset allocations.

137. <u>TIAA Real Estate Account</u>: Defendant selected and retained the TIAA Real Estate Account for the real estate investment in the Plan despite its excessive

fees and historical underperformance compared to lower-cost real estate investments.

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

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

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

COUNT III

Failure to Monitor Fiduciaries

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

142. Defendant University is the named fiduciary with the overall responsibility for the control, management and administration of the Plan, in accordance with 29 U.S.C. §1102(a). Defendant is the Plan Administrator of the Plan under 29 U.S.C. §1002(16)(A)(i) with exclusive responsibility and complete discretionary authority to control the operation, management and administration of

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

143. Given that Defendant had the overall responsibility for the oversight of its plans, Defendant had a fiduciary responsibility to monitor the performance of the other fiduciaries, including those delegated fiduciary responsibility to administer and manage Plan assets.

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

145. Defendant breached its fiduciary monitoring duties by, among other things:

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

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

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

d. Failing to ensure that the monitored fiduciaries considered the ready availability of comparable and better performing investment options that charged significantly lower fees and expenses than the Plan's mutual fund and insurance company variable annuity options; and

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

146. Had Defendant discharged its fiduciary monitoring duties prudently as described above, the losses suffered by the Plan would have been minimized or avoided. Therefore, as a direct result of the breaches of fiduciary duty alleged

herein, the Plan, the Plaintiffs, and the other Class members lost tens of millions of dollars of retirement savings.

JURY TRIAL DEMANDED

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

PRAYER FOR RELIEF

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

- Find and declare that the Defendant has breached its fiduciary duties as described above;
- Find and adjudge that Defendant is personally liable to make good to the Plan all losses to the Plan resulting from each breach of fiduciary duties, and to otherwise restore the Plan to the position it would have occupied but for the breaches of fiduciary duty;
- Determine the method by which Plan losses under 29 U.S.C. §1109(a) should be calculated;
- Order Defendant to provide all accountings necessary to determine the amounts Defendant must make good to the Plan under §1109(a);
- Remove the fiduciaries who have breached their fiduciary duties and enjoin them from future ERISA violations;
- Surcharge against Defendant and in favor of the Plan all amounts involved in any transactions which such accounting reveals were improper, excessive and/or in violation of ERISA;

- Reform the Plan to include only prudent investments;
- Reform the Plan to obtain bids for recordkeeping and to pay only reasonable recordkeeping expenses;
- Certify the Class, appoint each of the Plaintiffs as a class representative, and appoint Schlichter, Bogard & Denton LLP as Class Counsel;
- Award to the Plaintiffs and the Class their attorney's fees and costs under 29 U.S.C. §1132(g)(1) and the common fund doctrine;
- Order the payment of interest to the extent it is allowed by law; and
- Grant other equitable or remedial relief as the Court deems appropriate.

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Respectfully submitted,

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