**IN THE UNITED STATES DISTRICT COURT**
**FOR THE SOUTHERN DISTIRCT OF FLORIDA**

**CIVIL ACTION NO. 1:20-CV-21784-MGC**

| | |
|---|---|
| **AUGUSTINO SANTIAGO, LILLY LEYVA, GUILLERMO CREAMER, and MARIA ACEITUNO, individually and as representative of a class of participants and beneficiaries on behalf of the University of Miami Retirement Savings Plan, the Defined Contribution Retirement Plan for Faculty of the University of Miami, the University of Miami Hospital Retirement Savings Plan II, the University of Miami Hospital Retirement Savings Plan III, and the University of Miami Supplemental Retirement Annuity Program,**<br><br>**Plaintiffs,**<br><br>**vs.**<br><br>**UNIVERSITY OF MIAMI,**<br><br>**Defendant.** | **FIRST AMENDED COMPLAINT – CLASS ACTION**<br><br>**JURY TRIAL DEMANDED** |

1. Pursuant to Fed.R.Civ.P. 15(a)(2), and with Defendant's written consent, Plaintiffs Augustina Santiago, Lilly Leyva, Guillermo Creamer, and Maria Aceituno individually and as representatives of a class of participants and beneficiaries of the University of Miami Retirement Savings Plan, the Defined Contribution Retirement Plan for Faculty of the University of Miami, the University of Miami Retirement Savings Plan II, the UHealth Retirement Savings Plan III, and the University of Miami Supplemental Retirement Annuity Program (collectively, "Plans") bring this action under 29 U.S.C. §1132(a)(2) and (3) on behalf of the Plans against Defendant University of Miami ("University" or "Defendant") for breach of fiduciary duties under the Employee Retirement Income Security Act, 29 U.S.C. §§1001–1461 ("ERISA").

2. The duties of loyalty and prudence are "the highest known to the law" and require fiduciaries to have "an eye single to the interests of the participants and beneficiaries." *Donovan v. Bierwirth*, 680 F.2d 263, 271, 272 n.8 (2d Cir. 1982). As a fiduciary to the Plans, Defendant is obligated to act for the exclusive benefit of participants and beneficiaries, and to ensure that the Plans' expenses are reasonable and the Plans' investments are prudent. Because the marketplace for retirement plan services is established and competitive, and because the Plans have collectively more than a billion dollars in assets, the Plans have tremendous bargaining power to demand low-cost administrative and investment management services, and well-performing investment funds. But instead of leveraging the Plans' massive bargaining power to benefit participants and beneficiaries, Defendant failed to investigate, examine, and understand the real cost to Plans' participants for administrative services, thereby causing the Plans to pay unreasonable and excessive fees for investment and administrative services. Defendant caused Plaintiffs to pay an asset-based fee for administrative services that increased as the value of participant accounts rose, even though no additional services were being provided. All of the Plans at issue were subject to the same contractual terms with Fidelity and/or TIAA-CREF regarding the pricing for the provision of recordkeeping and other administrative services to the Plans.

3. Defendant's fiduciary decision-making process was either flawed or badly executed..

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

## JURISDICTION AND VENUE

5. 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).

6. This judicial 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 Plans are administered, where at least one of the alleged breaches took place and where the Defendant resides.

## THE UNIVERSITY RETIREMENT PLANS

7. The Plans are defined contribution, individual account, and employee pension benefit plans under 29 U.S.C. §1002(2)(A) and §1002(34).

8. The Plans are established and maintained under written documents in accordance with 29 U.S.C. §1102(a)(1).

9. Eligible faculty and staff members of the University are able to participate in the Plans. The Plans provide the primary source of retirement income for many University employees. The ultimate retirement benefit provided to participants depends on the performance of the investment options the participants select, from among the options the University offers through the Plans, net of fees and expenses. Participants have the right to direct the investment of their accounts among the available investment choices

10. The Plans collectively have more than one billion dollars of assets and are thus among the largest defined contribution plans in the United States. Plans of such great size are commonly referred to as “jumbo plans.”

## PARTIES

### Plaintiffs

11. Plaintiff Augustina Santiago is a participant in one of the Plans under 29 U.S.C. §1002(7) because she and her beneficiaries are or may become eligible to receive benefits under one of the Plans. She has an active account in one of the Plans.

12. Plaintiff Lilly Leyva is a participant in one of the Plans under 29 U.S.C. §1002(7) because she and her beneficiaries are or may become eligible to receive benefits under one of the Plans. She has an active account in one of the Plans.

13. Plaintiff Guillermo Creamer is a participant in one of the Plans under 29 U.S.C. §1002(7) because he and his beneficiaries are or may become eligible to receive benefits under one of the Plans.

14. Plaintiff Maria Aceituno is a participant in one of the Plans under 29 U.S.C. §1002(7) because she and her beneficiaries are or may become eligible to receive benefits under one of the Plans.

### Defendant

15. The University of Miami is a private, not-for-profit, nonsectarian institution of higher learning with its principal place of business in Miami, Florida.

16. The University is the Administrator of the Plans under 29 U.S.C. §1002(16)(A)(i), and upon information and belief, has exclusive responsibility and complete discretionary authority to control the operation, management and administration of the Plans, 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 Plans and the selection, monitoring, and removal

of the investment options made available to participants for the investment of their contributions and provision of their retirement income.

17. The University is a fiduciary to the Plans because it exercised discretionary authority or discretionary control respecting the management of the Plans 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 Plans. 29 U.S.C. §1002(21)(A)(i) and (iii).

## SUPPORTING FACTS

### I. Defendant's actions caused the Plans' participants to pay excessive administrative and recordkeeping fees in violation of ERISA's requirement that fees be reasonable.

18. 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 Plans. Recordkeepers primarily differentiate themselves based on price and vigorously compete for business by offering the best price.

19. 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 five years.

20. 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.

21. Jumbo defined contribution plans, like the Plans, 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.

22. 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 to induce recordkeepers to have their high-priced funds included as plan investment options.

23. 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.

24. 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).[1]

25. 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.
>
> **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).[2]

26. 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.[3]

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

---

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

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

[3] *Id.*

> 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.

AonHewitt, *How 403(b) Plans are Wasting Nearly $10 Billion Annually, and What Can Be Done to Fix It* (Jan. 2016).[4]

28. 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).[5]

29. 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.

---

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

Recordkeeping basis points returned to the plan sponsors rather than to the vendor. All plan money aggregated into a single platform, and participants were able to save on fee structure. This also eliminated the complications and confusion of having three different recordkeepers.");[6] 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").[7]

30. Use of a single recordkeeper is also less confusing to participants and avoids excessive recordkeeping fees charged to the Plans. *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").[8]

31. Despite the long-recognized benefits of a single recordkeeper for a defined contribution plan, Defendant continues to contract with multiple recordkeepers (including Fidelity Management Trust Company and TIAA-CREF). The inefficient and costly structure maintained by Defendant has caused the Plans' participants to pay and continue to pay duplicative, excessive,

---

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

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

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

and unreasonable fees for the Plans' 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 Plans or to continue with six recordkeepers to the present.

32. One or more of the Plans' recordkeepers received or currently receive compensation from revenue sharing payments and other sources of indirect and direct compensation from the Plans and their investments for providing these duplicative services. Each of the Plans is subject to the same contractual terms with Fidelity and/or TIAA-CREF regarding the pricing for the provision of recordkeeping and other administrative services.

33. In addition, the Plans' 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.

34. Based on information currently available to Plaintiff regarding the Plans' features, the nature of the administrative services provided by the Plans' recordkeepers, the Plans' participant level, and the recordkeeping market, benchmarking data indicates that a reasonable recordkeeping fee for the Plans would have been a fixed amount of approximately $35 per participant with an account balance). Participants in the Plans, however, paid substantially more than that $35 fee between 2013 and 2018 for recordkeeping and administrative services.

35. 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).[9] Even if participants pay only 25 basis

[9] 11 Available at http://www.dol.gov/ebsa/pdf/401kfeesemployee.pdf.

points in excessive fees over a thirty-five-year period, it would mean the difference between receiving 12 monthly benefit payments a year and eleven.

36. Defendant also failed to control recordkeeping costs as the Plans' assets grew. For example, from May 30, 2012, to December 31, 2018, the assets in the Retirement Savings Plan alone increased from $224,116,882 (in 2012) to $837,292,389 (in 2018), an increase of more than 300%. Because revenue sharing payments are asset-based, the already excessive compensation paid to the Plans' recordkeepers became even more excessive as the Plans' assets grew, even though the administrative services provided to the Plans remained the same. Defendant could have reasonably capped the amount of revenue sharing to ensure that any excessive amounts were returned to the Plans as other loyally and prudently administered plans do, but failed to do so. Defendant's failure cost the Plans and their participants to sustain millions of dollars in losses.

37. Defendant failed prudently to monitor and control the compensation paid by the Plans for recordkeeping and administrative services, particularly the asset-based revenue sharing received by the Plans' recordkeepers. Had Defendant monitored the compensation paid to the Plans' recordkeepers and ensured that participants were only charged reasonable fees for administrative and recordkeeping services, the Plans' participants would not have lost millions of dollars in their retirement savings over the last six years.

38. Annual Returns on Form 5500 provide substantial evidence of that failure. The Plans' 5500's are essentially the Plans' annual tax returns. Department of Labor ("DOL") rules expressly require that plan services providers report all direct and indirect compensation received for the year in connection with those services. None of the Plans' 5500's filed since 2012 disclose any amount of indirect compensation being received by the Plans' recordkeepers.

## ERISA'S FIDUCIARY STANDARDS

39. ERISA imposes strict fiduciary duties of loyalty and prudence upon the Defendant as fiduciary of the Plans. 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.

40. 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.

41. 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.

42. 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.

43. 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

44. 29 U.S.C. §1132(a)(2) authorizes any participant or beneficiary of either of the Plans to bring an action individually on behalf of the Plans to enforce a breaching fiduciary's liability to the plan under 29 U.S.C. §1109(a).

45. In acting in this representative capacity and to enhance the due process protections of unnamed participants and beneficiaries of the Plans, as an alternative to direct individual actions on behalf of the Plans 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 Plans. Plaintiffs seek to certify, and to be appointed as representatives of, the following class:

> All persons who participated in the University of Miami Retirement Savings Plan, the Defined Contribution Retirement Plan for Faculty of the University of Miami, the University of Miami Retirement Savings Plan II, the UHealth Retirement Savings Plan III, and/or the University of Miami Supplemental Retirement Annuity Program at any time from May 1, 2014 through August 31, 2021 (the "Settlement Class Period"), including any Beneficiary of a deceased person who participated in any of the Plans at any time during the Settlement Class Period, and any Alternate Payee of a person subject to a Qualified Domestic Relations Order who participated in any of the Plans at any time during the Settlement Class Period.
>
> Excluded from this Settlement Class are any individuals who were members of the Plans' fiduciary committees during the Settlement Class Period.

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

a. The Class includes over 16,000 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 Plans and to all participants and beneficiaries and took the actions and omissions alleged herein as to the Plans 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 Plans breached their fiduciary duties to the Plans; what are the losses to the Plans resulting from each breach of fiduciary duty; and what 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 Plaintiffs were participants during the time period at issue in this action and all participants in the Plans were harmed by Defendant's misconduct.

d. Plaintiffs are adequate representatives of the Class because they were participants in the Plans during the Class period, have no interests that are 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 its fiduciary duties to the Plans and personal liability to the Plans 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 Plans 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).

47. 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).

48. Plaintiffs' counsel 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).

**COUNT I**

**Breach of Duties of Loyalty and Prudence—Unreasonable Administrative Fees**

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

50. The scope of the fiduciary duties and responsibilities of the Defendant includes discharging its duties with respect to the Plans solely in the interest of, and for the exclusive purpose of providing benefits to, the Plans' participants and beneficiaries, defraying reasonable expenses of administering the Plans, and acting with the care, skill, prudence, and diligence required by ERISA. Defendant is directly responsible for ensuring that the Plans' fees are reasonable, selecting prudent investment options, evaluating and monitoring the Plans' investments on an ongoing basis and eliminating imprudent ones, and taking all necessary steps to ensure that the Plans' assets are invested prudently.

51. Defendant selected and retained as the Plans' investment options investment funds and insurance company annuities that caused the Plans to incur far higher administrative fees and expenses relative to the size and complexity of the Plans.

52. Defendant failed to engage in a prudent process for the evaluation and monitoring of amounts being charged for administrative expense, allowing the Plans to be charged an asset-based fee for recordkeeping calculated in a manner that was completely inconsistent with a reasonable fee for the service and was grossly excessive for the service being provided.

53. Had a prudent and loyal fiduciary conducted a process for the retention of investment options, it would have concluded that the Plans' investment options were retained for reasons other than the best interest of the Plans and their participants, and were causing the Plans

to lose millions of dollars of participants' retirement savings in excessive and unreasonable asset-based fees for fixed administrative services.

54. Defendant's failure to properly evaluate the reasonableness of amounts being charged to the Plans caused Plaintiffs and the Class millions of dollars in direct economic loss. The Plans' total losses will be determined after complete discovery in this case and are continuing.

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

**PRAYER FOR RELIEF**

For these reasons, Plaintiff, on behalf of the Plans and all similarly situated Plans participants and beneficiaries, respectfully requests that the Court:

1. Find and declare that the Defendant has breached its fiduciary duties as described above;
2. Find and adjudge that Defendant is personally liable to make good to the Plans all losses to the Plans resulting from each breach of fiduciary duties, and to otherwise restore the Plans to the position it would have occupied but for the breaches of fiduciary duty;
3. Determine the method by which the Plans' losses under 29 U.S.C. §1109(a) should be calculated;
4. Order Defendant to provide all accountings necessary to determine the amounts Defendant must make good to the Plans under §1109(a);
5. Remove the fiduciaries who have breached their fiduciary duties and enjoin them from future ERISA violations;

6. Surcharge against Defendant and in favor of the Plans all amounts involved in any transactions which such accounting reveals were improper, excessive and/or in violation of ERISA;

7. Reform the Plans to include only prudent investments;

8. Reform the Plans to obtain bids for recordkeeping and to pay only reasonable recordkeeping expenses;

9. Certify the Class, appoint the Plaintiffs as class representatives, and appoint their counsel as Class Counsel;

10. 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;

11. Order the payment of interest to the extent it is allowed by law; and

12. Grant other equitable or remedial relief as the Court deems appropriate.

DATED this 29th day of November, 2021.

Respectfully submitted,

**BRANDON J. HILL**
Florida Bar Number: 37061
**LUIS A. CABASSA, P.A.**
Florida Bar Number: 0053643
**WENZEL FENTON CABASSA, P.A.**
1110 North Florida Ave., Suite 300
Tampa, Florida 33602
Direct: 813-337-7992
Main: 813-224-0431
Facsimile: 813-229-8712
Email: bhill@wfclaw.com
Email: lcabassa@wfclaw.com
Email: gnichols@wfclaw.com

**MICHAEL C. MCKAY**
*Pro Hac Vice*
**MCKAY LAW, LLC**
5635 N. Scottsdale Road, Suite 170
Scottsdale, Arizona 85250
Telephone: (480) 681-7000
Email: mckay@mckay.law

**CHAD A. JUSTICE**
Florida Bar Number: 121559
**Justice for Justice LLC**
1205 N Franklin Street, Suite 326
Tampa, Florida 33602
Direct No. 813-566-0550
Facsimile: 813-566-0770
E-mail: chad@getjusticeforjustice.com
Attorneys for Plaintiffs and the proposed Class

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on this 29th day of November, 2021, I electronically filed the foregoing with the Clerk of the Court through the CM/ECF system, which will send a notice of electronic filing to counsel for all parties of record.

*/s/ Brandon J. Hill*
**BRANDON J. HILL**