

Exhibit A

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

MARY ELLEN LUTZ, LEA SHURMATZ, KRISTIN
SCHWARTZ, LINDA SPRING, AND ALEXIA
CHRISTODOULIDES, *individually and as
representatives of similarly situated persons, and on
behalf of the Plans,*

Plaintiffs,

v.

KALEIDA HEALTH, BOARD OF DIRECTORS OF
KALEIDA, KALEIDA HEALTH RETIREMENT
PLAN COMMITTEE, KALEIDA HEALTH
INVESTMENT COMMITTEE, NICHOLAS J.
AQUINO, MATTHEW L. BROWN, LORRIE A.
CLEMO, AMY L. CLIFTON, GARRY M. CROSBY,
FRANK CURCI, EVAN EVANS, KEVIN GIBBONS,
CHRISTOPHER T. GREENE, KATHLEEN T.
GRIMM, ROBERT HALONEN, JAMES R. KASKIE,
DARREN J. KING, JOHN R. KOELMEL, JODY L.
LOMEO, WILLIAM J. MAGGIO, JR., GEORGE E.
MATTHEWS, BRENDA L. MCGEE, DAVID A.
MILLING, HERMAN S. MOGAVERO, JR, PAUL
O'LEARY, CHRISTOPHER ROSS, MARY LOU
RUSIN, DALE N. SCHUMACHER, FRANCISCO M.
VASQUEZ, PETER WINKELSTEIN, ROBERT M.
ZAK, SUSAN VALLANCE, AND JOHN DOES I-80,

Defendants.

FIRST AMENDED
CLASS ACTION COMPLAINT
AND DEMAND FOR JURY
TRIAL

Civil Action No.
1:18-cv-01112-EAW

Plaintiffs Mary Ellen Lutz, Lea Shurmatz, Kristin Schwartz, Linda Spring, and Alexia Christodoulides (“Named Plaintiffs”), individually and on behalf the Kaleida Health Savings/Investment 403(b) and 401(k) Plans (“Plans”) and all other similarly situated participants and beneficiaries of the Plans (collectively, “Plaintiffs”), by and through their attorneys, Thomas & Solomon LLP, bring this class action complaint against Kaleida Health, Board of Directors of Kaleida, Kaleida Health Retirement Plan Committee, Kaleida Health Investment Committee, Nicholas J. Aquino, Matthew L. Brown, Lorrie A. Clemo, Amy L.

Clifton, Garry M. Crosby, Frank Curci, Evan Evans, Kevin Gibbons, Christopher T. Greene, Kathleen T. Grimm, Robert Halonen, James R. Kaskie, Darren J. King, John R. Koelmel, Jody L. Lomeo, William J. Maggio, Jr., George E. Matthews, Brenda L. McGee, David A. Milling, Herman S. Mogavero, Jr, Paul O’Leary, Christopher Ross, Mary Lou Rusin, Dale N. Schumacher, Francisco M. Vasquez, Peter Winkelstein, Robert M. Zak, Susan Vallance, and John Does 1-80 (collectively, “Defendants”), and allege as follows:

NATURE OF ACTION

1. This lawsuit seeks to recover damages in the form of losses suffered by the Plans and losses to Plaintiffs’ retirement savings as well as injunctive and other equitable relief for the Plans and on behalf of the Named Plaintiffs and similarly situated participants and beneficiaries of the Kaleida Health Savings/Investment 403(b) Plan (“403(b) Plan”) and Kaleida Health Savings/Investment 401(k) Plan (“401(k) Plan”).
2. Named Plaintiffs bring this suit individually and on behalf of the Plans pursuant to 29 U.S.C. § 1132(a)(2) and (3) as a class action on behalf of the Plans and similarly situated participants and beneficiaries of the Plans pursuant to Federal Rule of Civil Procedure 23 (“Rule 23”) against Defendants for breach of fiduciary duties under the Employee Retirement Income Security Act of 1974 (“ERISA”).
3. Plaintiffs seek relief for Defendants’ breach of their fiduciary duties. Defendants failed to properly minimize the reasonable fees and expenses of the Plans. Defendants instead incurred expenses that were excessive, unreasonable and/or unnecessary. Defendants failed to take advantage of the Plans’ bargaining power to reduce fees and expenses. Defendants failed to offer a prudent mix of investment options. Defendants impaired participants’ returns by only offering actively managed retail class mutual funds as investment options instead of

identical investor class mutual funds with lower operating expenses. To the extent any fiduciary responsibilities were properly delegated, Defendants failed to ensure that any delegated tasks were being performed prudently and loyally in accordance with ERISA. Defendants failed to properly undertake the requisite monitoring and supervision of fiduciaries to whom they had delegated fiduciary responsibilities. Defendants failed to monitor, among others, the committee members and activities of the Plans themselves to ensure compliance with their fiduciary duties. Defendants failed to discharge their fiduciary duties with the requisite expert care, skill, prudence and diligence. Defendants enabled other fiduciaries to commit breaches of fiduciary duties for which Defendants are liable.

4. Through this conduct, Defendants violated their fiduciary obligations under ERISA and caused damages to the Plans and to Plaintiffs. Plaintiffs bring this action to remedy this unlawful conduct, prevent further mismanagement of the Plans, and obtain equitable and other relief as provided by ERISA.

JURISDICTION AND VENUE

5. The jurisdiction of this Court is invoked pursuant to 28 U.S.C. § 1331 and 29 U.S.C. § 1132(e)(1).

6. Venue is appropriate in the Western District of New York since the Plans are administered in this district, the breach took place in this district, and Defendants reside in this district.

THE PARTIES

Named Plaintiffs

7. Named Plaintiff Mary Ellen Lutz resides in Kenmore, New York and worked as a Registered Nurse at Kaleida Health.

8. Ms. Lutz was a participant in the 403(b) Plan.
9. During the proposed class period, Ms. Lutz invested in T. Rowe Price Retirement 2020 Advisor class mutual funds.
10. Named Plaintiff Lea Shurmatz resides in North Tonawanda, New York and works as Registered Nurse at Kaleida Health.
11. Ms. Shurmatz is a participant in the Plans.
12. During the proposed class period, Ms. Shurmatz invested in T. Rowe Price Retirement 2050 Advisor class mutual funds.
13. Named Plaintiff Kristin Schwartz resides in Depew, New York and worked as a Registered Nurse and Clinical Information Specialist at Kaleida Health.
14. Ms. Schwartz was a participant in the Plans during the proposed class period.
15. During the proposed class period, Ms. Schwartz invested in T. Rowe Price Retirement 2045 Advisor class mutual funds.
16. Named Plaintiff Linda Spring resides in Akron, New York and works as a Medical Secretary at Kaleida Health.
17. Ms. Spring is a participant in the Plans.
18. During the proposed class period, Ms. Spring invested in T. Rowe Price Retirement 2020 Advisor class mutual funds.
19. Named Plaintiff Alexia Christodoulides resides in Buffalo, New York and works as an Interventional Nurse at Kaleida Health.
20. Ms. Christodoulides is a participant in the 403(b) Plan.
21. During the proposed class period, Ms. Christodoulides invested in T. Rowe Price Retirement 2035 Advisor class mutual funds, T. Rowe Price Retirement 2040 Advisor class

mutual funds, T. Rowe Price Retirement 2045 Advisor class mutual funds, T. Rowe Price Retirement 2050 Advisor class mutual funds, and T. Rowe Price Retirement 2055 Advisor class mutual funds.

Defendants

Kaleida Health

22. Kaleida Health is a New York not-for-profit corporation. It is a healthcare network and the largest healthcare provider in Western New York. Kaleida Health provides healthcare services through its facilities in the Western New York area, including hospitals, long-term care facilities, outpatient clinics, school-based health centers and home health care service.

23. Kaleida Health is the Sponsor of the Plans.

24. Kaleida Health acts through the Board of Directors of Kaleida and its individual members.

25. Kaleida Health, through its Board of Directors, authorized the adoption of the Plans.

26. Kaleida Health exercises discretionary authority over the management and/or administration of the Plans.

27. Kaleida Health, through its Board of Directors, has authority to take action as may be necessary to correct any defect, omission or inconsistency in the Plans.

28. Kaleida Health, through its Board of Directors, has authority to appoint members to or remove members from the Retirement Plan Committee (as defined below) and has a fiduciary duty to monitor those individuals, the Retirement Plan Committee and the Plans themselves.

29. Kaleida Health, through its Board of Directors, has or claims to have authority to delegate authority, duties and/or responsibilities including fiduciary duties or responsibilities, under the Plans.

30. Kaleida Health, through its Board of Directors, has or claims to have delegated certain authority, duties and/or responsibilities to the Retirement Plan Committee and has a fiduciary duty to monitor those individuals, the Retirement Plan Committee and the Plans themselves.

31. Kaleida Health, through its Board of Directors, has or claims to have delegated certain authority, duties and/or responsibilities to the Investment Committee (as defined below) and has a fiduciary duty to monitor those individuals, the Investment Committee and the Plans themselves.

32. Such authority to appoint, retain, remove and/or delegate to the Plans' fiduciaries constitutes discretionary authority or control over the management or administration of the Plans.

33. The responsibility for appointing and removing committee members carries with it an accompanying duty to monitor the appointed fiduciaries, to ensure that they were complying with the terms of the Plans and ERISA's statutory standards.

34. Furthermore, that monitoring duty carries with it a responsibility to take action upon discovery that an appointed fiduciary is not performing properly.

35. Kaleida Health has a continuing duty, under the Plans and under ERISA, to review and monitor the performance of any fiduciary or other person to whom duties have been delegated or allocated.

The Board of Directors

36. The “Board of Directors” includes the Board of Directors of Kaleida, as well as all individuals who have served on the Board of Directors of Kaleida at all relevant times, including individually named defendants who served on the Board of Directors for 2017-2018 (Nicholas J. Aquino, Lorrie A. Clemo, Gary M. Crosby, Frank Curci (Chair), Christopher T. Greene, Darren J. King, Jody L. Lomeo, William J. Maggio, Jr., George E. Matthews, Brenda L. McGee, David A. Milling, Paul O’Leary, Christopher Ross, Mary Lou Rusin, Francisco M. Vasquez, Peter Winkelstein), 2016-2017 (Nicholas J. Aquino, Amy L. Clifton, Frank Curci (Chair), Evan Evans, Kevin Gibbons, Christopher T. Greene, Darren J. King, Jody L. Lomeo, William J. Maggio, Jr., George E. Matthews, David A. Milling, Christopher Ross, Mary Lou Rusin, Francisco M. Vasquez, Peter Winkelstein), 2015-2016 (Nicholas J. Aquino, Amy L. Clifton, Frank Curci, Evan Evans, Kevin Gibbons, Christopher T. Greene, Darren J. King, John R. Koelmel (Chair), Jody L. Lomeo, William J. Maggio, Jr., George E. Matthews, David A. Milling, Christopher Ross, Mary Lou Rusin, Francisco M. Vasquez), 2014-2015 (Amy L. Clifton, Frank Curci, Evan Evans, Kevin Gibbons, Christopher T. Greene, Robert Halonen, Darren J. King, John R. Koelmel (Chair), George Matthews, David A. Milling, Herman S. Mogavero, Jr., Francisco M. Vasquez, Robert M. Zak), 2013-2014 (Amy L. Clifton, Frank Curci, Evan Evans, Kevin Gibbons, Christopher T. Greene, Robert Halonen, Darren J. King, John R. Koelmel (Chair), George Matthews, David A. Milling, Herman S. Mogavero, Jr., Francisco M. Vasquez, Robert M. Zak), 2012-2013 (Amy L. Clifton, Frank Curci, Evan Evans, Kevin Gibbons, Christopher T. Greene, Robert Halonen, James R. Kaskie, Darren J. King, John R. Koelmel (Chair), George Matthews, David A. Milling, Herman S. Mogavero, Jr., Francisco M. Vasquez, Robert M. Zak), and 2011-2012 (Matthew L. Brown, Amy L. Clifton, Evan Evans,

Christopher T. Greene, Kathleen T. Grimm, Robert Halonen, James R. Kaskie, Darren J. King, John R. Koelmel (Chair), David A. Milling, Herman S. Mogavero, Jr, Dale N. Schumacher, Francisco M. Vasquez, Robert M. Zak).

37. To the extent additional individuals served on the Board of Directors of Kaleida between 2012 and the present they are not currently known to Plaintiffs, including those individuals serving on the Board of Directors for 2018-2019, and those individuals are named as John Does 1-20.

38. The Board of Directors authorized the adoption of the Plans.

39. The Board of Directors exercises discretionary authority over the management and/or administration of the Plans.

40. The Board of Directors has authority to take action as may be necessary to correct any defect, omission or inconsistency in the Plans.

41. The Board of Directors has authority to appoint members to or remove members from the Retirement Plan Committee and has a fiduciary duty to monitor those individuals, the Retirement Plan Committee and the Plans themselves.

42. The Board of Directors has or claims to have authority to delegate authority, duties and/or responsibilities including fiduciary duties or responsibilities, under the Plans.

43. The Board of Directors has or claims to have delegated certain authority, duties and/or responsibilities to the Retirement Plan Committee and has a fiduciary duty to monitor those individuals, the Retirement Plan Committee and the Plans themselves.

44. The Board of Directors has or claims to have delegated certain authority, duties and/or responsibilities to the Investment Committee and has a fiduciary duty to monitor those individuals, the Investment Committee and the Plans themselves.

45. Such authority to appoint, retain, remove and/or delegate to the Plans' fiduciaries constitutes discretionary authority or control over the management or administration of the Plans.

46. The responsibility for appointing and removing committee members carries with it an accompanying duty to monitor the appointed fiduciaries, to ensure that they were complying with the terms of the Plans and ERISA's statutory standards.

47. Furthermore, that monitoring duty carries with it a responsibility to take action upon discovery that an appointed fiduciary is not performing properly.

48. The Board of Directors has a continuing duty, under the Plans and under ERISA, to review and monitor the performance of any fiduciary or other person to whom duties have been delegated or allocated.

49. To the extent any one or more of the Board of Directors was also a member of the Retirement Plan Committee, the Board of Directors therefore had actual or constructive knowledge to determine that other fiduciary Defendants were acting in breach of their fiduciary duties.

50. To the extent any one or more of the Board of Directors was also a member of the Investment Committee, the Board of Directors therefore had actual or constructive knowledge to determine that other fiduciary Defendants were acting in breach of their fiduciary duties.

Retirement Plan Committee

51. The "Retirement Plan Committee" includes the Retirement Plan Committee, as well as all individuals who have served on the Retirement Plan Committee between 2012 and

the present. The names of such individuals are not currently known to Plaintiffs, and therefore those individuals are named as John Does 21-40.

52. The Retirement Plan Committee is the Plan Administrator of the Plans.

53. The Retirement Plan Committee has discretionary authority to control and manage the operation and administration of the Plans.

54. The Retirement Plan Committee is responsible for the management and administration of the Plans.

55. The Retirement Plan Committee is responsible for the management and administration of the Plans and it has authority to delegate those functions to others.

56. The Retirement Plan Committee has the discretionary authority to control and manage the operation and administration of the Plans for the exclusive benefit of the participants and their beneficiaries as required by ERISA.

57. The Retirement Plan Committee has discretionary authority to determine any questions as to the eligibility of an employee to become a participant, the amount of contributions allocated to a participant, the determination of a participant's interest in the Plans at any time, to make factual findings, to fix omissions, to resolve ambiguities regarding the Plans and to construe terms of the Plans.

58. The Retirement Plan Committee has discretionary authority to approve or disapprove funding vehicles under the Plans.

59. The Retirement Plan Committee has delegated certain authority, duties and/or responsibilities to the Investment Committee, and/or has represented to participants in the Plans that it has done or may do so.

Investment Committee

60. The “Investment Committee” includes the Investment Committee, as well as all individuals who have served on the Investment Committee between 2012 and the present. The names of such individuals are not currently known to Plaintiffs, and therefore those individuals are named as John Does 41-60.

61. Certain responsibilities for funding and investment of the Plans’ assets have been delegated to the Investment Committee.

62. These and/or other responsibilities were delegated to the Investment Committee by Kaleida Health, the Board of Directors, The Retirement Plan Committee, and/or other fiduciaries of the Plans.

63. Defendants have intentionally failed to identify the Investment Committee in the Plans’ documents including by, for example, failing to identify the Investment Committee, failing to identify the members of the Investment Committee, and/or failing to identify the processes by which the Investment Committee is to be appointed, removed and/or appointed its duties.

Susan Vallance

64. Susan Vallance holds the position of Director, Employee Benefits & Pension Plans & Payroll at Kaleida Health.

65. Susan Vallance is the Plans’ Administrator.

66. For example, the Plans’ Form 5500s for 2014 to 2017, filed with the United States Departments of Labor and Treasury, identify Susan Vallance on the line for “signature of plan administrator.”

67. Susan Vallance has discretionary authority to control and manage the operation and administration of the Plans.

68. Susan Vallance is responsible for the management and administration of the Plans.

69. Susan Vallance exercises discretion in administering and managing the Plans and/or controlling the Plans' assets.

70. For example, in her role as Director, Employee Benefits, Pension Plans & Payroll, Susan Vallance holds herself out as having numerous responsibilities with respect to the Plans, including among others:

- a. Research, design, develop, negotiate, communicate and implement new or enhanced benefit programs, including retirement and pension plans.
- b. Manage corporate benefits department, including retirement program areas.
- c. Oversee filings, reports, benefits statements according to state and federal compliance to include Form 5500s and ACA requirements in addition to compliance requirements for ERISA and other benefits regulations.
- d. Educate members of HR department in benefit programs to allow them to accurately respond to employee inquiries.
- e. Responsible for preparing overall employee benefits budget.

71. These various powers and duties give Susan Vallance discretionary authority and responsibility in the administration of the Plans, permit Ms. Vallance to exercise discretionary authority or control respecting management of the Plans, and allow Ms. Vallance to exercise authority or control respecting management or disposition of Plans' assets.

Other Defendants

72. Defendants possess and/or claim to possess the authority to delegate certain responsibilities to other persons.

73. Any individual or entity to whom Defendants delegated any of their fiduciary functions or responsibilities are also fiduciaries of the Plans under 29 U.S.C. § 1002(21)(A) and § 1105(c)(2).

74. Because the individuals and/or entities that may have been delegated fiduciary responsibilities by Defendants are not currently known to Plaintiffs, they are collectively named as John Does 61-80.

ERISA FIDUCIARY DUTIES

75. As described in this Complaint, each Defendant is a named fiduciary and/or a functional fiduciary and/or undertakes fiduciary duties and responsibilities and, therefore, each Defendant is subject to liability for breach of fiduciary duties.

76. ERISA imposes strict fiduciary obligations.

77. Defendants' fiduciary obligations require that, at all times, they conduct themselves with the utmost good faith, loyalty and fidelity; act with the sole purpose of advancing the interests of the Plans, their participants, and beneficiaries; scrupulously avoid all self-interest, duplicity, and deceit; and fully disclose to and inform participants and beneficiaries of all material information.

78. Defendants, as fiduciaries, are required to discharge their duties with respect to the Plans solely in the interest of the participants and beneficiaries.

79. ERISA also imposes fiduciary duties of loyalty and prudence upon Defendants as fiduciaries of the Plans. These fiduciary duties are “the highest known to the law.” *Donovan v. Bierwirth*, 680 F.2d 263, 272 n.8 (2d Cir. 1982).

80. The fiduciary duty of loyalty requires Defendants to discharge their duties for the exclusive purpose of providing benefits to participants and their beneficiaries.

81. The fiduciary duty of loyalty requires Defendants to discharge their duties for the exclusive purpose of defraying reasonable expenses of administering the Plans.

82. Defendants’ fiduciary obligations under ERISA require that they exercise the care, skill, and diligence of a prudent expert in these matters.

83. The fiduciary duty of prudence encompasses a duty to select prudent investments.

84. Pursuant to the prudent investor rule, fiduciaries are required to incur only costs that are reasonable in amount and appropriate to the investment responsibilities.

85. Defendants’ fiduciary obligations under ERISA require that they discharge their duties with the exclusive purpose of providing benefits to the Plans’ participants and beneficiaries and defraying the reasonable costs of administering the Plans.

86. In addition, under ERISA a fiduciary has a continuing duty to monitor plan investments and remove imprudent ones that exists separate and apart from the fiduciary’s duty to exercise prudence in selecting investments.

87. Failing to closely monitor and/or minimize administrative expenses constitutes a breach of fiduciary duty.

88. To the extent any Defendants properly delegated fiduciary duties, Defendants are also subject to liability for breach of fiduciary duties to monitor and/or supervise the activities of those fiduciaries to whom such duties have been delegated.

89. Defendants were obligated to ensure that any delegated tasks were being performed prudently and loyally in accordance with ERISA.

90. Defendants are also subject to co-fiduciary liability. ERISA imposes explicit co-fiduciary duties on plan fiduciaries. 29 U.S.C. § 1105(a) states, in pertinent part, that:

In addition to any liability which he may have under any other provision of this part, a fiduciary with respect to a plan shall be liable for a breach of fiduciary responsibility of another fiduciary with respect to the same plan in the following circumstances:

- (1) if he participates knowingly in, or knowingly undertakes to conceal, an act or omission of such other fiduciary, knowing such act or omission is a breach; or
- (2) if, by his failure to comply with section 1104(a)(1) of this title in the administration of his specific responsibilities which give rise to his status as a fiduciary, he has enabled such other fiduciary to commit a breach; or
- (3) if he has knowledge of a breach by such other fiduciary, unless he makes reasonable efforts under the circumstances to remedy the breach.

FACTS

The Plans

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

92. The 403(b) Plan was effective July 1, 1999.

93. As of December 31, 2016, the 403(b) Plan had \$370,118,634 in net assets, 10,565 total participants and 6,757 participants with account balances.

94. As of December 31, 2016, the 403(b) Plan offered participants the following investment options:

a. 7 Equity Funds:

- American Funds Europacific Growth R5
- American Funds Growth Fund of Amer A
- Dodge & Cox Stock
- PNC Small Cap I
- Vanguard Institutional Index I
- Vanguard Mid Cap Index Admiral
- Vanguard Small Cap Index I

b. 2 Bond Funds:

- Baird Aggregate Bond Inst
- Vanguard Inflation-Protected Secs Adm

c. 11 Target Retirement Date Mutual Funds:

- T. Rowe Price Retirement 2005 Advisor
- T. Rowe Price Retirement 2010 Advisor
- T. Rowe Price Retirement 2015 Advisor
- T. Rowe Price Retirement 2020 Advisor
- T. Rowe Price Retirement 2025 Advisor
- T. Rowe Price Retirement 2030 Advisor
- T. Rowe Price Retirement 2035 Advisor
- T. Rowe Price Retirement 2040 Advisor
- T. Rowe Price Retirement 2045 Advisor
- T. Rowe Price Retirement 2050 Advisor
- T. Rowe Price Retirement 2055 Advisor

d. 2 Annuities:

- Lincoln NY Fixed Annuity-N03
- Lincoln NY Fixed Annuity-N03A

95. The 401(k) Plan is a defined contribution, individual account, employee pension benefit plan under 29 U.S.C. § 1002(2)(A) and § 1002(34).

96. The 401(k) Plan was effective July 1, 1999.

97. As of December 31, 2016, the 401(k) Plan had \$69,476,614 in net assets, 10,323 total participants and 4,644 participants with account balances.

98. As of June 30, 2016, the 401(k) Plan offered participants the following investment options:

a. 7 Equity Funds:

- American Funds Europacific Growth R5
- American Funds Growth Fund of Amer A
- Dodge & Cox Stock
- PNC Small Cap I
- Vanguard Institutional Index I
- Vanguard Mid Cap Index Admiral
- Vanguard Small Cap Index I

b. 2 Bond Funds:

- Baird Aggregate Bond Inst
- Vanguard Inflation-Protected Secs Adm

c. 11 Target Retirement Date Mutual Funds:

- T. Rowe Price Retirement 2005 Advisor
- T. Rowe Price Retirement 2010 Advisor
- T. Rowe Price Retirement 2015 Advisor
- T. Rowe Price Retirement 2020 Advisor
- T. Rowe Price Retirement 2025 Advisor
- T. Rowe Price Retirement 2030 Advisor
- T. Rowe Price Retirement 2035 Advisor
- T. Rowe Price Retirement 2040 Advisor
- T. Rowe Price Retirement 2045 Advisor
- T. Rowe Price Retirement 2050 Advisor
- T. Rowe Price Retirement 2055 Advisor

d. 1 Annuity:

- Lincoln NY Fixed Annuity-N03

99. The investment options offered by each of the Plans are nearly identical.

Defendants Failed to Minimize the Plans' Fees and Expenses

100. Defendants failed to satisfy their fiduciary duties by failing to defray the Plans' fees and expenses.

101. Excessive fees and expenses can significantly impair the value of returns and dramatically affect the amount of money participants are able to save for retirement. Over time, even seemingly small differences in fees and performance can result in vast differences in the amount of savings available at retirement. For example, according to a bulletin issued by the Securities and Exchange Commission, in an investment portfolio investing \$100,000 with a 4% annual return over 20 years, just a 0.25% increase in annual fees reduces the portfolio value by \$10,000. SEC Office of Investor Education and Advocacy, *How Fees and Expenses Affect Your Investment Portfolio*, available at https://www.sec.gov/investor/alerts/ib_fees_expenses.pdf.

102. Defendants are responsible to perform or contract for administrative, record-keeping, investment management, and other services on behalf of the Plans.

103. ERISA requires that the fees for these services must be reasonable, incurred solely for the benefit of the Plans' participants, and fully disclosed.

104. Defendants have a fiduciary duty to defray all reasonable expenses of the Plans, including those related to administrative services such as recordkeeping, trustee and custodial services, accounting, and others.

105. Fiduciaries can minimize plan expenses by hiring low-cost service providers.

106. Economies of scale generally result in lower administrative expenses on a per-participant or percentage-of-assets basis.

107. To ensure that plan recordkeeping and other administrative expenses are and remain reasonable for the services provided, prudent fiduciaries of large plans put those services out for competitive bidding at regular intervals and monitor costs regularly.

108. The scope of Defendants' fiduciary duties and responsibilities includes managing the assets of the Plans for the sole and exclusive benefit of the Plans' participants and beneficiaries, defraying reasonable expenses of administering the Plans, and acting with the expert care, skill, diligence, and prudence required by ERISA.

109. Defendants are directly responsible for ensuring that the Plans' fees are reasonable, not excessive, incurred solely for the benefit of the Plans and the Plans' participants, and fully disclosed to participants.

110. Pursuant to the prudent investor rule, Defendants as fiduciaries are required to incur only costs that are reasonable in amount and appropriate to the investment responsibilities of the trusteeship.

111. Either directly or indirectly, Defendants have caused the Plans to purchase trustee, recordkeeping, administration, investment management, brokerage, consulting, auditing, and/or other services. These fees are, and have been, unreasonable and excessive, especially in light of the Plans' size and asset value.

112. By subjecting the Plans to such excessive fees and by selecting investment options that assessed excessive fees against participants' accounts, Defendants breached their fiduciary duties.

113. Either directly or indirectly, Defendants have caused the amounts that the Plans pay for these services to be assessed against the Plans' assets.

114. For example, based on Defendants' publicly available statements and representations, it appears that the total administrative expenses incurred by the Plans exceed \$850,000 and represent expenses of more than approximately \$40 per participant.

115. Defendants have made inaccurate or misleading representations regarding the Plans' fees and expenses, either improperly and/or erroneously, including in publicly filed documents and statements.

116. Defendants' fiduciary obligations include the prudent and proper selection of investment options for the Plans.

117. The 11 T. Rowe Price target retirement date mutual funds offered by the Plans are all advisor or retail class funds, as opposed to investor or institutional class funds.

118. The advisor or retail class T. Rowe Price funds offered by the Plans charge a 12b-1 fee of .25% of the fund's net assets.

119. A 12b-1 fee is an annual charge for marketing or distribution. Participants of the Plans derive no benefit from the 12b-1 fee.

120. Although the Plans only offer advisor or retail class shares of the T. Rowe Price target retirement date funds, these same funds also have investor or institutional class shares which do not charge a 12b-1 fee. A chart comparing the operating expense fees of these two classes of funds is below:

Fund	Annual Operating Expense of Advisor Class (Plans' Class)	Annual Operating Expense of Investor Class
T. Rowe Price Retirement Fund 2005	.85	.60
T. Rowe Price Retirement Fund 2010	.84	.59
T. Rowe Price Retirement Fund 2015	.87	.62
T. Rowe Price Retirement Fund 2020	.91	.66
T. Rowe Price Retirement Fund 2025	.94	.69
T. Rowe Price Retirement Fund 2030	.97	.72
T. Rowe Price Retirement Fund 2035	.99	.74
T. Rowe Price Retirement Fund 2040	1.01	.76
T. Rowe Price Retirement Fund 2045	1.01	.76
T. Rowe Price Retirement Fund 2050	1.01	.76
T. Rowe Price Retirement Fund 2055	1.01	.76

121. Retail share classes of mutual funds are typically marketed to individuals with small amounts to invest whereas institutional share classes are offered to investors with large amounts to invest (typically \$1 million or more), such as large retirement plans. The different share classes of a mutual fund, such as the T. Rowe Price target retirement date funds, are identical in all ways except that the retail shares have a 12b-1 fee, resulting in a higher annual operating expense and lower returns for the retail class investors.

122. In the extremely competitive 401(k) and 403(b) marketplaces, retirement plans with very large pools of assets, such as the Plans, which together have over \$400 million in assets, have the ability to use their bargaining power to obtain institutional classes of shares without 12b-1 fees and, therefore, lower operating expenses.

123. Defendants' selection of mutual funds with 12b-1 fees instead of offering identical funds without those fees is imprudent since participants derive no benefit from those fees.

124. A prudent fiduciary would have selected the investor class of T. Rowe Price mutual funds instead of the retail class of funds with the 12b-1 fee.

125. The retail class funds offered by the Plans are the only class of target retirement date mutual funds offered and constitute a majority of the mutual fund options offered by the Plans.

126. A prudent investor would not have retained these more expensive share classes when other less expensive share classes were available.

127. Defendants knew or should have known of the existence of these cheaper share classes and therefore also should have immediately identified the prudence of transferring the Plans into the lower-cost shares.

128. A prudent fiduciary would have reviewed the Plans' investments and would have identified the cheaper share classes available and transferred the Plans' investments into institutional shares at the earliest opportunity. Yet, despite the availability of lower-cost shares, Defendants did not transfer the Plans' holdings in any of these three funds from retail shares into institutional shares, in breach of their fiduciary duties.

129. There is no good-faith explanation for utilizing high-cost share classes when lower-cost share classes are available for the exact same investment. The Plans did not receive any additional services or benefits based on the use of more expensive share classes; the only consequence was higher costs for the Plans' participants.

130. Therefore, Defendants acted imprudently by failing to offer a sufficient mix of investment options for the participants in the Plans.

CLASS ACTION ALLEGATIONS

131. 29 U.S.C. § 1132 (a)(2) authorizes any participant or beneficiary to bring an action on behalf of a plan for relief under 29 U.S.C. § 1109 for breach of fiduciary duty. The claims asserted herein are properly maintainable as a class action under Federal Rule of Civil Procedure 23 (“Rule 23”).

132. The Rule 23 class is defined as follows:

All participants and beneficiaries of the Plans at any time on or after October 11, 2012 excluding Defendants and any participant who is a fiduciary to the Plans.

133. The class action is maintainable under subsections (1), (2), (3) and (4) of Rule 23(a).

134. The Class is so numerous that joinder of all members is impracticable. The Plans had over 11,000 participants with account balances during the Class period.

135. Common issues of law and fact exist as to all members of the Class and predominate over any questions affecting only individual Class Members. Among the common issues of law and fact are the following:

- Whether Defendants are fiduciaries of the Plans;
- Whether Defendants breached their fiduciary duties by engaging in the conduct described herein;
- A determination of the losses to the Plans and proper measure of monetary relief due to the breach of fiduciary duties;
- A determination of equitable and injunctive relief that should be imposed due to the breach of fiduciary duties.

136. These common questions of law and fact also predominate over any questions affecting only individual Class members.

137. The Named Plaintiffs' claims are typical of the claims of other members of the Class because Named Plaintiffs, like other Class members, participated in the Plans and have suffered injuries due to Defendants' imprudence. Defendants treated Named Plaintiffs the same as members of the Class with regard to the Plans.

138. Named Plaintiffs and their counsel will fairly and adequately protect the interests of the Class. Named Plaintiffs have no interest antagonistic to the Class and have retained counsel experienced in complex class action litigation.

139. Class counsel Thomas & Solomon LLP is qualified and able to litigate Named Plaintiff and Class claims.

140. Thomas & Solomon LLP concentrates its practice in employment litigation, and its attorneys are experienced in class action litigation.

141. A class action is superior to other available methods for the fair and efficient adjudication of this controversy and avoids duplication by allowing these claims to be prosecuted in a single action. Named Plaintiffs and Class members lack the resources to adequately prosecute separate claims, and the amount that each individual stands to recover makes individual cases impractical to pursue.

142. The class action is also maintainable under subsection (2) of Rule 23(b) because the Named Plaintiffs and Class members seek injunctive relief against Defendants.

143. Moreover, the class action is maintainable under subsection (3) of Rule 23(b) because the Named Plaintiffs and Class members seek to resolve common questions of law and

fact that predominate among the Named Plaintiffs and Class members and the class action is superior to other available methods for the fair and efficient adjudication of the controversy.

144. The Class is also maintainable under Rule 23(c)(4) because resolution of common issues will significantly advance the litigation or entitle Plaintiffs to injunctive relief.

FIRST CAUSE OF ACTION
Breach of Fiduciary Duty Pursuant to ERISA

145. Plaintiffs hereby re-allege the above paragraphs as if fully restated herein.

146. Defendants are fiduciaries of the Plans, including under 29 U.S.C. § 1002(21) and/or § 1102(a)(1).

147. This count arises from Defendants' breach of their fiduciary duties under ERISA.

148. 29 U.S.C. § 1104 imposes fiduciary duties of prudence and loyalty upon Defendants and requires Defendants, as fiduciaries of the Plans, to act prudently and solely in the interest of the Plans' participants and beneficiaries in administering and managing the Plans and the Plans' investments.

149. The scope of the fiduciary duties and responsibilities of Defendants includes acting with the care, skill, diligence, and prudence of an expert, as required by ERISA.

150. Further, Defendants are responsible for defraying the reasonable expenses of the Plans, for selecting and retaining prudent investment options, for evaluating and monitoring the Plans' investments on an ongoing basis and eliminating imprudent ones, and for taking all necessary steps to ensure that the Plans' assets are spent prudently.

151. Defendants owe to the Plans and the Class extensive fiduciary duties including, without limitation:

- a. To conduct themselves with the care, skill, prudence, and diligence under the circumstances that a prudent expert would exercise in operating and administering plans of comparable size and character to the Plans;
- b. To perform their duties with the utmost loyalty and fidelity the Plans and the Plans' participants and beneficiaries, avoiding at all times conflicts of interest, self-interest, and duplicity;
- c. To ensure, at all times, that Plans' assets shall be held for the exclusive purposes of providing benefits to the Plans' participants and beneficiaries and defraying reasonable expenses of administering the Plans;
- d. To prudently select and maintain investment options for the Plans and to analyze and monitor them on an ongoing basis to ensure that such investment options are prudent;
- e. To track and account for all transactions involve the Plans and the Plans' assets so as to ensure that the Plans' assets are retained, managed, and disbursed in compliance with ERISA;
- f. To track and account for all transactions involving the Plans and the Plans' assets so as to ensure that the Plans' assets are held for the exclusive purposes of providing benefits to participants in the Plans and their beneficiaries and defraying reasonable expenses of administering the Plans;
- g. To ensure that the fees and expenses incurred by the Plans are reasonable and incurred for the sole and exclusive benefit of the Plans' participants and beneficiaries;

- h. To ensure that payments from the Plans, whether they are direct or indirect, are reasonable for the services provided and made for the sole and exclusive benefit of the Plans' participants and beneficiaries;
- i. In operating and administering the Plans, to establish, implement, and follow procedures to properly and prudently determine whether the fees and expenses paid by the Plans were reasonable and incurred solely for the benefit of the Plans' participants;
- j. In operating and administering the Plans, on an ongoing basis to monitor the payments made by the Plans to service providers, whether they are direct or indirect, and to ensure they are and remain reasonable for the services provided and made for the sole and exclusive benefit of the Plans' participants and beneficiaries;
- k. To inform themselves of trends, developments, practices, and policies in the retirement, financial investment and securities industry which affect the Plans, and to remain aware and knowledgeable of such trends, practices and policies on an ongoing basis;
- l. To communicate with the Plans' participants and beneficiaries regarding the Plans honestly, clearly, completely, and accurately;
- m. To affirmatively and without request provide the Plans' participants and beneficiaries with honest, accurate, and complete information they need to understand their investments in the Plans, the management, risk, potential returns of such investments, and the fees and expenses incurred in connection with those investments;

- n. Upon request, to provide information in the Plans' participants and beneficiaries regarding the operation and administration of the Plans and the expenses incurred in doing so; and
- o. To provide honest, accurate and complete information to the Plans' participants and beneficiaries regarding the costs associated with their various investment choices and directions.

152. Defendants' fiduciary duties include "a continuing duty to monitor trust investments and remove imprudent ones." *Tibble v. Edison Int'l*, 135 S. Ct. 1823, 1828, 191 L. Ed. 2d 795 (2015).

153. Defendants failed to manage the assets of the Plans for the sole and exclusive benefit of the Plans' participants and beneficiaries, to defray reasonable expenses of administering the Plans, and to act with the requisite care, skill, diligence, and prudence.

154. Defendants failed to meet their duties by causing the Plans to pay, directly or indirectly, completely or in part, fees and expenses that were unreasonable and not incurred solely for the benefit of the Plans' participants and beneficiaries.

155. Defendants failed to meet their duties by failing to monitor the fees and expenses paid by the Plans and, by such failure, causing, or allowing the Plans to pay fees and expenses that were unreasonably and not incurred solely for the benefit of the Plans' participants and beneficiaries.

156. Defendants failed to meet their duties by imprudently selecting and maintaining investment options for the Plans, failing to monitor and analyze them on an ongoing basis to ensure they were prudent, and failing to remove imprudent investment options.

157. Defendants failed to meet their duties by failing to establish, implement, and follow procedures to properly and prudently determine whether the fees and expenses paid by the Plans were reasonable and incurred solely for the benefit of the Plans' participants.

158. Defendants failed to meet their duties by failing to communicate with the Plans' participants and beneficiaries regarding the Plans honestly, clearly, and accurately, including failing to properly inform or disclose to the Plans' participants and beneficiaries the fees and expenses that are, or have been, paid by the Plans.

159. Defendants failed to meet their duties by failing to exercise the care, skill, prudence and diligence that a prudent expert would when acting in like capacity.

160. Defendants acted imprudently by selecting and retaining retail class shares of target-date mutual funds with 12b-1 fees for the Plans when identical investor class shares of the same funds were available without a 12b-1 fee.

161. Defendants failed to monitor the Plans' investments to ensure that the Plans were invested in the lowest-cost share class of each mutual fund within the Plans, and failed to transfer the Plans' investments into lower-cost share classes when those cheaper share classes became available.

162. By choosing the more expensive retail class of funds over the identical but less expensive investor class of the same funds, Defendants failed to discharge their duties with respect to the Plans with the care, skill, prudence and diligence under the circumstances then prevailing that a prudent person acting in a similar capacity and familiar with such matters would use in violation of 29 U.S.C. § 1104.

163. Each of the foregoing actions and failures to act in a prudent manner alleged herein demonstrates Defendants' failure to meet their fiduciary obligations.

164. Each of the foregoing actions and failures to act in a prudent manner alleged herein demonstrates Defendants' failure to monitor the Plans and make investment decisions based solely on the merits of each investment and what was in the interest of the Plans' participants. Instead, Defendants retained higher-cost shares of mutual funds and failed to investigate the availability of lower-cost share classes.

165. As described throughout this Complaint, Defendants failed to defray reasonable expenses of administering the Plans, to monitor the Plans' investments to ensure that the Plans were invested in the lowest-cost share class of each mutual fund within the Plans, and to transfer the Plans' investments into lower-cost share classes.

166. Through the actions and omissions described in this Complaint, Defendants failed to discharge their duties with respect to the Plans with the care, skill, prudence, and diligence required by ERISA, thereby breaching their fiduciary duties.

167. Defendants also knowingly participated in each breach of the other Defendants, knowing that such acts were a breach, enabled the other Defendants to commit breaches by failing to lawfully discharge such Defendant's own duties, and/or knew of the breaches by the other Defendants and failed to make any reasonable and timely effort under the circumstances to remedy the breaches. Accordingly, each Defendant is also liable for the losses caused by the breaches of its co-fiduciaries.

168. Each of the Defendants is personally liable and Defendants are jointly and severally liable to make good to the Plans the losses resulting from the breaches described herein, to restore to the Plans any profits Defendants made through the use of the Plans' assets and to restore to the Plans any profits resulting from the breach of fiduciary duties alleged herein.

169. Total losses to the Plans will be determined after complete discovery in this case and are continuing.

SECOND CAUSE OF ACTION
Failure to Monitor Fiduciaries Pursuant to ERISA

170. Plaintiffs hereby re-allege the above paragraphs as if fully restated herein.

171. As alleged throughout this Complaint, Defendants are fiduciaries of the Plans.

172. As alleged in this Complaint, Defendants had or claim to have the authority to delegate certain responsibilities to other persons.

173. To the extent Defendants had or exercised such authority and/or properly delegated any fiduciary duty, Defendants therefore had a fiduciary responsibility to monitor the performance of any such appointees.

174. To the extent any Defendant's fiduciary responsibilities were properly delegated, such delegating Defendant was obligated to ensure that any delegated tasks were being performed prudently and loyally in accordance with ERISA.

175. A monitoring fiduciary must ensure that its appointees are performing their fiduciary obligations, including those with respect to the investment, holding and monitoring of plan assets, and must take prompt and effective action to protect the plan and its participants when the monitored fiduciaries fail to perform their fiduciary obligations in accordance with ERISA.

176. To the extent any of Defendants' fiduciary responsibilities were properly delegated to an appointee, such delegating Defendants' monitoring duty included an obligation to ensure that any delegated tasks were being performed in accordance with ERISA's fiduciary standards.

177. To the extent that Defendants' fiduciary monitoring responsibilities were delegated, each Defendant's monitoring duty included an obligation to ensure that any delegated tasks were being performed prudently and loyally.

178. Defendants breached their fiduciary monitoring duties by, among other things:

- a) Failing to monitor and evaluate the performance of their appointees or have a system in place for doing so;
- b) Failing to monitor their appointees' fiduciary process, including the processes by which the Plans' investments were evaluated, which would have alerted a prudent fiduciary to the breach of fiduciary duty;
- c) Failing to monitor their appointees' fiduciary process, including the processes by which the Plans' investments were evaluated, which would have alerted a prudent fiduciary to the failure to investigate the availability of lower-cost share classes;
- d) Failing to ensure their appointees considered the ready availability of comparable investment options to the Plans, including lower-cost share classes of the identical mutual funds; and
- e) Failing to remove their appointees whose performance was inadequate in that they continued to maintain imprudent, excessively costly investments within the Plans, all to the detriment of the Plans and the Plans' participants' retirement savings.

179. As a consequence of the foregoing breaches of the duty to monitor, the Plans suffered and continue to suffer losses due to excessive fees.

180. Had Defendants discharged their fiduciary monitoring duties prudently as described above, the losses suffered by the Plans would have been avoided. Therefore, the Plans, Plaintiffs and other class members suffered losses as a direct result of the breaches of fiduciary duty alleged herein.

181. Pursuant to 29 U.S.C. §§ 1109(a), 1132(a)(2), and 1132(a)(3), Defendants are personally liable to restore to the Plans all losses suffered as a result of the fiduciary breaches that resulted from their failure to properly monitor the Plans' fiduciaries, and subsequent failure to take prompt and effective action to rectify any observed fiduciary breaches. Each Defendant is likewise subject to other equitable or remedial relief as appropriate.

182. Defendants also knowingly participated in each breach of the other Defendants, knowing that such acts were a breach, enabled the other Defendants to commit breaches by failing to lawfully discharge such Defendant's own duties, and/or knew of the breaches by the other Defendants and failed to make any reasonable and timely effort under the circumstances to remedy the breaches. Accordingly, each Defendant is also liable for the losses caused by the breaches of its co-fiduciaries.

183. Each of the Defendants is personally liable and Defendants are jointly and severally liable to make good to the Plans the losses resulting from the breaches described herein, to restore to the Plans any profits Defendants made through the use of the Plans' assets and to restore to the Plans any profits resulting from the breach of fiduciary duties alleged herein.

184. Total losses to the Plans will be determined after complete discovery in this case and are continuing.

THIRD CAUSE OF ACTION

Other Remedies for Breach of Fiduciary Duty under ERISA

185. Plaintiffs hereby re-allege the above paragraphs as if fully restated herein.

186. In addition to, and as an alternative to, the causes of action stated above, Plaintiffs seek further relief pursuant to ERISA § 502(a)(3), 29 U.S.C., § 1132(a)(3).

187. Under ERISA § 502(a)(3), a participant may enjoy any act which violates ERISA or may obtain other appropriate equitable relief to redress such violations or enforce the terms of ERISA.

188. Defendants are the primary fiduciaries of the Plans and occupy a position of trust and confidence in connection with the Plans, the Plans' assets, and the Plans' participants and beneficiaries.

189. Defendants have exclusive discretion and control over the Plans' assets and are strictly obligated to exercise that control for the exclusive purposes of providing benefits to participants in the Plans and their beneficiaries and defraying reasonable expenses of administering the Plans.

190. Although only the Plans' participants and beneficiaries are entitled to the Plans' assets and to the benefit of the Plans' assets, in the absence of full and candid disclosure from Defendants, the Plans' participants and beneficiaries do not know, and have no means of knowing, how their assets have been managed and disbursed.

191. Accordingly, Defendants occupy the position of a common law trustee in connection with the Plans, their assets, and their participants and beneficiaries.

192. Defendants have caused and/or allowed the Plans to pay, directly or indirectly, excess fees and expenses and/or allowed the Plans to invest in, and remain invested in, imprudent investment options, and to suffer losses.

193. Defendants, and not the Plaintiffs, are the entities that have or should have specific and detailed information regarding how the Plans' assets have been treated and disbursed in this regard.

194. Accordingly, the Court should order that Defendants render an accounting of all transactions, disbursements and dispositions occurring in, in connection with, or in respect of, the Plans and the Plans' assets.

195. Plaintiffs respectfully request that the Court order that such an accounting include, without limitation, detailed and specific information regarding all fees and expenses incurred by the Plans or paid to third parties, whether paid directly or indirectly.

196. Plaintiffs respectfully request that the Court surcharge against the Defendants and in favor of the Plans all amounts involved in transactions which such accounting reveals were or are improper, excessive or in violation of ERISA.

197. Plaintiffs further seek injunctive and other appropriate equitable relief to redress the wrongs described above and to cause them to cease in order for the Plans' participants and beneficiaries to receive the full benefit of their retirement savings in the future.

WHEREFORE, Plaintiffs demand judgment against Defendants in their favor and that they be given the following relief:

- a. A declaration that Defendants have breached their fiduciary duties under ERISA;
- b. an order certifying the class as requested and designating Thomas & Solomon LLP as class counsel;
- c. designation of Mary Ellen Lutz, Lea Shurmatz, Kristin Schwartz, Linda Spring, and Alexia Christodoulides as Class Representatives;
- d. imposition of a constructive trust on any amounts by which Defendants

were unjustly enriched at the expense of the Plans due to the breach of fiduciary duties under ERISA;

- e. an order that Defendants be required to provide an accounting of the losses the Plans suffered due to Defendants' breach of their fiduciary duties under ERISA;
- f. an order requiring Defendants to render an accounting as set forth above;
- g. an order compelling Defendants to personally make good to the Plans all losses that the Plans incurred as a result of the breaches of fiduciary duties described above, and to restore the Plans to the position they would have been in but for this unlawful conduct;
- h. the amount equal to the value that would make Named Plaintiffs and the Class Members whole for the violations;
- i. an order enjoining Defendants from any further violations of their ERISA fiduciary responsibilities, obligations, and duties;
- j. an award of reasonable attorneys' fees, expenses, expert fees and costs incurred in vindicating Named Plaintiffs' and Class Members' rights pursuant to ERISA § 502(g), 29 U.S.C. § 1132(g);
- k. an award of pre- and post-judgment interest;
- l. service payments for the Named Plaintiffs; and
- m. such other and further legal or equitable relief as this Court deems to be just and appropriate.

JURY DEMAND

Plaintiffs demand a jury to hear and decide all issues of fact in accordance with Federal Rule of Civil Procedure 38(b).

Dated: February 4, 2019

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