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9 **UNITED STATES DISTRICT COURT**
10 **DISTRICT OF NEVADA**

11 ROBERT CEVASCO, on behalf of the
12 Allegiant 401(k) Retirement Plan,
13 individually and on behalf of all others
14 similarly situated,

15 Plaintiff,

16 vs.

17 ALLEGIANT TRAVEL COMPANY

18 Defendant.

Case No.

CLASS ACTION COMPLAINT

19
20 On behalf of The Allegiant 401(k) Retirement Plan (“Plan”), himself, and all
21 others similarly situated, the Robert Cevasco (“Plaintiff”), files this Class Action
22 Complaint against Allegiant Travel Company (“Allegiant” or “Defendant”) for
23 breaching its fiduciary duties of prudence in violation of the Employee Retirement
24 Income Security Act, 29 U.S.C. §§1001–1461 (“ERISA”).
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27

BRIEF OVERVIEW

1
2 1. This is a class action brought pursuant to §§ 409 and 502 of the Employee
3 Retirement Income Security Act of 1974 (“ERISA”), 29 U.S.C. §§ 1104, 1109, and
4 1132, against Defendant for breaches of fiduciary duties.

5
6 2. Defined contribution retirement plans, like the Plan, confer tax benefits on
7 participating employees to incentivize saving for retirement. According to the
8 Investment Company Institute, Americans held \$7.9 trillion in all employer-based
9 defined contribution retirement plans as of March 31, 2020, of which \$5.6 trillion was
10 held in 401(k) plans. *See* INVESTMENT COMPANY INSTITUTE, *Retirement Assets*
11 *Total \$28.7 Trillion in First Quarter 2020* (June 17, 2020).

12
13 3. In a defined contribution plan, “participants’ retirement benefits are
14 limited to the value of their own individual investment accounts, which is determined
15 by the market performance of employee and employer contributions, less expenses.”
16 *Tibble v. Edison Int’l*, 575 U.S. 523 (2015).

17
18 4. Because all risks related to high fees and poorly performing investments
19 are borne by the participants, the employer has little incentive to keep costs low or to
20 closely monitor the Plan to ensure every investment remains prudent.

21
22 5. The Plan is a legal entity that can sue and be sued. *See* ERISA § 502(d)(1),
23 29 U.S.C. § 1132(d)(1). However, in a breach of fiduciary duty action such as this, the
24 Plan is not a party. Rather, pursuant to ERISA § 409, and the case law interpreting it,
25 the relief requested in this action is for the benefit of the Plan and its participants.

26
27 6. To safeguard Plan participants and beneficiaries, ERISA imposes strict

1 fiduciary duties of loyalty and prudence upon employers and other plan fiduciaries. 29
2 U.S.C. § 1104(a)(1). These twin fiduciary duties are “the highest known to the law.”
3 *Sweda v. Univ. of Pennsylvania*, 923 F.3d 320, 333 (3d Cir. 2019). Fiduciaries must act
4 “solely in the interest of the participants and beneficiaries,” 29 U.S.C. § 1104(a)(1)(A),
5 with the “care, skill, prudence, and diligence” that would be expected in managing a
6 plan of similar scope. *See* 29 U.S.C. § 1104(a)(1)(B).

8 7. Because retirement savings in defined contribution plans grow and
9 compound over the course of the employee participants’ careers excessive fees can
10 dramatically reduce the amount of benefits available when the participant is ready to
11 retire. Over time, even small differences in fees can compound and result in a vast
12 difference in the amount of savings available at retirement. As the Supreme Court has
13 explained, “[e]xpenses, such as management or administrative fees, can sometimes
14 significantly reduce the value of an account in a defined-contribution plan.” *Tibble v.*
15 *Edison Int’l*, 135 S. Ct. 1823, 1825 (2015).

18 8. The impact of excessive fees on employees’ and retirees’ retirement assets
19 is dramatic. The U.S. Department of Labor (“DOL”) has noted that a 1% higher level of
20 fees over a 35-year period makes a 28% difference in retirement assets at the end of a
21 participant’s career. U.S. Dep’t of Labor, *A Look at 401(k) Plan Fees*, p. 2 (September
22 2019).

24 9. The Plaintiff is a Plan participant. As of December 31, 2021, the Plan had
25 \$371,281,305 in assets and 3,720 total participants with account balances as of the end
26 of the plan year. Instead of leveraging the Plan’s tremendous bargaining power to
27

1 benefit participants and beneficiaries, Defendant caused the Plan to pay unreasonable
2 and excessive fees for recordkeeping and other administrative services.

3 10. Plaintiff has standing to bring this action on behalf of the Plan because
4 Plaintiff participated in the Plan and was injured by Defendant's unlawful conduct.
5 Plaintiff is entitled to receive benefits in the amount of the difference between the value
6 of his account currently, or as of the time his account was distributed (no such
7 distribution has occurred), and what his accounts are or would have been worth, but for
8 Defendant's breaches of fiduciary duty as described herein.
9

10 11. For purposes of this Complaint, Plaintiff has drawn reasonable inferences
11 regarding these processes based on several factors.
12

13 12. For example, Defendant did not adhere to fiduciary best practices to
14 control Plan fees and expenses. To the extent that Defendant made any prudent attempt
15 to control the Plan's expenses and to ensure the expenses were not excessive, Defendant
16 employed flawed and ineffective processes, which failed to ensure that: (a) the fees and
17 expenses charged to Plan participants were reasonable, and (b) that the compensation
18 third-party service providers received from the plan for services provided were
19 reasonable.
20

21 13. Defendant's mismanagement of the Plan constitutes a breach of the
22 fiduciary duty of prudence in violation of 29 U.S.C. § 1104. Defendant's actions (and
23 omissions) were contrary to actions of a reasonable fiduciary and cost the Plan and its
24 participants millions of dollars.
25
26
27

JURISDICTION AND VENUE

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

5
6 15. This judicial District is the proper venue for this action under 29 U.S.C.
7 §1132(e)(2) and 28 U.S.C. §1391(b) because it is the district in which the Plan is
8 administered, and where at least one of the alleged breaches took place. Additionally,
9 venue is proper in this District because Defendant is headquartered in Las Vegas,
10 Nevada.

THE PLAN

11
12
13 16. The Plan is a qualified retirement plan commonly referred to as a 401(k)
14 plan.

15
16 17. The Plan is established and maintained under written documents in
17 accordance with 29 U.S.C. §1102(a)(1).

18 18. More specifically, the Plan is a “defined contribution” or “individual
19 account” plan within the meaning of ERISA § 3(34), 29 U.S.C. § 1002(34).

20
21 19. Eligible current and former employees of Allegiant are eligible to
22 participate in the Plan. During his employment, Plaintiff participated in the Plan paying
23 the excessive recordkeeping and administrative costs associated with the Plan and
24 investing in the imprudent options offered by the Plan, which are the subject of this
25 lawsuit. The Plan provides the primary source of retirement income for many former
26 Allegiant employees.
27

THE PARTIES

Plaintiff & Standing

1
2
3 20. Named Plaintiff is a participant in the Plan under 29 U.S.C. §1002(7)
4 because he and his beneficiaries are or may become eligible to receive benefits under
5 the Plan.
6

7 21. In terms of standing, §1132(a)(2) allows recovery for a “plan” and does
8 not provide a remedy for individual injuries distinct from plan injuries. Here, the Plan
9 suffered millions of dollars in losses caused by Defendant’s fiduciary breaches.
10

11 22. The Plan continues suffering economic losses, and those injuries may be
12 redressed by a judgment of this Court in favor of Plaintiff and the Plan. The Plan is the
13 victim of any fiduciary breach and the recipient of any recovery. *Id.* at 254.

14 23. Section 1132(a)(2) authorizes any participant to sue derivatively as a
15 representative of the plan to seek relief on behalf of the plan. 29 U.S.C. §1132(a)(2). As
16 explained in detail below, the Plan suffered millions of dollars in losses caused by
17 Defendant’s fiduciary breaches and it remains exposed to harm and continued losses,
18 and those injuries may be redressed by a judgment of this Court in favor of Plaintiff.
19

20 24. To the extent the Plaintiff must also show an individual injury even though
21 §1132(a)(2) does not provide redress for individual injuries, Plaintiff has standing to
22 bring this action on behalf of the Plan because he participated in the Plan and was injured
23 and continues to be injured by Defendant’s unlawful conduct.
24

25 25. To establish standing, Plaintiff need only show a constitutionally adequate
26 injury flowing from those decisions or failures. Plaintiff alleges such an injury for each
27

1 claim.

2 26. More specifically, Plaintiff has standing because the challenged conduct,
3 including Defendant's actions resulting in Plaintiff and the class members paying
4 excessive recordkeeping and administrative fees, and affected all Plan participants in
5 the same way.
6

7 27. For example, the Named Plaintiff's individual account in the Plan suffered
8 losses because, in fact, each participant's account was assessed an excessive amount for
9 recordkeeping and administrative fees, which would not have been incurred had
10 Defendant discharged its fiduciary duties to the Plan and reduced those fees to a
11 reasonable level.
12

13 28. All class members have standing for the same reason. Each class
14 member's individual account in the Plan suffered losses because, in fact, each
15 participant's account was assessed an excessive amount for recordkeeping and
16 administrative fees, which would not have been incurred had Defendant discharged its
17 fiduciary duties to the Plan and reduced those fees to a reasonable level.
18

19 29. As a result of Defendant's actions, the Plaintiff and class members are
20 entitled to restitution in the amount of the difference between the value of their account
21 currently, or as of the time their accounts were distributed, and what their accounts are
22 or would have been worth, but for Defendant's breaches of fiduciary duty as described
23 herein.
24

25 **The Defendant**

26 30. Defendant Allegiant is the Plan Sponsor and a fiduciary of the Plan within
27

1 the meaning of ERISA Section 3(21)(A), 29 U.S.C. § 1002(21)(A), because: (a) it is a
2 named fiduciary under the Plan, (b) during the Class Period, it exercised discretionary
3 authority and control over Plan management and/or authority or control over
4 management or disposition of Plan assets.

5
6 31. Defendant is also a fiduciary to the Plan because it is the Plan
7 Administrator and exercised authority or discretionary control respecting the
8 management of the Plan or exercised authority or control respecting the management or
9 disposition of Plan assets and has discretionary authority or discretionary responsibility
10 in the administration of the Plan. 29 U.S.C. §1002(21)(A)(i) and (iii).

11
12 32. At all times during the Class Period, Allegiant has acted through its Board
13 of Directors to appoint fiduciaries of the Plan, including the Administrative Committee
14 (“Committee”). Under ERISA, fiduciaries with the power to appoint have the
15 concomitant fiduciary duty to monitor and supervise their appointees.

16
17 33. Defendant through its Board of Directors, had a fiduciary duty to monitor
18 and supervise the Plan’s fiduciaries, including the Committee and its members during
19 the Class Period, but, as set forth in detail below, the Committee failed to carry out these
20 fiduciary duties prudently.

21
22 34. Defendant’s fiduciary duties to the Plan include, *inter alia*, selecting and
23 regularly reviewing the investment options that are available to Plan participants in order
24 to ensure that such investment options are at times prudent, and selecting and regularly
25 reviewing the service providers to the Plan, including the Plan’s recordkeeper and
26 advisors and consultants to the Plan in order to ensure that the fees charged by such
27

1 service providers are reasonable.

2 35. For the foregoing reasons, at all times during the Class Period, Defendant
3 was a fiduciary of the Plan within the meaning of ERISA Section 3(21)(A), 29 U.S.C. §
4 1002(21)(A), because it exercised discretionary authority over management or
5 disposition of Plan assets and because it exercised discretionary authority to appoint
6 and/or monitor the other fiduciaries, which had control over Plan management and/or
7 authority or control over management or disposition of Plan assets.
8

9 **Additional Information on the Plan**

10 36. Defendant established the Plan as a defined contribution plan in 2000. The
11 Plan was amended in January 2021 and March 2022.
12

13 37. The Plan covers substantially all non-union employees of Defendant and
14 its subsidiaries.
15

16 38. Fidelity Management Trust Company (the “Trustee”) serves as the Trustee
17 of the Plan and over The Allegiant 401(k) Retirement Plan Master Trust (the “Master
18 Trust”).

19 39. Fidelity Investments Institutional (“Recordkeeper” or “Fidelity”) serves
20 as the recordkeeper for the Plan.
21

22 40. The Plan is subject to the provisions of ERISA.

23 41. With respect to contributions, each year participants may contribute from
24 1% to 75% of their pre-tax annual compensation, as defined by the Plan, subject to
25 certain Internal Revenue Code (“IRC”) limitations.
26

27 42. Notably, Management fees and operating expenses, including in some

1 instances, recordkeeping fees, are charged to the Plan via investments in mutual funds
2 within the Master Trust and such fees are deducted by the Recordkeeper directly from
3 Plan participant individual accounts and such deductions are not separately reflected in
4 any disclosures to Plan participants. Consequently, it is very difficult, if not impossible,
5 for Plan participants to know how much the Recordkeeper deducts from their individual
6 accounts for such fees.
7

8 **CLASS ACTION ALLEGATIONS**

9 43. Plaintiff brings this action as a class action pursuant to Fed. R. Civ. P. 23
10 on behalf of himself and the following proposed class (“Class”):¹
11

12 All persons who were participants or beneficiaries of the
13 Plan, at any time between October 17, 2016, and the present
14 (the “Class Period”).

15 44. Members of the Class are so numerous that joinder is impractical.
16 According to the most recent Form 5500 filed with the DOL, there were 3,720
17 participants in the Plan with account balances as of December 31, 2021.

18 45. Plaintiff’s claims are typical of the claims of the members of the Class.
19 Like other Class members, Plaintiff participated in the Plan and suffered injuries
20 because of Defendant’s ERISA fiduciary breaches. Defendant treated Plaintiff
21 consistently with other Class members and managed the Plan as a single entity.
22 Plaintiff’s claims and the claims of all Class members arise out of the same conduct,
23
24

25
26 _____
27 ¹ Plaintiff reserves the right to propose other or additional classes or subclasses in his motion for class certification or subsequent pleadings in this action.

1 policies, and practices of Defendant as alleged herein, and all members of the Class
2 have been similarly affected by Defendant's wrongful conduct.

3 46. There are questions of law and fact common to the Class, and these
4 questions predominate over questions affecting only individual Class members.
5 Common legal and factual questions include, but are not limited to:
6

- 7 A. Whether Defendant is fiduciary of the Plan;
- 8 B. Whether Defendant breached its fiduciary duty of prudence by
9 engaging in the conduct described herein;
- 10 C. Whether Defendant failed to adequately monitor other fiduciaries
11 to ensure the Plan was being managed in compliance with ERISA;
- 12 D. The proper form of equitable and injunctive relief; and
- 13 E. The proper measure of relief.

14 47. Plaintiff will fairly and adequately represent the Class and has retained
15 counsel experienced and competent in the prosecution of ERISA class action litigation.
16 Plaintiff has no interests antagonistic to those of other members of the Class. Plaintiff
17 is committed to the vigorous prosecution of this action and anticipate no difficulty in
18 the management of this litigation as a class action.
19

20 48. This action may be properly certified under Fed. R. Civ. P. 23(b)(1). Class
21 action status in this action is warranted under Fed. R. Civ. P. 23(b)(1)(A) because
22 prosecution of separate actions by the members of the Class would create a risk of
23 establishing incompatible standards of conduct for Defendant. Class action status is
24 also warranted under Fed. R. Civ. P. 23(b)(1)(B) because prosecution of separate
25 actions by the members of the Class would create a risk of adjudications with respect
26
27

1 to individual members of the Class that, as a practical matter, would be dispositive of
2 the interests of other members not parties to this action, or that would substantially
3 impair or impede their ability to protect their interests.

4 49. In the alternative, certification under Fed. R. Civ. P. 23(b)(2) is warranted
5 because the Defendant has acted, or refused to act, on grounds generally applicable to
6 the Class, thereby making appropriate final injunctive, declaratory, or other appropriate
7 equitable relief with respect to the Class as a whole.
8

9
10 **DEFENDANT’S FIDUCIARY STATUS AND**
OVERVIEW OF FIDUCIARY DUTIES

11 50. ERISA requires every covered retirement plan to provide for one or more
12 named fiduciaries who will have “authority to control and manage the operation and
13 administration of the plan.” ERISA § 402(a)(1), 29 U.S.C. § 1102(a)(1).
14

15 51. ERISA treats as fiduciaries not only persons explicitly named as
16 fiduciaries under § 402(a)(1), 29 U.S.C. § 1102(a)(1), but also any other persons who
17 in fact perform fiduciary functions. Thus, a person is a fiduciary to the extent: “(i) he
18 exercises any discretionary authority or discretionary control respecting management
19 of such plan or exercise any authority or control respecting management or disposition
20 of its assets, (ii) he renders investment advice for a fee or other compensation, direct or
21 indirect, with respect to any moneys or other property of such plan, or has any authority
22 or responsibility to do so, or (iii) he has any discretionary authority or discretionary
23 responsibility in the administration of such plan.” ERISA § 3(21)(A)(i), 29 U.S.C. §
24 1002(21)(A)(i).
25
26
27

1 52. As described above, Defendant was (and still is) a fiduciary of the Plan
2 because:

- 3 A. it so named; and/or
4 B. exercised authority or control respecting management or
5 disposition of the Plan’s assets; and/or
6 C. exercised discretionary authority or discretionary control
7 respecting management of the Plan; and/or
8 D. had discretionary authority or discretionary responsibility in the
9 administration of the Plan.

10 53. As a fiduciary, Defendant were and are required by ERISA § 404(a)(1),
11 29 U.S.C. § 1104(a)(1)(A), to manage and administer the Plan solely in the interest of
12 the Plan’s participants and beneficiaries, defray reasonable expenses of administering
13 the Plan, and to do so with the care, skill, prudence, and diligence under the
14 circumstances then prevailing that a prudent person acting in a like capacity and
15 familiar with such matters would use in the conduct of an enterprise of a like character
16 and with like aims as the Plan. These twin duties are referred to as the duties of loyalty
17 and prudence, and they are “the highest known to the law.” *Sweda*, 923 F.3d at 333.
18
19

20 54. As set forth in detail below, Defendant breached its fiduciary duties of
21 prudence to the Plan, Plan participants, and Plan beneficiaries, and Defendant is,
22 therefore, liable for its breach under 29 U.S.C. §§ 1104, 1109, and 1132.
23
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SPECIFIC ALLEGATIONS

Improper Management of the Plan Cost the Plan's Participants Millions in Savings

1
2
3
4 55. “Wasting beneficiaries’ money is imprudent. In devising and
5 implementing strategies for the investment and management of trust assets, trustees are
6 obligated to minimize costs.” Uniform Prudent Investor Act (the “UPIA”) § 7; *see also*
7 29 U.S.C. § 1104(a)(1)(A) (requiring ERISA fiduciaries to “defray reasonable expenses
8 of administering the plan.”).

9
10 56. “The Restatement ... instructs that ‘cost-conscious management is
11 fundamental to prudence in the investment function.’” *Tibble v. Edison Int'l*, 843 F.3d
12 1187, 1197–98 (9th Cir. 2016) (quoting Restatement (Third) of Trust § 90, cmt. b). *See*
13 *also* U.S. Dep’t of Labor, *A Look at 401(k) Plan Fees*, at 2 (Aug. 2013) (“You should
14 be aware that your employer also has a specific obligation to consider the fees and
15 expenses paid by your plan ... Employers are held to a high standard of care and
16 diligence and must discharge their duties solely in the interest of the plan participants
17 and their beneficiaries.”).²

18
19
20 57. Higher fees of only 0.18% to 0.4% can have a large effect on a
21 participant’s investment results over time because “[b]eneficiaries subject to higher fees
22 for materially identical funds lose not only the money spent on higher fees, but also ‘lost
23
24
25

26
27 ² Available at: <https://www.dol.gov/sites/dolgov/files/ebsa/about-ebsa/our-activities/resource-center/publications/a-look-at-401k-plan-fees.pdf> (last visited October 3, 2022).

1 investment opportunity’; that is, the money that the portion of their investment spent on
2 unnecessary fees would have earned over time.” *Tibble*, 843 F.3d at 1198.

3 58. Most participants in 401(k) plans expect that their 401(k) accounts will be
4 their principal source of income after retirement. “The 401(k) is the major source people
5 think they are going to rely on.”³ Although 401(k) accounts are fully funded, that does
6 not prevent plan participants from losing money on poor investment choices of plan
7 fiduciaries, whether due to poor performance, high fees, or both.

8
9 59. Indeed, the DOL has stated that employers are held to a “high standard of
10 care and diligence” and must both “establish a prudent process for selecting investment
11 options and service providers” and “monitor investment options and service providers
12 once selected to see that they continue to be appropriate choices,” among other duties.
13 See “A Look at 401(k) Plan Fees,” *supra*.

14
15 60. The duty to evaluate and monitor plan expenses, investments and
16 investment costs, includes fees paid directly by plan participants to investment
17 providers, usually in the form of an expense ratio or a percentage of assets under
18 management within a particular investment. See Investment Company Institute (“ICI”),
19 *The Economics of Providing 401(k) Plans: Services, Fees, and Expenses*, at 4 (July
20 2016).⁴ “Any costs not paid by the employer, which may include administrative,
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26 ³ Brandon, Emily, “10 Essential Sources of Retirement Income,” (May 6, 2011), available at:
27 <https://money.usnews.com/money/retirement/slideshows/10-essential-sources-of-retirement-income> (last visited October 3, 2022).

⁴ Available at: <https://www.ici.org/pdf/per22-04.pdf> (last visited October 3, 2022).

1 investment, legal, and compliance costs, effectively are paid by plan participants.” *Id.*
2 at 5.

3 **Defendant Failed to Monitor or Control the**
4 **Plan’s Recordkeeping and Administrative Expenses**

5 61. The term “recordkeeping” is a catchall term for the suite of administrative
6 services typically provided to a plan by the plan’s “recordkeeper.” Beyond simple
7 provision of account statements to participants, it is quite common for the recordkeeper
8 to provide a range of services to a plan as part of a package of services. These services
9 typically include, preparation of individual account statements, delivery of individual
10 account statements, claims processing, participant communications, participant loan
11 processing, Qualified Domestic Relations Order (“QDRO”) processing, and preparation
12 of ERISA required disclosures to participants and regulators.
13
14

15 62. Nearly all recordkeepers in the marketplace offer the same range of
16 services. The services are essentially the same. Many of the recordkeeping services can
17 be provided by recordkeepers at little cost.
18

19 63. The market for recordkeeping is highly competitive, with many vendors
20 equally capable of providing a high-level service. As a result of such competition,
21 vendors vigorously compete for business by offering the best price, rather than
22 differentiating themselves based on the quality or range of services offered.
23

24 64. Individual plan participants cannot negotiate with recordkeepers on behalf
25 of the Plan. That responsibility falls to the Plan’s fiduciaries – in this case Defendant.
26 ERISA explicitly requires plan fiduciaries to prudently defray plan expenses. 29 U.S.C.
27

1 1104(a)(1)(A). Accordingly, prudent fiduciaries routinely bargain for low
2 recordkeeping fees. *See, e.g., George v. Kraft Foods Global, Inc.*, 641 F.3d 786 (7th Cir.
3 2011) (expert opined market rate for large plans is approximately \$20–\$27 per plan
4 participant); *Gordon v. Mass Mutual*, Case 13-30184, Doc. 107-2 at ¶10.4 (D. Mass.
5 June 15, 2016) (401(k) fee settlement committing the Plan to pay not more than \$35 per
6 participant for recordkeeping); *Spano v. Boeing*, Case 06-743, Doc. 466, at 26 (S.D. Ill.
7 Dec. 30, 2014) (Doc. 562-2, Jan. 29, 2016) (declaration that Boeing’s 401(k) plan
8 recordkeeping fees have been \$18 per participant for the past two years).
9

10
11 65. The cost of providing recordkeeping services primarily depends on the
12 number of participants in a plan, rather than the range of services provided to the plan.
13 Because recordkeeping expenses are driven by the number of participants in a plan, most
14 plans are charged on a per-participant basis. Plans with large numbers of participants
15 can and do take advantage of economies of scale by negotiating a lower per-participant
16 recordkeeping fee.
17

18 66. Recordkeeping expenses can either be paid directly from plan assets, or
19 indirectly by the plan’s investments in a practice known as revenue sharing (or a
20 combination of both). Revenue sharing payments are derived from investments within
21 the plan, typically mutual funds. A percentage of all the money invested by plan
22 participants in mutual funds is removed from the plan participants’ individual accounts
23 and diverted to the recordkeeper – ostensibly, to pay for plan administrative expenses.
24
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1 67. Utilizing a revenue sharing approach is not *per se* imprudent. Plaintiff is
2 not making a claim against Defendant merely because it used revenue sharing to pay
3 recordkeeping fees.

4 68. However, when (as here) revenue sharing is left unchecked, it can be
5 devastating for plan participants. “At worst, revenue sharing is a way to hide fees.
6 Nobody sees the money change hands, and very few understand what the total
7 investment expense pays for. It is a way to milk large sums of money out of large plans
8 by charging a percentage-based fee that never goes down (when plans are ignored or
9 taken advantage of). In some cases, employers and employees believe the plan is ‘free’
10 when it is in fact expensive.” *See* Justin Pritchard, “Revenue Sharing and Invisible
11 Fees.”⁵

12 69. Because revenue sharing payments are asset based, they bear no relation
13 to actual services provided and, likewise, bear no relation to a reasonable recordkeeping
14 fee, and can provide excessive compensation by plan participants to recordkeepers.

15 70. Again, it is important to emphasize that fees obtained through revenue
16 sharing are tethered not to any actual services provided to a plan; but rather, to a
17 percentage of assets in a plan and/or investments in mutual funds in a plan. As the assets
18 in a plan increase, so too increases the recordkeeping fees that the recordkeeper pockets
19 from the plan and its participants.
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26 ⁵ Available at: <http://www.cccandc.com/p/revenue-sharing-and-invisible-fees> (last visited
27 October 3, 2022).

1 71. One commentator likened this fee arrangement to hiring a plumber to fix
2 a leaky gasket and paying the plumber based not on actual work provided but, rather,
3 based on the amount of water that flows through the pipe. If asset-based fees are not
4 monitored, the fees skyrocket as more money flows into the Plan.
5

6 72. For example, assume a plan had two participants. The two plan
7 participants each had individual accounts in the plan with \$1,000 invested. The plan
8 contracted with a recordkeeper who agreed that \$25 per participant, per year, was a fair
9 and reasonable fee for recordkeeping. But instead of charging each participant \$25
10 directly each year, the plan and recordkeeper agreed that the record keeper would collect
11 its fee by assessing a 250-basis point fee to each plan participants for all assets under
12 management in the plan – the amount equals the agreed upon \$25.00 per participant, per
13 year. Assume, as time passes the two participants individual accounts increase in value
14 from \$1,000 to \$1,000,000. If the recordkeeper’s fee is not renegotiated, the
15 recordkeeper will collect \$25,000 per year, per participant, instead of the fair and
16 reasonable \$25.00 per year, per participant fee.
17
18

19 73. It is well-established that plan fiduciaries have an obligation to monitor
20 and control recordkeeping fees to ensure that such fees remain reasonable. *See, e.g.,*
21 *Tussey v. ABB, Inc.*, 746 F.3d 327, 336 (8th Cir. 2014) (“*Tussey II*”) (holding that
22 fiduciaries of a 401(k) plan “breach[] their fiduciary duties” when they “fail[] to monitor
23 and control recordkeeping fees” incurred by the plan). Excessive expenses “decrease [an
24 account’s] immediate value” and “depriv[es] the participant of the prospective value of
25 funds that would have continued to grow if not taken out in fees.” *Sweda*, 923 F.3d at
26
27

1 328. No matter the method of payment or fee collection, the fiduciary must understand
2 the total amount paid the recordkeeper and per-participant fees and determine whether
3 pricing is competitive. *See Tussey II*, 746 F.3d at 336. Thus, defined contribution plan
4 fiduciaries have an ongoing duty to ensure that the recordkeeper's fees are reasonable.
5

6 74. Prudent fiduciaries implement three related processes to prudently
7 manage and control a plan's recordkeeping costs. First, they must closely monitor the
8 recordkeeping fees being paid by the plan. A prudent fiduciary tracks the recordkeeper's
9 expenses by demanding documents that summarize and contextualize the
10 recordkeeper's compensation, such as fee transparencies, fee analyses, fee summaries,
11 relationship pricing analyses, cost-competitiveness analyses, and multi-practice and
12 stand-alone pricing reports.
13

14 75. Second, to make an informed evaluation as to whether a recordkeeper or
15 other service provider is receiving no more than a reasonable fee for the services
16 provided to a plan, a prudent fiduciary must identify *all* fees, including direct
17 compensation and so-called "indirect" compensation through revenue sharing being
18 paid to the plan's recordkeeper. To the extent that a plan's investments pay asset-based
19 revenue sharing to the recordkeeper, prudent fiduciaries closely monitor the amount of
20 the payments to ensure that the recordkeeper's total compensation from all sources does
21 not exceed reasonable levels and require that any revenue sharing payments that exceed
22 a reasonable level be returned to the plan and its participants. Additionally, to the extent
23 prudent fiduciaries agree that recordkeepers receive interest or float income from funds
24 transferred into or out of a plan, fiduciaries track and control these amounts as well.
25
26
27

1 76. Third, a plan’s fiduciaries must remain informed about overall trends in
2 the marketplace regarding the fees being paid by similar plans, as well as the
3 recordkeeping rates that are available in the marketplace. This will generally include
4 conducting a request for proposal (“RFP”) process at reasonable intervals, and
5 immediately if the plan’s recordkeeping expenses have grown significantly or appear
6 high in relation to the general marketplace. More specifically, an RFP should happen at
7 least every three to five years as a matter of course, and more frequently if a plan
8 experiences an increase in recordkeeping costs or fee benchmarking reveals the
9 recordkeeper’s compensation to exceed levels found in other, similar plans. *George v.*
10 *Kraft Foods Global, Inc.*, 641 F.3d 786, 800 (7th Cir. 2011); *Kruger v. Novant Health,*
11 *Inc.*, 131 F. Supp. 3d 470, 479 (M.D.N.C. 2015).

14 77. The Plan’s assets under management have exploded over the past ten
15 years. The Plan’s assets under management was \$35,231,655 in 2012. The Plan’s assets
16 under management was \$371,281,312 in 2021. Because the Recordkeeper is
17 compensated via revenue sharing, the compensation the Recordkeeper receives from the
18 Plan has exploded too. The administrative and recordkeeping fees the Recordkeeper
19 receives are excessive in relation to the services provided to the Plan.

22 78. The direct and indirect payments that Defendant caused the Plan,
23 participants, and beneficiaries to make for recordkeeping and administrative services
24 during the Class Period were excessive and unreasonable. Defendant breached its duty
25 of prudence by failing to monitor, control, negotiate, and otherwise ensure that indirect
26

1 compensation Plan participants' pay to Fidelity via revenue sharing was not excessive
2 and unreasonable.

3 79. All national recordkeepers, like Fidelity, Empower, Schwab, etc., have the
4 capability to provide recordkeeping services at very little cost to large defined
5 contribution plans.
6

7 80. Fees related to additional a la carte services (e.g., participant loans, self-
8 directed brokerage services, and other ancillary services) were also deducted directly
9 from participant accounts, resulting in additional fees and expenses that increased
10 overall recordkeeping and administrative fees for Plan participants in an amount more
11 than \$200 per participant annually.
12

13 81. Fidelity was hired as the Plan's recordkeeper in 2011, and still is in that
14 role today.
15

16 82. There is nothing to indicate that Defendant has undertaken a proper RFP
17 since 2011. If Defendant had undertaken an RFP to compare Fidelity's compensation
18 with those of others in the marketplace, Defendant would have recognized that Fidelity's
19 compensation for recordkeeping and administrative services during the Class Period has
20 been (and remains) unreasonable and excessive.
21

22 83. Additionally, as noted above the Plan had more than \$371,281,305 in
23 assets under management as of December 31, 2021. This is Plan participant money.
24 Defendant agreed that anytime Plan participants deposit or withdraw money from their
25 individual accounts the money will first pass through a Fidelity clearing account.
26
27

1 84. Defendant reported for the year 2021, \$44,870,640 was added to Plan
2 participants individual accounts and at least, \$27,818,392 was withdrawn from Plan
3 participants individual accounts. The total added and withdrawn in 2021 was
4 \$72,689,032.

5
6 85. Fidelity earned income on \$72,689,032 of Plan participant money while it
7 was in Fidelity's clearing account. This is another form of indirect compensation that
8 Fidelity receives as the recordkeeper for the Plan. However, Defendant has not tracked,
9 monitored, or negotiated the amount of compensation Fidelity receives from income it
10 earns on Plan participant money in Fidelity's clearing account. Moreover, Defendant
11 does not even know how much fidelity pockets from this source of indirect
12 compensation. Defendant breached its fiduciary duty of prudence by allowing Fidelity
13 to receive excessive and unreasonable compensation from Plan participants and without
14 even knowing the amount of compensation Fidelity collects from interest on participant
15 money.
16
17

18 86. Fidelity also receives "direct compensation" from Plan participants. From
19 2015 to 2020 the direct compensation that Fidelity received from Plan participants, per
20 participant, as disclosed on the Plan's 5500 disclosures filed with the DOL were as
21 follows:
22

Year	Direct Recordkeeping Compensation Per-Participant (annually)
2015	\$31.25
2016	\$33.39

Year	Direct Recordkeeping Compensation Per-Participant (annually)
2017	\$50.01
2018	\$57.35
2019	\$68.93
2020	\$75.62
2021	\$72.24

87. Plans of similar size pay annually no more than \$25 - \$30 per participant annually in total for recordkeeping fees. Thus, the direct compensation that Fidelity received was – on a stand-alone basis – excessive for recordkeeping. Here, the direct compensation alone was more than double what a reasonable fee should have been.

88. In fact, Defendant’s own recordkeeper, Fidelity, has provided evidence supporting Plaintiff’s position on this discrete issue. Fidelity’s own retirement plan was recently sued. In that case, the “parties [] stipulated that if Fidelity were a third party negotiating this fee structure at arms-length, the value of services would range from \$14-\$21 per person per year over the class period, and that the recordkeeping services provided by Fidelity to this Plan are not more valuable than those received by other plans of over \$1,000,000,000 in assets where Fidelity is the recordkeeper.” *Moitoso et al. v. FMR, et al.*, 451 F.Supp.3d 189, 214 (D. Mass. 2020).

89. But there’s more. In the *Moitoso*, case Fidelity went on to stipulate as follows:

1 The value of the recordkeeping services that Fidelity
2 provided to the Plan in 2014 was \$21 per participant; the
3 value of the recordkeeping services that Fidelity provided to
4 the Plan in 2015 and 2016 was \$17 per participant, per year;
5 and **the value of the recordkeeping services that Fidelity**
6 **has provided to the Plan since January 1, 2017 is \$14 per**
7 **participant, per year.** Had the Plan been a third-party plan
8 that negotiated a fixed fee for recordkeeping services at arm's
9 length with Fidelity, it could have obtained recordkeeping
10 services for these amounts during these periods. The Plan did
11 not receive any broader or more valuable recordkeeping
12 services from Fidelity than the services received by any other
13 Fidelity-record kept plan with at least \$1 billion in assets
14 during the Class Period (November 18, 2014 to the present).⁶

15 90. The key takeaway from this stipulation by Fidelity, the same recordkeeper
16 utilized in this case, is simple: Fidelity served as Allegiant's Plan's recordkeeper during
17 much of the same time period from the *Moitoso* case when Fidelity admitted (1) **it did**
18 **not provide recordkeeping services to its plan** that were broader or more valuable than
19 any of the plans where it is the recordkeeper (*i.e.*, the Plan here) and, more importantly,
20 (2) the value of those services ranged from between **\$14 to \$17 per participant**
21 **annually.**

22 91. Thus, Allegiant Plan fiduciaries should have negotiated for recordkeeping
23 and administration fees for somewhere between \$17 beginning in January 2017 down
24 to \$14 per Plan participant currently but failed to do so.

25 92. The Plan had between 2,500 and 5,000 participants during the Class
26 Period, making it eligible for some of the lowest fees on the market.

27 ⁶ *Moitoso*, No. 1:18-cv-12122-WGY, ECF 138-67, ¶ 2 (emphasis added)

1 93. Given the size of the Plan’s assets during the Class Period and total
2 number of participants, in addition to the general trend towards lower recordkeeping
3 expenses in the marketplace, the Plan could have obtained recordkeeping services that
4 were comparable to or superior to the typical services provided by the Plan’s
5 recordkeeper at a lower cost.
6

7 94. Additionally, as noted above, Fidelity did not receive only the direct
8 compensation from the Plan, it received—it received even more compensation for
9 recordkeeping services through revenue sharing payments and through float income.
10

11 95. As one industry expert has noted: “If you don’t establish tight control, the
12 growth of your plan’s assets over time may lead to higher than reasonable amounts
13 getting paid to service providers. This is because most revenue sharing is asset-based. If
14 a recordkeeper’s workload is about the same this year as last, why should they get more
15 compensation just because the market had a big year and inflated the asset base? In a
16 large plan, this phenomenon can lead to six figure comp bloat over time. That’s bad for
17 plan participants and bad for fiduciaries.” Jim Phillips, *(b)est Practices: What Do You*
18 *Know About Revenue Sharing?*, PLANSPONSOR.com (June 6, 2014).
19

20 96. The best practice is a flat price based on the number of participants in a
21 plan, which ensures that the amount of compensation will be tied to the actual services
22 provided and that the recordkeeping fees will not fluctuate or change based upon, *e.g.*,
23 an increase in assets in the plan.
24
25
26
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1 97. The total amount of recordkeeping fees (both through direct and indirect
2 payments) currently is at least \$200 per participant annually, when a reasonable fee
3 ought to be no more than \$25 per participant annually.

4 98. The recordkeeping fees paid to Fidelity are far greater than recognized
5 reasonable rates for a plan with nearly \$400,000,000 in assets. Given the growth and
6 size of the Plan's assets during the Class Period, in addition to the general trend towards
7 lower recordkeeping expenses in the marketplace, the Plan could have obtained
8 recordkeeping services that were comparable to the typical services that would have
9 been provided to the Plan by Fidelity. Fidelity performs tasks for the Plan such as
10 validating payroll data, tracking employee eligibility and contributions, verifying
11 participant status, recordkeeping, and information management (computing, tabulating,
12 data processing, etc.).
13
14

15 99. Fidelity's compensation was excessive in relation to the services it
16 provided because, in fact, the services that Fidelity provided were nothing out of the
17 ordinary, and a prudent fiduciary would have observed the excessive compensation
18 being paid to Fidelity and taken corrective action.
19

20 100. Defendant's failure to monitor and control Fidelity's compensation cost
21 the Plan millions of dollars during the Class Period and constituted a breach of the duty
22 of prudence.
23

24 101. Looking at recordkeeping costs for other plans of a similar size shows that
25 the Plan was paying significantly higher recordkeeping fees than its peers – an indication
26
27

1 the Plan's fiduciaries failed to appreciate the prevailing circumstances surrounding
2 recordkeeping and administration fees.

3 102. Here is yet another example, Fidelity acts as the recordkeeper for Molson
4 Coors Beverage Company USA, LLC ("Molson Plan"). The Molson Plan filed a Form
5 5500 disclosure for the year ending 2020 that shows it had 2,948 plan participants,
6 \$455,926,00 of assets under management in the plan, Fidelity is the plan's recordkeeper,
7 and the plan's participants paid \$9.42 per participant annually for recordkeeping. The
8 services Fidelity provides to the Molson Plan are virtually identical to those provided to
9 the Plan here. These services include validating payroll data, tracking employee
10 eligibility and contributions, verifying participant status, recordkeeping, and
11 information management.
12
13

14 103. However, Defendant permitted Fidelity to charge the Plan in this case
15 \$75.62 in direct fees only per participant annually, or nearly eight times what Fidelity
16 charged the Molson Plan, for basically the same services, making the fees charged to
17 this Plan, in this case, excessive.
18

19 104. Considering that the recordkeeping services provided by Fidelity in this
20 case are similar to those provided by all national recordkeepers, like Schwab, Empower,
21 and even Fidelity itself, Defendant's flawed decision-making process caused the Plan
22 and its participants to pay more than \$75 in direct compensation to Fidelity is imprudent.
23

24 105. As such, Defendant either engaged in little to no examination, comparison,
25 or benchmarking of the recordkeeping/administrative fees of the Plan to those of other
26 similarly sized 401(k) plans, or it was complicit in paying grossly excessive fees. Had
27

1 Defendant conducted a meaningful examination, comparison, or benchmarking, as any
2 prudent fiduciary would, Defendant would have known that the Plan was compensating
3 Fidelity at an inappropriate level for its size. Plan participants bear this excessive fee
4 burden and, accordingly, achieve considerably lower retirement savings, since the extra
5 fees, particularly when compounded, have a damaging impact upon the returns attained
6 by participant retirement savings.
7

8 106. By failing to recognize that the Plan and its participants were being
9 charged much higher fees than they should have been and/or failing to take effective
10 remedial actions, Defendant breached its fiduciary duties to the Plan.
11

12 107. In sum, given the size of the Plan's assets during the Class Period and total
13 number of participants, in addition to the general trend towards lower recordkeeping
14 expenses in the marketplace as a whole, Defendant could have obtained for the Plan
15 recordkeeping services that were comparable to or superior to the typical services
16 provided by the Plan's recordkeeper at a lower cost. Defendant failed to do so and, as a
17 result, violated its fiduciary duties under ERISA.
18

19 **Defendant Breached Its Fiduciary Duties by Selecting More Expensive Share**
20 **Classes Instead of Low-Cost Institutional Shares of the Same Funds**

21 108. The Supreme Court reaffirmed the ongoing fiduciary duty to monitor a
22 plan's investment options in *Tibble*, 575 U.S. 523. In *Tibble*, the Court held that "an
23 ERISA fiduciary's duty is derived from the common law of trusts," and that "[u]nder
24 trust law, a trustee has a continuing duty to monitor trust investments and remove
25 imprudent ones." *Id.* at 1828. In so holding, the Supreme Court referenced with approval
26
27

1 the Uniform Prudent Investor Act (“UPIA”), treatises, and seminal decisions confirming
2 the duty.

3 109. The UPIA, which enshrines trust law, recognizes that “the duty of prudent
4 investing applies both to investing and managing trust assets....” *Tibble*, 575 U.S. 523
5 (quoting Nat’l Conference of Comm’rs on Uniform State Laws, Uniform Prudent
6 Investor Act § 2(c) (1994)). The official comment explains that “[m]anaging embraces
7 monitoring, that is, the trustee’s continuing responsibility for oversight of the suitability
8 of investments already made as well as the trustee’s decisions respecting new
9 investments.” *Id.* § 2 comment.
10
11

12 110. Under trust law, one of the responsibilities of the Plan’s fiduciaries is to
13 “avoid unwarranted costs” by being aware of the “availability and continuing
14 emergence” of alternative investments that may have “significantly different costs.”
15 Restatement (Third) of Trusts Ch. 17, intro. note (2007); *see also* Restatement (Third)
16 of Trusts § 90 cmt. B (2007) (“Cost-conscious management is fundamental to prudence
17 in the investment function.”).
18

19 111. Adherence to these duties requires regular performance of an “adequate
20 investigation” of existing investments in a plan to determine whether any of the plan’s
21 investments are “improvident,” or if there is a “superior alternative investment” to any
22 of the plan’s holdings. *Pension Ben. Guar. Corp. ex rel. St. Vincent Catholic Med.*
23 *Centers Ret. Plan v. Morgan Stanley Inv. Mgmt. Inc.*, 712 F.3d 705, 718–19 (2d Cir.
24 2013).
25
26

27 112. A document titled, Fidelity Pricing Options for Retirement Plans dated

1 September 30, 2022 is attached as Exhibit 1. The document shows Defendant failed to
 2 prudently monitor the Plan to determine whether the Plan was invested in the lowest-
 3 cost share class available for the Plan's mutual funds, which are identical to the mutual
 4 funds in the Plan in every way except for their lower cost. That is, by causing Plan
 5 participants to pay more for identical investments, Defendant failed in its statutory
 6 ERISA duty to prudently defray costs of the Plan. The chart below demonstrates how
 7 much more expensive the share classes in the Plan are than available identical fund lower
 8 cost share classes:
 9

Fund in Plan	Net Expense Ratio	Lower Cost Share Class of <u>Same Fund</u>	Net Expense Ratio
FSNJX Fidelity Freedom 2005 Fund Class K	0.42%	FITKX Fidelity Freedom 2005 Fund Class K6	0.37%
FSNKX Fidelity Freedom 2010 Fund Class K	0.44%	FOTKX Fidelity Freedom 2010 Fund Class K6	0.38%
FSNLX Fidelity Freedom 2015 Fund Class K	0.47%	FPTKX Fidelity Freedom 2015 Fund Class K6	0.40%
FSNOX Fidelity Freedom 2020 Fund Class K	0.51%	FATKX Fidelity Freedom 2020 Fund Class K6	0.42%
FSNPX Fidelity Freedom 2025 Fund Class K	0.54%	FDTKX Fidelity Freedom 2025 Fund Class K6	0.44%
FSNQX Fidelity Freedom 2030 Fund Class K	0.58%	FGTKX Fidelity Freedom 2030 Fund Class K6	0.46%
FSNUX Fidelity Freedom 2035 Fund Class K	0.61%	FWTKX Fidelity Freedom 2035 Fund Class K6	0.48%

Fund in Plan	Net Expense Ratio	Lower Cost Share Class of <u>Same Fund</u>	Net Expense Ratio
FSNVX Fidelity Freedom 2040 Fund Class K	0.65%	FHTKX Fidelity Freedom 2040 Fund Class K6	0.50%
FSNZX Fidelity Freedom 2045 Fund Class K	0.65%	FJTKX Fidelity Freedom 2045 Fund Class K6	0.50%
FSNBX Fidelity Freedom 2050 Fund Class K	0.65%	FZTKX Fidelity Freedom 2050 Fund Class K6	0.50%
FSNDX Fidelity Freedom 2055 Fund Class K	0.65%	FCTKX Fidelity Freedom 2055 Fund Class K6	0.50%
FSNFX Fidelity Freedom 2060 Fund Class K	0.65%	FFLEX Fidelity Freedom 2060 Fund Class K6	0.50%
FSNDX Fidelity Freedom 2065 Fund Class K	0.65%	FFSZX Fidelity Freedom 2065 Fund Class K6	0.08%

113. Throughout the Class Period, the Plan met the eligibility criteria for the Fidelity Freedom K6 share class, which has been offered by Fidelity since June 7, 2017.

114. As Exhibit 1, and the table above illustrate, throughout the Class Period Defendant should have known of the existence and availability of lower-cost share classes. Yet, Defendant selected and retained the more expensive share classes on the Plan's menu of investment options. This is akin to Fidelity publicly offering the Plan the option to purchase an investment for \$1 and the Plan instead agreeing to purchase the identical investment for \$2. There is over \$100,000,000 of Plan participant

1 retirement savings invested in the funds identified above. The losses sustained by the
2 Plan caused by Defendant's imprudence is substantial.

3 115. A prudent fiduciary conducting an impartial review of the Plan's
4 investments would have identified the prudent share classes available and selected those
5 for the Plan instead of the identical but higher-priced investments.
6

7 116. There is no good-faith explanation for selecting and retaining the higher-
8 priced and poorly performing share classes when the lower-priced and better performing
9 share classes were available. The Plan did not receive any additional services or benefits
10 based on its stagnate continuation of the more expensive share classes. The only
11 difference between the two was higher price and lower returns.
12

13 **Defendant Breached Its Fiduciary Duty of Prudence by Designating the Fidelity**
14 **Freedom Active Suite Target Date Funds as the Plan's QDIA**

15 117. As detailed above there is more than \$100,000,000 of Plan assets invested
16 in the wrong share classes of the Fidelity Freedom Funds. These funds are "actively"
17 managed.
18

19 118. They include thirteen target-date funds, that shift the funds' asset
20 allocation over time according to their respective "glide path." For example, as an
21 investor gets closer to retirement, the target-date fund will increase the portfolio's
22 holdings in bonds and decrease the portfolio's holdings in securities to decrease risk.
23

24 119. The Fidelity Freedom Funds are also the Plan's Qualified Default
25 Investment Alternative ("QDIA"), which means that new contributions are
26
27

1 automatically directed to the Fidelity Freedom Funds unless a participant directs
2 contributions to other funds.

3 120. Because of the Fidelity Freedom Funds' status as the QDIA, the funds
4 hold such a large portion of the Plan's assets. In other words, Defendant steered Plan
5 participants into the Fidelity Freedom Funds by designating the funds as the QDIA.
6

7 121. Defendant breached its duty of prudence by designating the Fidelity
8 Freedom Funds as the QDIA because the Fidelity Freedom Funds are riskier, more
9 expensive, and are consistently outperformed by the Fidelity Freedom Index Funds,
10 which are also included in the Plan's investment menu.
11

12 122. The main difference between the two suites is that the index suite includes
13 only Fidelity mutual funds that passively track market indices, whereas the active suite
14 invests predominantly in actively managed funds that attempt to outperform the market
15 indices. Notably, each suite's glide path demonstrates both the actively managed and
16 passively managed suites follow essentially the same strategy, given that each suite's
17 allocation of equities versus bonds follows the same pattern.
18

19 123. However, because they are actively managed, the Freedom Funds charge
20 more fees and have higher expense ratios than the Freedom Index Funds. For example,
21 the Institutional Premium share class for each target year of the Freedom Index Funds
22 had an expense ratio of only 0.08%, while the K share of the Freedom Funds had expense
23 ratios ranging from 0.42% to 0.65%.
24
25
26
27

1 124. Despite passive management, the Freedom Index Funds outperformed the
2 Fidelity Freedom Funds between 2017 and 2021.⁷

3 125. Additionally, each Freedom Index Fund bears an equal or higher rating by
4 Morningstar – a well-respected industry analyst – than its actively managed counterpart.
5 Apart from three small anomalies, every single one of the thirteen funds in the Freedom
6 Index Funds received a category leading five-star rating from Morningstar. In contrast,
7 not even one of the thirteen funds in the actively managed Fidelity Freedom Funds has
8 a five-star rating, and only one has a four-star rating.
9

10 126. Likely because of the Fidelity Freedom Funds’ poor performance, many
11 asset managers have withdrawn their investments in these funds altogether. For
12 example, in 2018, the funds experienced an estimated \$5.4 billion in net outflows. In the
13 four years prior to 2018, the funds saw nearly \$16 billion in total withdraws. At the same
14 time, the Fidelity Freedom Index Funds have seen significant inflows, receiving an
15 estimated \$4.9 billion in new funds in 2018 alone.
16

17 127. Unfortunately, despite other asset managers recognizing the actively
18 managed Fidelity Freedom Funds’ poor performance when compared to the passively
19 managed Fidelity Freedom Index Funds, Defendant did not. Instead, Defendant
20 continued to double down on its misguided and imprudent strategy of retaining the
21

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⁷ See, e.g., March 2018 Reuters special report on the Fidelity Freedom funds (the “Reuters Report”) details how many investors lost confidence in the Active suite “because of their history of underperformance, frequent strategy changes and rising risk. See “Special Report: Fidelity puts 6 million savers on risky path to retirement,” available at <https://www.reuters.com/article/us-funds-fidelity-retirement-special-rep/special-report-fidelity-puts-6-million-savers-on-risky-path-to-retirement>.

1 actively managed Fidelity Freedom Funds and continued using them as the Plan's
2 default option.

3 128. Additionally, it is also worth noting that actively managed Fidelity
4 Freedom Funds have recently been the subject of many retirement plan class action
5 lawsuits, further demonstrating why a prudent fiduciary would not designate such
6 expensive and poorly performing funds as the default investment option in a plan –
7 especially when the plan also includes the prudently priced and much better performing
8 index funds on the investment menu. *See, e.g., Garthwait v. Eversource Energy Co.*, No.
9 3:20-CV-00902 (JCH), 2022 WL 3019633, at *19 (D. Conn. July 29, 2022) (denying
10 motion for summary judgment in ERISA retirement plan case alleging breach of
11 fiduciary duty by employer due, in part, to inclusion of Fidelity Freedom Funds); *see*
12 *also Boley v. Universal Health Servs., Inc.*, 337 F.R.D. 626, 631-636 (E.D. Pa. 2021)
13 (granting motion for class certification in case asserting claims related to Fidelity
14 Freedom Funds); *In re Omnicom ERISA Litig.*, No. 20-cv-4141 (CM), 2021 WL 392487
15 (S.D.N.Y. Aug. 2, 2021) (denying motion to dismiss breach of fiduciary duty claim
16 based on retention of the Fidelity Freedom Funds over the Fidelity Freedom Index
17 Funds); *In re: Prime Healthcare ERISA Litig.*, No. 8:20-cv-01529-JLS-JDE, 2021 WL
18 3076649 (C.D. Cal. July 16, 2021) (same); *In re Biogen, Inc. ERISA Litig.*, No. 20-cv-
19 11325-DJC, 2021 WL 3116331 (D. Mass. July 22, 2021) (same); *In re Quest*
20 *Diagnostics Inc. ERISA Litig.*, No. 20-07936-SDW-LDW, 2021 WL 1783274 (D.N.J.
21 May 4, 2021) (same); *Blackmon v. Zachary Hldgs.*, No. 5:20-cv-988-DAE, 2021 WL
22 2190907 (W.D. Tex. Apr. 22, 2021) (same); *Jones v. Coca-Cola Consol., Inc.*, No. 3:20-

1 cv-00654-FDW-DSC, 2021 WL 1226551 (W.D.N.C. Mar. 31, 2021) (same); *In re*
2 *MedStar ERISA Litig.*, No. RDB-20-1984, 2021 WL 391701 (D. Md. Feb. 4, 2021)
3 (same).

4 129. For these reasons, it was imprudent for Defendant to designate the actively
5 managed Fidelity Freedom Funds as the QDIA for the Plan here.
6

7 **FIRST CLAIM FOR RELIEF**
8 **Breach of Fiduciary Duties of Prudence**

9 130. Plaintiff re-alleges and incorporates herein by reference all prior
10 allegations in this Complaint as if fully set forth herein.

11 131. As a fiduciary of the Plan, Defendant is/was subject to the fiduciary duties
12 imposed by ERISA § 404(a), 29 U.S.C. § 1104(a). These fiduciary duties included
13 managing the Plan's fees and assets for the sole and exclusive benefit of Plan
14 participants and beneficiaries, and acting with the care, skill, diligence, and prudence
15 under the circumstances that a prudent person acting in a like capacity and familiar with
16 such matters would use in the conduct of an enterprise of like character and with like
17 aims.
18

19 132. Defendant breached its fiduciary duties in multiple respects as discussed
20 throughout this Complaint. Defendant failed to monitor or control the grossly excessive
21 compensation paid for recordkeeping services. Defendant failed to select the prudent
22 share classes for the Plan. Defendant failed to designate the prudent Fidelity Freedom
23 Index Funds as the QDIA for the Plan.
24
25
26
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1 obligations, and to take prompt and effective action to protect the Plan in the event that
2 the Committee was not fulfilling those duties.

3 135. Defendant also had a duty to ensure that the Committee possessed the
4 needed qualifications and experience to carry out its duties; had adequate financial
5 resources and information; maintained adequate records of the information on which it
6 based its decisions and analysis with respect to the Plan's investments; and reported
7 regularly to Defendant.
8

9 136. Defendant breached its fiduciary monitoring duties by, among other
10 things:
11

- 12 (a) Failing to monitor and evaluate the performance of the Committee
13 or have a system in place for doing so, standing idly by as the Plan
14 suffered significant losses as a result of the Committee's imprudent
15 actions and omissions;
16
17 (b) failing to monitor the processes by which the Plan's expenses and
18 investments were evaluated; and
19
20 (c) failing to remove the Committee as a fiduciary whose performance
21 was inadequate in that it continued to maintain imprudent,
22 excessively costly, and poorly performing investments within the
23 Plan, and caused the Plan to pay excessive recordkeeping fees, all
24 to the detriment of the Plan and the retirement savings of the Plan's
25 participants.
26
27

1 them from future ERISA violations;

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

5
6 7. Reform the Plan to obtain bids for recordkeeping and to pay only
7 reasonable recordkeeping expenses;

8 8. Certify the Class, appoint the Plaintiff as class representative, and appoint
9 her counsel as Class Counsel;

10
11 9. Award to the Plaintiff and the Class their attorney's fees and costs under
12 29 U.S.C. §1132(g)(1) and the common fund doctrine;

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

14 11. Grant other equitable or remedial relief as the Court deems appropriate.
15

16 DATED: October 17, 2022

Respectfully submitted,

17
18 By: /s/ Michael Kind

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EXHIBIT 1

Fidelity Pricing Options for Retirement Plans

As of September 30, 2022

Not FDIC Insured • May Lose Value • No Bank Guarantee

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Fidelity Pricing Options for Retirement Plans

Strategy	Retail			Class K			K6			CIT Class 1	CIT Class 2	CIT Class 3
	Ticker	Expense Ratio (%)		Ticker	Expense Ratio (%)		Ticker	Expense Ratio (%)		Management Fee (%)	Management Fee (%)	Management Fee (%)
EQUITY												
Blue Chip Growth	FBGRX	0.76	0.76	FBGKX	0.68	0.68	FBCGX	0.45	0.45	0.43	0.35	0.30
Capital Appreciation	FDCAX	0.84	0.84	FCAKX	0.76	0.76						
Contrafund®	FCNTX	0.81	0.81	FCNKX	0.74	0.74	FLCNX	0.45	0.45	0.43	0.38	0.35
Disciplined Equity	FDEQX	0.79	0.79	FDEKX	0.70	0.70						
Diversified International	FDIVX	1.01	1.01	FDIKX	0.91	0.91	FKIDX	0.60	0.60	0.58	0.53	0.48
Dividend Growth	FDGFX	0.48	0.48	FDGKX	0.38	0.38						
Emerging Markets	FEMKX	0.88	0.88	FKEMX	0.77	0.77						
Equity Dividend Income	FEQTX	0.58	0.58	FETKX	0.49	0.49						
Equity-Income	FEQIX	0.60	0.60	FEIKX	0.50	0.50	FEKFX	0.34	0.34	0.32	0.29	0.26
Fidelity	FFIDX	0.45	0.45	FFDKX	0.38	0.38						
Growth & Income	FGRIX	0.57	0.57	FGIKX	0.49	0.49						
Growth Company	FDGRX	0.79	0.79	FGCKX	0.73	0.73	FGKFX	0.45	0.45	0.43	0.38	0.35
Growth Discovery	FDSVX	0.77	0.77	FGDKX	0.68	0.68						
Growth Strategies	FDEGX	0.63	0.63	FAGKX	0.52	0.52	FSKGX	0.45	0.45			
Int'l Capital Appreciation	FIVFX	1.00	1.00				FAPCX	0.65	0.65			
MINIMUMS		N/A			N/A			N/A		\$50 million	\$500 million*	\$1 billion

* Class 2 minimum for Blue Chip Growth was lowered to \$300 million. All other Class 2 minimums are \$500 million.

All other Fidelity Funds have a Retail share class only. • CITs are only available to institutional clients in certain qualified employer plans. Eligibility for qualified plans is determined by the definition of "Qualified Investor" in the underlying Group Trust. • FMTC minimums: \$50 million for the CIT Class 1, \$500 million for the CIT Class 2, and \$1 billion for the CIT Class 3. Eligibility for each class of a pool will be determined based on the plan's(s') investment in the pool(s) and various other considerations.

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Fidelity Pricing Options for Retirement Plans (continued)

Strategy	Retail			Class K			K6			CIT Class 1	CIT Class 2	CIT Class 3
	Expense Ratio (%)			Expense Ratio (%)			Expense Ratio (%)			Management	Management	Management
EQUITY	Ticker	Gross	Net	Ticker	Gross	Net	Ticker	Gross	Net	Fee (%)	Fee (%)	Fee (%)
International Discovery	FIGRX	0.99	0.99	FIDKX	0.90	0.90	FDKFX	0.60	0.60	0.58	0.53	0.48
Large Cap Stock	FLCSX	0.54	0.54				FCLKX	0.45	0.45			
Leveraged Co. Stock	FLVCX	0.74	0.74	FLCKX	0.65	0.65						
Low-Priced Stock	FLPSX	0.82	0.82	FLPKX	0.74	0.74	FLKSX	0.50	0.50	0.48	0.45	0.42
Magellan®	FMAGX	0.68	0.68	FMGKX	0.62	0.62	FMKFX	0.45	0.45	0.43	0.38	0.35
Mid-Cap Stock	FMCSX	0.85	0.85	FKMCX	0.76	0.76	FNKFX	0.52	0.52	0.43	0.40	0.37
Mid Cap Value	FSMVX	0.57	0.57				FCMVX	0.45	0.45			
OTC	FOCPX	0.81	0.81	FOCKX	0.73	0.73	FOKFX	0.50	0.50	0.48	0.43	0.40
Overseas	FOSFX	0.99	0.99	FOSKX	0.89	0.89						
Small Cap Growth	FCPGX	1.02	1.02				FOCSX	0.60	0.60			
Small Cap Stock	FSLCX	0.90	0.90				FKICX	0.60	0.60			
Stock Selector All Cap	FDSSX	0.68	0.68	FSSKX	0.58	0.58						
Value	FDVLX	0.79	0.79	FVLKX	0.71	0.71						
Value Discovery	FVDFX	0.80	0.80	FVDKX	0.70	0.70	FDVKX	0.45	0.45			
Value Strategies	FSLSX	0.86	0.86	FVSKX	0.75	0.75						
Strategy	Retail			Advisor Class Z			K6 Funds					
	Expense Ratio (%)			Expense Ratio (%)			Expense Ratio (%)					
FIXED INCOME	Ticker	Gross	Net	Ticker	Gross	Net	Ticker	Gross	Net			
Total Bond	FTBFX	0.45	0.45	FBKWX	0.40	0.36	FTKFX	0.30	0.30			
MINIMUMS	N/A			N/A			N/A			\$50 million	\$500 million	\$1 billion

All other Fidelity Funds have a Retail share class only. • CITs are only available to institutional clients in certain qualified employer plans. Eligibility for qualified plans is determined by the definition of "Qualified Investor" in the underlying Group Trust. • FMTC minimums: \$50 million for the CIT Class 1, \$500 million for the CIT Class 2, and \$1 billion for the CIT Class 3. Eligibility for each class of a pool will be determined based on the plan's(s') investment in the pool(s) and various other considerations. • Class Z shares are available only to eligible investors as described in the fund's prospectus.

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Fidelity Pricing Options for Retirement Plans (continued)

Strategy	Retail			Class K			K6			CIT Class 1	CIT Class 2	CIT Class 3
	Ticker	Expense Ratio (%)		Ticker	Expense Ratio (%)		Ticker	Expense Ratio (%)		Management Fee (%)	Management Fee (%)	Management Fee (%)
ASSET ALLOCATION												
Balanced	FBALX	0.51	0.51	FBAKX	0.43	0.43	FBKFX	0.32	0.32			
Managed Retirement 2010	FIRQX	0.46	0.46	FRQKX	0.36	0.36	FRQHJ	0.26	0.26			
Managed Retirement 2015	FIRSX	0.46	0.46	FKRSX	0.36	0.36	FJRSX	0.26	0.26			
Managed Retirement 2020	FIRVX	0.47	0.47	FKRVX	0.37	0.37	FHRVX	0.27	0.27			
Managed Retirement 2025	FIXRX	0.48	0.48	FKRFX	0.38	0.38	FHRFX	0.28	0.28			
Managed Retirement 2030	FMRAX	0.48	0.48	FMREX	0.38	0.38	FMRFX	0.28	0.28			
Managed Retirement Income	FIRMX	0.45	0.45	FRKMX	0.35	0.35	FRHMX	0.25	0.25			
Puritan®	FPURX	0.51	0.51	FPUKX	0.43	0.43	FPKFX	0.32	0.32			
MINIMUMS		N/A			N/A			N/A		\$50 million	\$500 million	\$1 billion

All other Fidelity Funds have a Retail share class only. • CITs are only available to institutional clients in certain qualified employer plans. Eligibility for qualified plans is determined by the definition of “Qualified Investor” in the underlying Group Trust. • FMTC minimums: \$50 million for the CIT Class 1, \$500 million for the CIT Class 2, and \$1 billion for the CIT Class 3. Eligibility for each class of a pool will be determined based on the plan’s(s’) investment in the pool(s) and various other considerations.

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Fidelity Freedom Pricing Options

Fund	Retail			Class K			K6		
	Ticker	Expense Ratio (%)		Ticker	Expense Ratio (%)		Ticker	Expense Ratio (%)	
		Gross	Net		Gross	Net		Gross	Net
Freedom Income	FFFAX	0.47	0.47	FNSHX	0.42	0.42	FYTKX	0.37	0.37
Freedom 2005	FFFVX	0.47	0.47	FSNJX	0.42	0.42	FITKX	0.37	0.37
Freedom 2010	FFFCX	0.49	0.49	FSNKX	0.44	0.44	FOTKX	0.38	0.38
Freedom 2015	FFVFX	0.54	0.54	FSNLX	0.47	0.47	FPTKX	0.40	0.40
Freedom 2020	FFFDX	0.58	0.58	FSNOX	0.51	0.51	FATKX	0.42	0.42
Freedom 2025	FFTWX	0.62	0.62	FSNPX	0.54	0.54	FDTKX	0.44	0.44
Freedom 2030	FFFEX	0.66	0.66	FSNQX	0.58	0.58	FGTKX	0.46	0.46
Freedom 2035	FFTHX	0.71	0.71	FSNUX	0.61	0.61	FWTKX	0.48	0.48
Freedom 2040	FFFFX	0.75	0.75	FSNVX	0.65	0.65	FHTKX	0.50	0.50
Freedom 2045	FFFGX	0.75	0.75	FSNZX	0.65	0.65	FJTKX	0.50	0.50
Freedom 2050	FFFHX	0.75	0.75	FNSBX	0.65	0.65	FZTKX	0.50	0.50
Freedom 2055	FDEEX	0.75	0.75	FNSDX	0.65	0.65	FCTKX	0.50	0.50
Freedom 2060	FDKVX	0.75	0.75	FNSFX	0.65	0.65	FVTKX	0.50	0.50
Freedom 2065	FFSFX	0.75	0.75	FFSDX	0.65	0.65	FFSZX	0.50	0.50

Fidelity Freedom Blend Pricing Options

Fund	Retail*			Class K			K6			Premier Class		
	Ticker	Expense Ratio (%)		Ticker	Expense Ratio (%)		Ticker	Expense Ratio (%)		Ticker	Expense Ratio (%)	
Gross		Net	Gross		Net	Gross		Net	Gross		Net	
Freedom Blend Income	FHBZX	0.41	0.41	FHHEX	0.31	0.31	FHRDX	0.21	0.21	FFBCX	0.19	0.19
Freedom Blend 2005	FHAZX	0.41	0.41	FHGEX	0.31	0.31	FHQDX	0.21	0.21	FFBEX	0.19	0.19
Freedom Blend 2010	FHAYX	0.41	0.41	FHFEX	0.31	0.31	FHPDX	0.21	0.21	FFBHX	0.19	0.19
Freedom Blend 2015	FHAWX	0.43	0.43	FHEEX	0.33	0.33	FHODX	0.23	0.23	FFBJX	0.20	0.20
Freedom Blend 2020	FHAVX	0.44	0.44	FHCEX	0.34	0.34	FHNDX	0.24	0.24	FFBLX	0.21	0.21
Freedom Blend 2025	FHAUX	0.45	0.45	FHBEX	0.35	0.35	FHLDX	0.25	0.25	FFBNX	0.22	0.22
Freedom Blend 2030	FHATX	0.46	0.46	FHAEX	0.36	0.36	FHKDX	0.26	0.26	FFBPX	0.23	0.23
Freedom Blend 2035	FHASX	0.48	0.48	FHZDX	0.38	0.38	FHJDX	0.28	0.28	FFBRX	0.24	0.24
Freedom Blend 2040	FHARX	0.49	0.49	FHYDX	0.39	0.39	FHHDX	0.29	0.29	FFBTX	0.25	0.25
Freedom Blend 2045	FHAQX	0.49	0.49	FHXDX	0.39	0.39	FHFDX	0.29	0.29	FFBUX	0.25	0.25
Freedom Blend 2050	FHAPX	0.49	0.49	FHWDX	0.39	0.39	FHEDX	0.29	0.29	FFBWX	0.25	0.25
Freedom Blend 2055	FHAOX	0.49	0.49	FHVDX	0.39	0.39	FHDDX	0.29	0.29	FFBZX	0.25	0.25
Freedom Blend 2060	FHANX	0.49	0.49	FHTDX	0.39	0.39	FHCDX	0.29	0.29	FFCBX	0.25	0.25
Freedom Blend 2065	FFBSX	0.49	0.49	FFBKX	0.39	0.39	FFBQX	0.29	0.29	FFCHX	0.25	0.25

* Advisor share classes of Fidelity Freedom Blend funds are also available.

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Fidelity Freedom Index Pricing Options

Fund	Institutional Premium Class			Investor Class			Premier Class		
	Expense Ratio (%)			Expense Ratio (%)			Expense Ratio (%)		
	Ticker	Gross	Net	Ticker	Gross	Net	Ticker	Gross	Net
Freedom Index Income	FFGZX	0.08	0.08	FIKFX	0.12	0.12	FAPIX	0.06	0.06
Freedom Index 2005	FFGFX	0.08	0.08	FJIFX	0.12	0.12	FBLPX	0.06	0.06
Freedom Index 2010	FFWTX	0.08	0.08	FKIFX	0.12	0.12	FCYPX	0.06	0.06
Freedom Index 2015	FIWFX	0.08	0.08	FLIFX	0.12	0.12	FFYPX	0.06	0.06
Freedom Index 2020	FIWTX	0.08	0.08	FPIFX	0.12	0.12	FKIPX	0.06	0.06
Freedom Index 2025	FFEDX	0.08	0.08	FQIFX	0.12	0.12	FLIPX	0.06	0.06
Freedom Index 2030	FFEGX	0.08	0.08	FXIFX	0.12	0.12	FMKPX	0.06	0.06
Freedom Index 2035	FFEZX	0.08	0.08	FIHFX	0.12	0.12	FNIPX	0.06	0.06
Freedom Index 2040	FFIZX	0.08	0.08	FBIFX	0.12	0.12	FPIPX	0.06	0.06
Freedom Index 2045	FFOLX	0.08	0.08	FIOFX	0.12	0.12	FQIPX	0.06	0.06
Freedom Index 2050	FFOPX	0.08	0.08	FIPFX	0.12	0.12	FRLPX	0.06	0.06
Freedom Index 2055	FFLDX	0.08	0.08	FDEWX	0.12	0.12	FTYPX	0.06	0.06
Freedom Index 2060	FFLEX	0.08	0.08	FDKLX	0.12	0.12	FUIPX	0.06	0.06
Freedom Index 2065	FFIKX	0.08	0.08	FFIJX	0.12	0.12	FVIPX	0.06	0.06

Recordkeeping offset incentives listed above are for plans recordkept on the Fidelity platform. For any opportunities off platform, please contact your Fidelity representative for more information. There is no initial purchase minimum or minimum balance for Institutional Premium Class for employer-sponsored retirement plans, qualified tuition programs for which Fidelity serves as investment manager, and Fidelity health savings accounts.

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Fidelity Advisor Pricing Options

Fund	Class I		Class Z			
	Ticker	Expense Ratio (%)		Ticker	Expense Ratio (%)	
EQUITY		Gross	Net		Gross	Net
FA Growth Opportunities	FAGCX	0.79	0.81	FZAHX	0.67	0.67
FA Int'l Capital Appreciation	FCPIX	0.97	0.97	FIDZX	0.85	0.85
FA New Insights	FINSX	0.68	0.68	FZANX	0.56	0.56
FA Small Cap Value*	FCVIX	0.99	0.99	FIKNX	0.87	0.87
ASSET ALLOCATION						
FA Balanced	FAIOX	0.57	0.57	FZAAX	0.45	0.45
FIXED INCOME						
FA Total Bond ^{††}	FEPIX	0.50	0.50	FBKWX	0.40	0.36

* Classes I and Z are classes of the respective Fidelity Fund.

† There is a contractual cap on the expenses borne by the fund, which indicates the maximum level of expenses (with certain exceptions) that the fund would pay. The contract expires 12/31/22 for FBKWX (0.36%).

Classes I and Z are available only to eligible investors as described in the fund's prospectus.

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Fidelity Advisor Freedom Pricing Options

Fund	Class I			Class Z			Class Z6		
	Ticker	Expense Ratio (%)		Ticker	Expense Ratio (%)		Ticker	Expense Ratio (%)	
		Gross	Net		Gross	Net		Gross	Net
FA Freedom Income	FIAFX	0.47	0.47	FIJUX	0.42	0.42	F EGLX	0.37	0.37
FA Freedom 2005	FFIVX	0.47	0.47	FIJHX	0.42	0.42	FYGLX	0.37	0.37
FA Freedom 2010	FCIFX	0.49	0.49	FIJJX	0.44	0.44	FUGLX	0.38	0.38
FA Freedom 2015	FFVIX	0.54	0.54	FIJKX	0.47	0.47	FIGLX	0.40	0.40
FA Freedom 2020	FDIFX	0.58	0.58	FIJLX	0.51	0.51	FOGLX	0.42	0.42
FA Freedom 2025	FITWX	0.62	0.62	FIJMX	0.54	0.54	FPGLX	0.44	0.44
FA Freedom 2030	FEFIX	0.66	0.66	FIJNX	0.58	0.58	FDGLX	0.46	0.46
FA Freedom 2035	FITHX	0.71	0.71	FIJOX	0.61	0.61	FHGLX	0.48	0.48
FA Freedom 2040	FIFFX	0.75	0.75	FIJPX	0.65	0.65	FKGLX	0.50	0.50
FA Freedom 2045	FFFIX	0.75	0.75	FIJQX	0.65	0.65	FCGLX	0.50	0.50
FA Freedom 2050	FFFPX	0.75	0.75	FIJRX	0.65	0.65	FVGLX	0.50	0.50
FA Freedom 2055	FHFIX	0.75	0.75	FIJSX	0.65	0.65	FBGLX	0.50	0.50
FA Freedom 2060	FDKQX	0.75	0.75	FIJTX	0.65	0.65	FNGLX	0.50	0.50
FA Freedom 2065	FDFSX	0.75	0.75	FDFQX	0.65	0.65	FDFRX	0.50	0.50

Classes I, Z, and Z6 are available only to eligible investors as described in the fund's prospectus.

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Fidelity Advisor Freedom Blend Pricing Options

Fund	Class I			Class Z			Class Z6		
	Ticker	Expense Ratio (%)		Ticker	Expense Ratio (%)		Ticker	Expense Ratio (%)	
		Gross	Net		Gross	Net		Gross	Net
FA Freedom Blend Income	FHAJX	0.41	0.41	FHAHX	0.31	0.31	FHBDX	0.21	0.21
FA Freedom Blend 2005	FHADX	0.41	0.41	FHACX	0.31	0.31	FHJHX	0.21	0.21
FA Freedom Blend 2010	FJAWX	0.41	0.41	FJAVX	0.31	0.31	FHZCX	0.21	0.21
FA Freedom Blend 2015	FJAQX	0.43	0.43	FJAPX	0.33	0.33	FHXCX	0.23	0.23
FA Freedom Blend 2020	FJAJX	0.44	0.44	FJAIX	0.34	0.34	FHWCX	0.24	0.24
FA Freedom Blend 2025	FJADX	0.45	0.45	FJABX	0.35	0.35	FHSPX	0.25	0.25
FA Freedom Blend 2030	FJEFX	0.46	0.46	FJLMX	0.36	0.36	FHRCX	0.26	0.26
FA Freedom Blend 2035	FHGDY	0.48	0.48	FHSDX	0.38	0.38	FHQCX	0.28	0.28
FA Freedom Blend 2040	FHJFX	0.49	0.49	FHHFX	0.39	0.39	FHOXC	0.29	0.29
FA Freedom Blend 2045	FHCFX	0.49	0.49	FHBFX	0.39	0.39	FHLCX	0.29	0.29
FA Freedom Blend 2050	FHWEX	0.49	0.49	FHVEX	0.39	0.39	FHJCX	0.29	0.29
FA Freedom Blend 2055	FHQEX	0.49	0.49	FHPEX	0.39	0.39	FHGCX	0.29	0.29
FA Freedom Blend 2060	FHKEX	0.49	0.49	FHJEX	0.39	0.39	FHDCX	0.29	0.29
FA Freedom Blend 2065	FAXFX	0.49	0.49	FAXGX	0.39	0.39	FAXHX	0.29	0.29

Classes I, Z, and Z6 are classes of the respective Fidelity Freedom Blend Fund.
Classes I, Z, and Z6 are available only to eligible investors as described in the fund's prospectus.

Target Date Commingled Pool Pricing Summaries

ACTIVE TARGET DATE

Freedom Commingled Pool ¹	B / C	D / E	F / G	H / I	J / K	L / M	N / O	P / Q	R / S
Asset Minimum	<\$100M	\$100M–\$300M	\$300M–\$1B	\$1B–\$2B	\$2B–\$3B	\$3B–\$4B	\$4B–\$5.5B	\$5.5B–\$7B	\$7B+
Net Expense Ratio (%)	0.40	0.36	0.35	0.33	0.31	0.29	0.28	0.27	0.25
	0.50	0.46	0.45	0.43	0.41	0.39	0.38	0.37	0.35
RK Offset ² (%)	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
	0.10	0.10	0.10	0.10	0.10	0.10	0.10	0.10	0.10

BLEND TARGET DATE

Freedom Blend Commingled Pool ^{3,4}	H / G	Q / V	S / X ⁵	T / Y	L / J	I / M	N / O	F / E
Asset Minimum	\$0–\$100M	\$100M–\$300M	\$300M–\$1B	\$1B–\$3B	\$3B–\$5B	\$5B–\$7.5B	\$7.5B–\$10B	\$10B+
Net Expense Ratio (%)	0.27	0.25	0.23	0.20	0.18	0.16	0.15	0.14
	0.37	0.35	0.33	0.30	0.28	0.26	0.25	0.24
RK Offset ² (%)	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
	0.10	0.10	0.10	0.10	0.10	0.10	0.10	0.10

INDEX TARGET DATE

Freedom Index Commingled Pool ^{3,6}	S	T	Y	R
Asset Minimum	\$5M–\$200M	\$200M–\$1B	\$1B–\$2B	\$2B+
Net Expense Ratio (%)	0.08	0.07	0.06	0.05
RK Offset ² (%)	N/A	N/A	N/A	N/A

¹ Fidelity Freedom Commingled Pool series available starting on 6/1/22. ² Recordkeeping offset incentives (RK Offset) listed above are for plans record kept on the Fidelity platform. For any opportunities off platform, please contact your Fidelity representative for more information. ³ The Fidelity Freedom Blend and Fidelity Freedom Index Commingled Pools are commingled pools of the FIAM Group Trust for Employee Benefit Plans and are managed by Fidelity Institutional Asset Management Trust Company® (FIAM®). ⁴ Freedom Blend Commingled Pool fees shown are as of 5/1/22. As of 6/30/22 the FIAM Blend Target Date Commingled Pools were renamed Fidelity Freedom Blend Commingled Pools. ⁵ Share classes R and W are legacy share classes no longer open to the public or being proactively sold. Fees align with share classes S and X respectively. ⁶ Freedom Index Commingled Pool fees shown are as of 6/1/21. As of 6/30/22, the FIAM Index Target Date Commingled Pools were renamed Fidelity Freedom Index Commingled Pools.

Note that certain client transactions into the Fidelity Freedom, Fidelity Freedom Blend, and Fidelity Freedom Index Commingled Pools are subject to covering their own transition costs as part of FIAM's Significant Cash Flow policy (formerly the Anti Dilution policy). Please discuss with your Fidelity representative.

The eligibility requirement for Fidelity Freedom, Fidelity Freedom Blend, and Fidelity Freedom Index Commingled Pools is \$25 million in client assets. Client assets is defined as assets invested in qualified defined contribution plans only, which are profit sharing, 401(k), and defined benefit plans that are qualified under Section 401(a) and governmental plans that are described in section 401(a)24 of the IRS Code. Pricing for your plan will be determined based on the characteristics and attributes of your plan and may be more or less than what is indicated herein. Pricing is subject to change.

Important Information

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Stock markets, especially foreign markets, are volatile and can decline significantly in response to adverse issuer, political, regulatory, market, or economic developments. Foreign securities are subject to interest rate, currency exchange rate, economic, and political risks, all of which are magnified in emerging markets. The securities of smaller, less well-known companies can be more volatile than those of larger companies. Growth stocks can perform differently from other types of stocks and the market as a whole and can be more volatile than other types of stocks. Value stocks can perform differently than other types of stocks and can continue to be undervalued by the market for long periods of time.

In general the bond market is volatile, and fixed income securities carry interest rate risk. (As interest rates rise, bond prices usually fall, and vice versa. This effect is usually more pronounced for longer-term securities.) Fixed income securities also carry inflation, credit, and default risks for both issuers and counterparties.

The investment risk of each Target Date strategy changes over time as its asset allocation changes. These risks are subject to the asset allocation decisions of the portfolio manager. Except for the target date index portfolios, pursuant to the portfolio manager's ability to use an active asset allocation strategy, investors may be subject to a different risk profile compared to the portfolio's neutral asset allocation strategy shown in its glide path. The portfolios are subject to the volatility of the financial markets, including that of equity and fixed income investments in the U.S. and abroad, and may be subject to risks associated with investing in high-yield, small cap, commodity-linked, and foreign securities. Fixed income investments entail issuer default and credit risk, inflation risk, and interest rate risk (as interest rates rise, bond prices usually fall, and vice versa). This effect is usually more pronounced for longer-term securities. Leverage can increase market exposure, magnify investment risks, and cause losses to be realized more quickly. No target date strategy is considered a complete retirement program and there is no guarantee any single offering will provide sufficient retirement income at or through retirement. Principal invested is not guaranteed at any time, including at or after the portfolios' target dates.

The performance of an index fund and its index may vary somewhat due to factors such as fees and expenses of the fund, transaction costs, sample selection, regulatory restrictions, and timing differences associated with additions to and deletions from its index.

Please note **K6** is a standalone fund (not a share class), so it is a conversion rather than an exchange. Conversions above 1% of TNA should be coordinated through your Fidelity contact. Please ask your Fidelity contact for additional information on the 1% threshold and the available conversion dates. If a K6 balance falls below 1% of the portfolio's total net assets, you are not limited to one of the predetermined dates.

Important Information

About Fidelity Management Trust Company:

Fidelity Management Trust Company (FMTC) is a Massachusetts limited purpose trust company and Fidelity Investments entity and was established to provide investment management and trustee services to corporate and public retirement plans, endowments, foundations and other institutional investors. FMTC also provides IRAs and other retirement products to retail retirement customers.

The Fidelity Blue Chip Growth Commingled Pool, Fidelity Contrafund Commingled Pool, Fidelity Diversified International Commingled Pool, Fidelity Equity-Income Commingled Pool, Fidelity Growth Company Commingled Pool, Fidelity International Discovery Commingled Pool, Fidelity Low-Priced Stock Commingled Pool, Fidelity Magellan Commingled Pool, Fidelity Mid-Cap Stock Commingled Pool, and Fidelity OTC Commingled Pool are not mutual funds. They are commingled pools of the Fidelity Group Trust for Employee Benefit Plans and are managed by FMTC. FMTC, as trustee of the Fidelity Group Trust for Employee Benefit Plans, has claimed an exemption from registration under the Commodity Exchange Act and is not subject to registration or regulation under the Act.

Third-party trademarks and service marks are the property of their respective owners. All other trademarks and service marks are the property of FMR LLC or an affiliated company.

If receiving this piece through your relationship with Fidelity Institutional® (FI), this publication may be provided by Fidelity Distributors Company LLC or Fidelity Brokerage Services LLC, Member NYSE, SIPC.

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Before investing, consider the funds' or pools' investment objectives, risks, charges, and expenses. Contact Fidelity for a fund prospectus or, if available, a summary prospectus, or the pool's offering document, containing this information. Read it carefully.

JS 44 (Rev. 09/19)

CIVIL COVER SHEET

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

<p>I. (a) PLAINTIFFS Robert Cevasco</p> <p>(b) County of Residence of First Listed Plaintiff <u>Clark</u> <i>(EXCEPT IN U.S. PLAINTIFF CASES)</i></p> <p>(c) Attorneys <i>(Firm Name, Address, and Telephone Number)</i> Michael Kind, Esq. 8860 South Maryland Parkway, Suite 106, Las Vegas, Nevada, 89123 (702) 337-2322</p>	<p>DEFENDANTS Allegiant Travel Company</p> <p>County of Residence of First Listed Defendant _____ <i>(IN U.S. PLAINTIFF CASES ONLY)</i></p> <p>NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.</p> <p>Attorneys <i>(If Known)</i></p>
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<p>II. BASIS OF JURISDICTION <i>(Place an "X" in One Box Only)</i></p> <p><input type="checkbox"/> 1 U.S. Government Plaintiff</p> <p><input type="checkbox"/> 2 U.S. Government Defendant</p> <p><input checked="" type="checkbox"/> 3 Federal Question <i>(U.S. Government Not a Party)</i></p> <p><input type="checkbox"/> 4 Diversity <i>(Indicate Citizenship of Parties in Item III)</i></p>	<p>III. CITIZENSHIP OF PRINCIPAL PARTIES <i>(Place an "X" in One Box for Plaintiff and One Box for Defendant)</i></p> <table border="1" style="width:100%; border-collapse: collapse;"> <thead> <tr> <th></th> <th>PTF</th> <th>DEF</th> <th></th> <th>PTF</th> <th>DEF</th> </tr> </thead> <tbody> <tr> <td>Citizen of This State</td> <td><input type="checkbox"/> 1</td> <td><input type="checkbox"/> 1</td> <td>Incorporated or Principal Place of Business In This State</td> <td><input type="checkbox"/> 4</td> <td><input type="checkbox"/> 4</td> </tr> <tr> <td>Citizen of Another State</td> <td><input type="checkbox"/> 2</td> <td><input type="checkbox"/> 2</td> <td>Incorporated and Principal Place of Business In Another State</td> <td><input type="checkbox"/> 5</td> <td><input type="checkbox"/> 5</td> </tr> <tr> <td>Citizen or Subject of a Foreign Country</td> <td><input type="checkbox"/> 3</td> <td><input type="checkbox"/> 3</td> <td>Foreign Nation</td> <td><input type="checkbox"/> 6</td> <td><input type="checkbox"/> 6</td> </tr> </tbody> </table>		PTF	DEF		PTF	DEF	Citizen of This State	<input type="checkbox"/> 1	<input type="checkbox"/> 1	Incorporated or Principal Place of Business In This State	<input type="checkbox"/> 4	<input type="checkbox"/> 4	Citizen of Another State	<input type="checkbox"/> 2	<input type="checkbox"/> 2	Incorporated and Principal Place of Business In Another State	<input type="checkbox"/> 5	<input type="checkbox"/> 5	Citizen or Subject of a Foreign Country	<input type="checkbox"/> 3	<input type="checkbox"/> 3	Foreign Nation	<input type="checkbox"/> 6	<input type="checkbox"/> 6
	PTF	DEF		PTF	DEF																				
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Citizen or Subject of a Foreign Country	<input type="checkbox"/> 3	<input type="checkbox"/> 3	Foreign Nation	<input type="checkbox"/> 6	<input type="checkbox"/> 6																				

IV. NATURE OF SUIT *(Place an "X" in One Box Only)* Click here for: [Nature of Suit Code Descriptions.](#)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES		
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excludes Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	<p>PERSONAL INJURY</p> <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury - Medical Malpractice	<p>PERSONAL INJURY</p> <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 367 Health Care/Pharmaceutical Personal Injury Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability <p>PERSONAL PROPERTY</p> <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157	<input type="checkbox"/> 375 False Claims Act <input type="checkbox"/> 376 Qui Tam (31 USC 3729(a)) <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input checked="" type="checkbox"/> 480 Consumer Credit (15 USC 1681 or 1692) <input type="checkbox"/> 485 Telephone Consumer Protection Act <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 896 Arbitration <input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision <input type="checkbox"/> 950 Constitutionality of State Statutes	
<p>REAL PROPERTY</p> <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	<p>CIVIL RIGHTS</p> <input type="checkbox"/> 440 Other Civil Rights <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 448 Education	<p>PRISONER PETITIONS</p> <p>Habeas Corpus:</p> <input type="checkbox"/> 463 Alien Detainee <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <p>Other:</p> <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition <input type="checkbox"/> 560 Civil Detainee - Conditions of Confinement	<p>LABOR</p> <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Management Relations <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Employee Retirement Income Security Act	<p>PROPERTY RIGHTS</p> <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 835 Patent - Abbreviated New Drug Application <input type="checkbox"/> 840 Trademark	<p>SOCIAL SECURITY</p> <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g))	<p>FEDERAL TAX SUITS</p> <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609
		<p>IMMIGRATION</p> <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 465 Other Immigration Actions				

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

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

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing *(Do not cite jurisdictional statutes unless diversity):*
29 U.S.C. § 1104(a).

Brief description of cause:
Violations of ERISA

VII. REQUESTED IN COMPLAINT:
 CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P.
DEMAND \$ _____
 CHECK YES only if demanded in complaint:
JURY DEMAND: Yes No

VIII. RELATED CASE(S) IF ANY *(See instructions):*

JUDGE _____ DOCKET NUMBER _____

DATE October 17, 2022 SIGNATURE OF ATTORNEY OF RECORD /s/ Michael Kind

FOR OFFICE USE ONLY

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

AO 440 (Rev. 06/12) Summons in a Civil Action

UNITED STATES DISTRICT COURT

for the

District of Nevada

Robert Cevasco

Plaintiff(s)

v.

Allegiant Travel Company

Defendant(s)

Civil Action No.

SUMMONS IN A CIVIL ACTION

To: (Defendant's name and address)

Allegiant Travel Company
C/O: SCOTT SHELDON
1201 N TOWN CENTER DRIVE
LAS VEGAS, NV, 89144

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it) — or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3) — you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are: Michael Kind (SBN 13903) 8860 South Maryland Pkwy., Ste. 106 Las Vegas, NV 89123 702-337-2322

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

CLERK OF COURT

Date:

Signature of Clerk or Deputy Clerk

AO 440 (Rev. 06/12) Summons in a Civil Action (Page 2)

Civil Action No. _____

PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 4 (l))

This summons for *(name of individual and title, if any)* Allegiant Travel Company
was received by me on *(date)* _____.

I personally served the summons on the individual at *(place)* _____
_____ on *(date)* _____ ; or

I left the summons at the individual's residence or usual place of abode with *(name)* _____
_____, a person of suitable age and discretion who resides there,
on *(date)* _____, and mailed a copy to the individual's last known address; or

I served the summons on *(name of individual)* _____, who is
designated by law to accept service of process on behalf of *(name of organization)* _____
_____ on *(date)* _____ ; or

I returned the summons unexecuted because _____ ; or

Other *(specify)*: _____

My fees are \$ _____ for travel and \$ _____ for services, for a total of \$ 0.00.

I declare under penalty of perjury that this information is true.

Date: _____

Server's signature

Printed name and title

Server's address

Additional information regarding attempted service, etc:
