

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

JAMISON REMIED, individually,
and as Representative of a Class of
Participants and Beneficiaries of the
NorthShore University HealthSystem
Tax Deferred Annuity Plan,

Plaintiff,

v.

NORTHSHORE UNIVERSITY
HEALTHSYSTEM, GERALD
P. GALLAGHER,

and

RETIREMENT PLAN ADMINISTRATIVE
COMMITTEE and RETIREMENT PLAN
INVESTMENT COMMITTEE,

Defendants

Case No. 1:22-cv-2578

CLASS ACTION SECOND
AMENDED COMPLAINT
FOR CLAIMS UNDER
29 U.S.C. § 1132(a)(2)

Honorable Steven C. Seeger

SECOND AMENDED COMPLAINT

COMES NOW Plaintiff, Jamison Remied, individually and as a representative of a Class of Participants and Beneficiaries of the NorthShore University HealthSystem Tax Deferred Annuity Plan (the “Plan” or “NorthShore University Plan”), by his counsel, WALCHESKE & LUZI, LLC, as and for a claim against Defendants, alleges and asserts to the best of his knowledge, information, and belief, formed after an inquiry reasonable under the circumstances, the following:

INTRODUCTION

1. Under the Employee Retirement Income Security Act (“ERISA”), 29 U.S.C. § 1001 *et seq.*, plan fiduciaries must discharge their duty of prudence “with the care, skill, prudence, and diligence under the circumstances then prevailing that a prudent man acting in a like capacity and familiar with such matters would use in the conduct of an enterprise of a like character and with like aims.” ERISA Section 404(a)(1)(B), 29 U.S.C. § 1104(a)(1)(B).

2. The ERISA fiduciary duty of prudence governs the conduct of plan fiduciaries and imposes on them “the highest duty known to the law.” *Donovan v. Bierwirth*, 680 F.2d 263, 272 n. 8 (2d Cir. 1982.)

3. The law is settled under ERISA that, “a categorical rule is inconsistent with the context-specific inquiry that ERISA requires,” *Hughes v. Northwestern Univ.*, 142 S. Ct. 737, 739 (2022), and “[a] plaintiff may allege that a fiduciary breached the duty of prudence by failing to properly monitor investments and remove imprudent ones.” *Id.* (citing *Tibble v. Edison Int’l*, 575 U.S. 523 (2015).)

4. Even in a defined contribution plan in which participants are responsible for selecting their plan investments, ERISA Section 404(c), 29 U.S.C. § 1104(c), “plan fiduciaries are required to conduct their own independent evaluation to determine which investments may be prudently included in the plan’s menu of options.” *See Hughes*, 142 S. Ct. at 742 (citing *Tibble*, 575 U.S. at 529–530). “If the fiduciaries fail to remove an imprudent investment from the plan within a reasonable time,” fiduciaries “breach their duty [of prudence].” *Id.* Imprudent investments, as that

term is used herein and by the United States Supreme Court, includes services provided by Plan recordkeepers. *See Hughes*, 142 S. Ct. at 742.

5. Defendants, NorthShore University HealthSystem (“NorthShore University”), Gerald P. Gallagher (“Gallagher”), and the Retirement Plan Administrative Committee and the Retirement Plan Investment Committee (“Committee Defendants”) (collectively, “Defendants”), are ERISA fiduciaries as they exercise discretionary authority or discretionary control over the 403(b) defined contribution pension plan – known as NorthShore University HealthSystem Tax Deferred Annuity Plan (the “Plan” or “NorthShore University Plan”) – that it sponsors and provides to its employees.

6. During the putative Class Period (May 16, 2016, through the date of judgment), Defendants, as fiduciaries of the Plan, as that term is defined under ERISA Section 3(21)(A), 29 U.S.C. § 1002(21)(A), breached the duty of prudence they owed to the Plan by requiring the Plan to “pay[] excessive recordkeeping [and administrative (“RKA”) fees],” *Hughes*, 142 S. Ct. at 739-740, and by failing to remove their high-cost recordkeeper, Voya Retirement Insurance & Annuity (“Voya”), who has been the Plan recordkeeper since at least 2002 (though previously known as “ING” and “Aetna”).

7. Defendants, as fiduciaries of the Plan, as that term is defined under ERISA Section 3(21)(A), 29 U.S.C. § 1002(21)(A), breached their fiduciary duty of prudence also by “offer[ing] needlessly expensive investment options,” in the form of high-cost funds. *See Hughes*, 142 S. Ct. at 740.

8. These objectively unreasonable recordkeeping and investment fees cannot be contextually justified, and do not fall within “the range of reasonable judgments a fiduciary may make based on her experience and expertise.” *See Hughes*, 142 S. Ct. at 742.

9. Defendants breached their fiduciary duty of prudence by offering higher cost investments to the Plan’s participant when it could have offered the substantially similar investment opportunities at a more reasonable cost, and by causing the Plan participants to pay excessive RKA fees.

10. Defendants unreasonably failed to leverage the size of the Plan to pay reasonable fees for Plan RKA and investment services and Mr. Gallagher breached his duty to prudently monitor the Plan’s fiduciary process.

11. ERISA’s duty of prudence applies to the conduct of the plan fiduciaries in negotiating RKA fees, as well as selecting and retaining investments, based on what is *reasonable* (not the lowest, cheapest, or average) in the applicable market.

12. There is no requirement to allege the actual inappropriate fiduciary actions taken because “an ERISA plaintiff alleging breach of fiduciary duty does not need to plead details to which he has no access, as long as the facts alleged tell a plausible story.” *Allen v. GreatBanc Tr. Co.*, 835 F.3d 670, 678 (7th Cir. 2016).

13. The unreasonable RKA fees paid, as well as the unreasonable selection and retention of Plan investments, inferentially tells the plausible story that Defendants breached their fiduciary duty of prudence under ERISA.

14. These breaches of fiduciary duty caused Plaintiff and Class Members millions of dollars of harm in the form of lower retirement account balances than they

otherwise should have had in the absence of these unreasonable Plan fees and expenses.

15. To remedy these fiduciary breaches and prohibited transactions, Plaintiff brings this action on behalf of the Plan under 29 U.S.C. § 1132(a)(2) to enforce Defendants' liability under 29 U.S.C. § 1109(a), to make good to the Plan all losses resulting from these breaches.

JURISDICTION AND VENUE

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

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

18. Venue is appropriate in this District within the meaning of 29 U.S.C. §1132(e)(2) because some or all of the violations of ERISA occurred in this District and Defendants reside and may be found in this District.

19. In conformity with 29 U.S.C. §1132(h), Plaintiffs served the initial Complaint by certified mail on the Secretary of Labor and the Secretary of the Treasury.

PARTIES

20. Plaintiff, Jamison Remied, is a resident of the State of Illinois and currently resides in Evanston, Illinois, and during the Class Period, was a participant in the Plan under ERISA § 3(7), 29 U.S.C. § 1002(7).

21. Plaintiff was a Patient Access Representative at the 4901 Searle Parkway NorthShore University location in Skokie, Illinois, from August 2017 through July 2020. During the Class Period, he was invested in the following Plan investments: Voya Stable Value Option, Dodge & Cox Income Fund, Vanguard Target Retirement 2045 Fund, Vanguard Institutional Index Fund, Class P, Harbor Capital Appreciation Fund, ClearBridge Small Cap Growth Fund, Class IS, and Harding Lovener Institutional Emerging Market Portfolio, Class Z.

22. Plaintiff has Article III standing to bring this action on behalf of the Plan because he suffered actual injuries to his Plan account through paying excessive RKA fees during the Class Period, those injuries are fairly traceable to Defendants' unlawful conduct in maintaining Voya as its recordkeeper, and the harm is likely to be redressed by a favorable judgment providing equitable relief to the Plaintiff and Class.

23. Having established Article III standing, Plaintiff may seek recovery under 29 U.S.C. § 1132(a)(2), ERISA § 502(a)(2), on behalf of the Plan and for relief that sweeps beyond his own injuries, including for high cost funds that he has not held.

24. The Plaintiff and all participants in the Plan did not have knowledge of all material facts (including, among other things, the excessive RKA and investment fees) necessary to understand that Defendants breached their fiduciary duties until shortly before this suit was filed.

25. Having never managed a mega 403(b) Plan, meaning a plan with over \$500 million dollars in assets, *see Center for Retirement and Policy Studies, Retirement Plan Landscape Report* 18 (March 2022) (“Mega plans have more than \$500 million in assets,”) Plaintiff, and all participants in the Plan, lacked actual knowledge of reasonable fee levels available to the Plan.

26. NorthShore University HealthSystem (“NorthShore University”), headquartered at 1301 Central Street, Evanston, IL 60201, includes six hospitals – Evanston, Glenbrook, Highland Park, Northwest Community, Skokie, and Swedish. NorthShore University includes a 900-physician multispecialty group practice, NorthShore Medical Group, with more than 140 locations in the Chicago area. NorthShore University has annual revenues of \$3.2 billion and employs 17,000 people. In this Complaint, “NorthShore University” refers to the named Defendants and all parent, subsidiary, related, predecessor, and successor entities to which these allegations pertain.

27. NorthShore University acted through its officers, including Gerald P. Gallagher, its President, and Chief Executive Officer, to perform Plan-related fiduciary functions in the course and scope of their business. Gallagher appointed Plan fiduciaries on the Committee, had the power to remove them, and accordingly had a concomitant fiduciary duty to monitor and supervise those appointees under Plan Article 13.1(a). For these reasons, NorthShore University and Gallagher are fiduciaries of the Plan, within the meaning of 29 U.S.C. § 1002(21)(A).

28. The Retirement Plan Administrative Committee and the Retirement Plan Investment Committee (“Committee Defendants”) are the Plan Administrators under Plan Articles 13. As the Plan Administrators, Committee Defendants are fiduciaries with day-to-day administration and operation of the Plan under 29 U.S.C. § 1002(21)(A). Committee Defendants have authority and responsibility for the control, management, and administration of the Plan in accord with 29 U.S.C. § 1102(a), with all powers necessary to properly carry out such responsibilities. Plan Articles 13.4-13.5.

29. The Plan is a Section 403(b) “defined contribution” pension plan under 29 U.S.C. § 1002(34), meaning that NorthShore University’s contributions to the payment of Plan costs is guaranteed but the pension benefits are not. In a defined contribution plan, the value of participants’ investments is “determined by the market performance of employee and employer contributions, less expenses.” *Tibble*, 575 U.S. at 525.

30. In 2020, the Plan had about \$1,793,319,571 in assets entrusted to the care of the Plan’s fiduciaries. The Plan thus had substantial bargaining power regarding Plan fees and expenses. Defendants, however, did not regularly monitor Voya to ensure that Voya, and the Plan investments and services selected, remained the prudent and objectively reasonable choice.

31. With 11,669 participants in 2020, the Plan had more participants than 99.85% of the defined contribution plans in the United States that filed 5500 forms for the 2020 Plan year. Similarly, with \$1,793,319,571 in assets in 2020, the Plan

had more assets than 99.90% of the defined contribution plans in the United States that filed 5500 forms for the 2020 Plan year.

**ERISA'S FIDUCIARY STANDARDS IN THE
DEFINED CONTRIBUTION INDUSTRY**

32. Over the past three decades, defined contribution plans have become the most common employer-sponsored retirement plan. A defined contribution plan allows employees to make pre-tax elective deferrals through payroll deductions to an individual account under a plan. An employer may also make matching contribution based on an employee's elective deferrals.

33. Employees with money in a plan are referred to as "participants" under ERISA Section 3(7), 29 U.S.C. § 1002(7).

34. Although NorthShore contributed employer matching contributions to Plan participants during the Class Period, these matching contributions are irrelevant to whether a Plan has paid excessive plan recordkeeping or managed account fees or other types of Plan expenses.

35. While contributions to a plan account and the earnings on investments will increase retirement income, fees and expenses paid by the plan may substantially reduce retirement income. Fees and expenses are a significant factor that affect plan participant's investment returns and impact their retirement income.

36. According to the United States Department of Labor, Employers must:

- (1) establish a prudent process for selecting investment options and service providers;
- (2) ensure that fees paid to service providers and other plan expenses are reasonable

in light of the level and quality of services provided; and (3) monitor investment options and service providers once selected to make sure they continue to be appropriate choices. *See* United States Department of Labor, Employee Benefit Security Administration, *Meeting Your Fiduciary Responsibilities*, 12 at <https://www.dol.gov/sites/dolgov/files/ebsa/about-ebsa/our-activities/resource-center/publications/meeting-your-fiduciary-responsibilities.pdf> (last visited Aug. 11, 2022) (hereinafter “DOL Fiduciary Publication”) (“If you are hiring third-party service providers, have you looked at a number of providers, given each potential provider the same information, and considered whether the fees are reasonable for the services provided?”).

Recordkeeping Services

37. Defined contribution plan fiduciaries of mega 401(k) plans hire service providers to deliver a retirement plan benefit to their employees. There is a group of national retirement plan services providers commonly and generically referred to as “recordkeepers,” that have developed bundled service offerings that can meet all the needs of mega retirement plans with same level and caliber of services. Voya is one such recordkeeper.

38. These recordkeepers deliver all the essential recordkeeping and related administrative (“RKA”) services through standard bundled offerings of the same level and quality as other recordkeepers who service mega plans.

39. The fees charged by recordkeepers for RKA services are impacted by 1) the costs of providing the RKA services; 2) the competitive environment related to

what other recordkeepers would charge to provide materially identical services; and

3) the revenues that a recordkeeper can generate from both the recordkeeping fees as well as other ancillary revenue based on the potential to manage proprietary investment options in the plan.

40. Recordkeepers determine their willingness to accept fees for providing RKA services based on an evaluation of the potential profitability of a retirement plan services relationship.

41. Providing RKA services involves both fixed and variable costs. The more participants in a plan, the greater proportion of the costs are variable costs which, in turn, means the closer the average cost per participant approaches the variable cost per participant.

42. All else being equal, the more participants a plan has, a recordkeeper will be able to provide a lower fee per participant to provide identical RKA services to maintain the same profit margin rate.

43. As a result, it is axiomatic in the retirement plan services industry that the more participants in a plan, the lower the effective RKA fee per participant the plan can negotiate. All prudent plan fiduciaries and their consultants and advisors are aware of this industry dynamic.

44. There are two types of essential RKA services provided by all recordkeepers. The first type, “Bundled RKA” services, include:

- a. Recordkeeping;

- b. Transaction Processing (which includes the technology to process purchases and sales of participants' assets as well as providing the participants the access to investment options selected by the plan sponsor);
- c. Administrative Services related to converting a plan from one recordkeeper to another recordkeeper;
- d. Participant communications (including employee meetings, call centers/phone support, voice response systems, web account access, and the preparation of other communications to participants, e.g., Summary Plan descriptions and other participant materials);
- e. Maintenance of an employer stock fund;
- f. Plan Document Services which include updates to standard plan documents to ensure compliance with new regulatory and legal requirements;
- g. Plan consulting services including assistance in selecting the investments offered to participants;
- h. Accounting and audit services including the preparation of annual reports, e.g., Form 5500;
- i. Compliance support which would include, e.g., assistance interpreting plan provisions and ensuring the operation of the plan follows legal requirements and the provisions of the plan;
- j. Compliance testing to ensure the plan complies with Internal Revenue nondiscrimination rules; and
- k. Trustee / custodian services.

45. The second type of essential RKA services, hereafter referred to as "A La Carte services," provided by all recordkeepers, often have separate, additional fees

based on the conduct of individual participants and the usage of the service by individual participants (usage fees). These “A La Carte RKA” services typically include the following:

- a. Loan processing;
- b. Brokerage services/account maintenance;
- c. Distribution services; and
- d. Processing of Qualified Domestic Relations Orders (QDROs).

46. The sum of the total Bundled RKA fees plus the total A La Carte RKA fees equals the Total RKA fees.

47. As the retirement plan services industry evolved over the past forty-plus years, the recordkeepers have developed automated or semi-automated processes for providing the RKA services.

48. In practice, there are no material difference between the services that are offered and provided by national recordkeepers. Rather, some recordkeepers may differ in *how* they deliver the services.

49. Indeed, according to the April 1, 2019 Administrative Service Agreement between NorthShore and Voya, Schedule A (“Scope of Contractor Services”), a standard package of RKA services were provided to the Plan including: (1) plan enrollment materials and basic investment education material; (2) introductory on-site education and enrollment meetings for employees; (3) ongoing allocation of Plan contributions; (4) Plan testing for tax purposes; (5) ongoing maintenance of Plan beneficiary designations; (6) ongoing administration of the Plan; (7) ongoing maintenance

and recordkeeping of individual participant account records and processing all Plan transactions; (8) generation of periodic Plan reports; (9) processing of participant benefit payment requests; (10) establish an electronic interface with employer; (11) access to customer service representatives via toll free telephone lines; and (12) access to internet site and mobile app.

50. The 408(b)(2) Plan Sponsor Fee Disclosures from Voya to NorthShore also establishes that NorthShore received a standard package of RKA services from Voya including: (1) 1099R or W2 reporting on distributions payable to the participant; (2) Administration to plan rules in the absence of a Third Party Administrator; (3) Client relationship management; (4) Communications to help educate, guide and motivate your participants to take full advantage of the benefits of your plan; (5) Comprehensive support to help navigate regulatory landscape; (6) Technology to help manage plan; (7) Daily account valuations and reconciliations; (8) Dedicated Plan Participant Website; (9) Dedicated Plan Sponsor Website; (10) Disbursement of funds as directed by authorized plan representatives; (11) Establishment and maintenance of participant accounts; (12) Financial education and counseling for terminated or retiring employees; (13) Fund scorecard to help assess performance of funds; and (14) Monitoring Internal Revenue Code default limits.

51. The NorthShore Plan, with these specific RKA services provided by Voya, had a standard level of Bundled RKA services, providing Bundled RKA services of a nearly identical level and quality to all other recordkeepers who also serviced mega plans during the Class Period.

52. Because the RKA offerings are materially identical among all recordkeepers who provide services to large plans, like the NorthShore plan, it is the standard and prevailing practice for retirement plan consultants and advisors (experts in the retirement plan industry) to request quotes by asking what the recordkeeper's revenue requirement is on a per participant basis for providing the Bundled RKA services.

53. Similarly, in most cases differences in fee rates for the A La Carte services are immaterial in determining the total fees charged by recordkeepers. To the extent that some recordkeepers have charged higher fees for these services, when those recordkeepers are in a competitive situation (in which they may not win the business), they will reduce their A La Carte fee rates to be competitive with what others are charging.

54. The same is true for the Bundled RKA fee rates charged by recordkeepers. Retirement plan consultants and advisors primarily use the Bundled RKA fee rate of different recordkeepers to make fee rate comparisons and determine whether the Bundled RKA fee rate is reasonable.

55. This approach is validated by the structure of the request for proposals ("RFPs") sent out by retirement plan consultants and advisors and the responses provided by the recordkeepers and then the summary of the evaluations created by the retirement plan consultants and advisors.

56. For mega plans, like the NorthShore Plan, any immaterial variations in the way certain services are received by one plan compared to another plan have an immaterial impact on the reasonable market rate for Bundled RKA services.

57. As a result, comparisons of the fees paid by similar sized plans are meaningful and provide a reasonable basis for determining whether an inference of imprudence is warranted based on the RKA fees being paid by any specific plan.

58. Additionally, any minor variation in the level and quality of the NorthShore Bundled RKA services described above and provided by other recordkeepers has little to no material impact on the fees charged by recordkeepers.

59. Since well before 2015, industry experts have maintained that for mega retirement plans like the NorthShore Plan, prudent fiduciaries treat Bundled RKA services as a commodity with little variation in price. “Custody and recordkeeping are ‘commodity’ services. Like any commodity, given equal quality, the key benchmark for these services is price. The cheaper you can find competent custody and recordkeeping services, the better for participants.” Eric Droblyen, *Evaluating 401(k) Providers: Separating Commodity from Value-Added Services*, <https://www.employeebeneficiary.com/blog/evaluating-401k-providers-separating-commodity-value-added-services> (Feb. 10, 2015).

60. Industry experts know that recordkeeping services have become a commodity for retirement plan fiduciaries; virtually every major recordkeeper provide the same core services as Voya does to NorthShore. See, e.g., Allen Steinberg, *Unchecked Revenue: Show Me the Fees*, <https://blog.retireaware.com/2018/01/12/unchecked-revenue/> (last visited Sep. 15, 2022); Fred Barstein, Investment News, *Potential Pru Retirement Sale a Cautionary Tale of a 401(k) Innovator*, <https://www.investmentnews.com/prudential-retirement-sale-cautionary-tale-innovatio-205453> (Apr. 20,

2021) (“It is no wonder, but certainly disappointing, that one of the industry’s most innovative providers, Prudential Retirement, is reportedly exploring a sale. That highlights how much record keeping has become a commodity focused on scale and costs.”).

61. Fidelity, the largest 401(k)/403(b) recordkeeper in the country, has conceded that the RKA services that it provides to mega Plans are commodified, including to its own Plan for its own employees.

62. As part of stipulated facts in a similar ERISA fees case, Fidelity stated: “The value of the recordkeeping services that Fidelity provided to the Plan in 2014 was \$21 per participant; the value of the recordkeeping services that Fidelity provided to the Plan in 2015 and 2016 was \$17 per participant, per year, and the value of the recordkeeping services that Fidelity has provided to the Plan since January 1, 2017 is \$14 per participant, per year. *Had the Plan been a third-party plan that negotiated a fixed fee for recordkeeping services at arm’s length with Fidelity it could have obtained recordkeeping services for these amounts during these periods. The Plan did not receive any broader or more valuable recordkeeping services from Fidelity than the services received by any other Fidelity-recordkept plan with at least \$1 billion in assets during the Class Period (November 18, 2014 to the present).*” See *Moitoso v. FMR LLC, et al.*, 1:18-CV-12122-WGY, Stipulation of Facts, Dkt. 128-67, at 4-5 (D. Mass. Sep. 6, 2019) (emphasis added).

63. All recordkeepers quote fees for the Bundled RKA services on a per participant basis without regard for any individual differences in services requested, like

Fidelity, which are treated by the recordkeepers as immaterial because they are inconsequential from a cost perspective to the delivery of the Bundled RKA services.

64. Because dozens of recordkeepers can provide the complete suite of required RKA services, like the ones Voya provided to NorthShore, plan fiduciaries can ensure that the services offered by each specific recordkeeper are apples-to-apples comparisons.

65. Plan fiduciaries use the Bundled RKA fee rate as the best and most meaningful way to make apples-to-apples comparisons of the recordkeeping fee rates proposed by recordkeepers.

66. Plan fiduciaries request bids from recordkeepers by asking what the recordkeeper's Bundled RKA revenue requirement is to administer the plan.

67. There is nothing disclosed in the Participant Section 404(a)(5) fee and service disclosure documents, Section 408(b)(2) plan sponsor fee disclosure documents, or administrative service agreements between NorthShore and Voya that suggests that the annual RKA fees charged to participants included any services that were unusual or above and beyond the standard RKA services provided by all national recordkeepers to mega plans with more than \$500,000,000 in assets.

68. By the start of, and during the entire Class Period, the level of fees that recordkeepers have been willing to accept for providing RKA has stabilized, and has not materially changed for mega plans, including the NorthShore Plan. Reasonable recordkeeping fees paid in 2018 are representative of the reasonable fees during the

entire Class Period. *See The Economics of Providing 401(k) Plans: Services, Fees, and Expenses, 2020*, ICI Research Perspective, at 4 (June 2021).

69. The investment options selected by plan fiduciaries often also have a portion of the total expense ratio allocated to the provision of recordkeeping performed by the recordkeepers on behalf of the investment manager in the form of Investment Fees.

70. Collecting a portion of the total expense ratio fee of the mutual fund in exchange for providing services that would otherwise have to be provided by the mutual fund is known as “revenue sharing” or “indirect compensation.” The NorthShore Plan paid its Plan services providers by both direct and indirect compensation.

71. The amount of compensation paid to Plan service providers must be *reasonable* (not the cheapest or the average in the market).

72. Reasonable, in turn, depends on contextually understanding the market for such RKA services at the time that the recordkeeping contract is entered into. *Fifth Third Bancorp v. Dudenhoeffer*, 573 U.S. 409, 425 (2014).

Investments

73. Plan fiduciaries of a defined contribution plan have a continuing and regular responsibility to select and monitor all investment options they make available to Plan participants.

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

75. In selecting different investment options to make available to plan participants, plan fiduciaries are held to the prudent investor standard when choosing investment managers or, alternatively, choosing index investment options.

76. When choosing an active investment option, the analysis is focused on determining whether the portfolio manager is likely to outperform an appropriate benchmark. Thus, the primary emphasis when choosing an active investment option to make available to plan participants is the skill of the portfolio manager.

THE PLAN

77. During the entire Class Period, the Plan received RKA services from Voya.

78. At all relevant times, the Plan's RKA fees were objectively unreasonable and excessive when compared with other comparable 401(k) and 403(b) plans offered by other sponsors that had similar numbers of plan participants.

79. The fees were also excessive relative to the level and quality of record-keeping services received because industry experts have observed that the same level and quality of services are generally offered to mega plans, like the NorthShore University Plan, regardless of the number or level of services selected by the Plan and regardless of the specific service codes utilized by the plan on the Form 5500.

80. This is true regardless of the specific service codes listed by the plan on the Form 5500. *See Droblyen, supra; Steinberg, supra; Barstein, supra.* For example, all recordkeepers provide communications to plan participants but neither Wells

Fargo nor Merrill list service code “38 Participant communication” in the Plan’s Form 5500.

81. It is clear based on the 5500 forms, 404(a)(5) participant fee disclosures, 408(b)(2) plan sponsor fee disclosures, and the administrative service agreement between Voya and NorthShore, that Voya provided materially identical services as the standard package of RKA services provided by all recordkeepers to mega plans and did not provide any higher level or quality of services.

82. These excessive Bundled Plan RKA fees led to lower net returns than participants in comparable 401(k) and 403(b) plans enjoyed.

83. During the Class Period, Defendants breached their duty of prudence owed to the Plan, to Plaintiff, and all other Plan participants, by authorizing the Plan to pay objectively unreasonable fees for RKA services.

84. Defendants’ fiduciary mismanagement of the Plan, to the detriment of Plaintiff, Plan participants and their beneficiaries, breached their fiduciary duties of prudence in violation of Section 404(a)(1)(B), 29 U.S.C. § 1104(a)(1)(B) and caused Plaintiff and members of the Class millions of dollars of harm to their Plan accounts.

STANDARD OF CARE FOR PRUDENT FIDUCIARIES
SELECTING & MONITORING ITS RECORDKEEPER

85. Prudent plan fiduciaries ensure they are paying only reasonable fees for RKA by engaging in an “independent evaluation,” see *Hughes*, 142 S. Ct. at 742, and soliciting competitive bids from other recordkeepers to perform the same level and quality of services currently being provided to the Plan. *See, e.g.*, U.S. DEPARTMENT OF LABOR, *Understanding Retirement Plan Fees and Expenses*, at 6,

<https://www.dol.gov/sites/dolgov/files/EBSA/about-ebsa/our-activities/resource-center/publications/understanding-retirement-plan-fees-and-expenses.pdf> (last visited Oct. 10, 2022) (“Once you have a clear idea of your requirements, you are ready to begin receiving estimates from prospective providers. Give all of them complete and identical information about your plan and the features you want so that you can make a meaningful comparison. This information should include the number of plan participants and the amount of plan assets as of a specified date.”).

86. Prudent plan fiduciaries can easily receive a quote from other recordkeepers to determine if their current level of RKA fees is reasonable in light of the level and quality of RKA services. It is not a cumbersome or expensive process.

87. It is the standard of care prevailing among industry experts to solicit competitive bids every three to five years. *See* CAPTRUST, *Understanding and Evaluating Retirement Plan Fees / Part One: A Holistic Approach*, <https://www.captrust.com/understanding-and-evaluating-retirement-plan-fees-part-one-a-holistic-approach/> (stating “best practice is . . . a more formal recordkeeper search and selection process conducted approximately every three to five years. Recordkeeping and administrative fees should be evaluated and compared to plans of similar size and type that are receiving analogous services. While each plan is unique—making an apples-to-apples comparison imperfect—evaluating fees against similarly situated and sized plans provides a good reference point in helping to determine if plan fees are reasonable.”).

88. A plan fiduciary is required to fully understand all sources of revenue received by its recordkeeper. It must regularly monitor that revenue to ensure that the compensation received is, and remains, reasonable for the quality and level of services provided.

89. Prudent plan fiduciaries ensure they are paying only reasonable fees for recordkeeping by engaging in an “independent evaluation,” see *Hughes*, 142 S. Ct. at 742, through soliciting competitive bids from other recordkeepers to perform the same level and quality of services currently being provided to the Plan.

90. Having received bids, prudent plan fiduciaries can negotiate with their current recordkeeper for a lower fee or move to a new recordkeeper to provide the same (or better) level and qualities of services for a more competitive, reasonable fee if necessary.

91. A benchmarking survey alone is inadequate. Such surveys skew to higher “average prices,” that favor inflated Bundled RKA fees. To receive a truly “reasonable” Bundled RKA fee in the prevailing market, prudent plan fiduciaries engage in solicitations of competitive bids on a regular basis (about every 3 years).

92. Prudent fiduciaries implement three related processes to prudently manage and control a plan’s recordkeeping costs. *Tussey v. ABB, Inc.*, 746 F.3d 327, 336 (8th Cir. 2014).

93. First, a hypothetical prudent fiduciary tracks the recordkeeper’s expenses by demanding documents that summarize and contextualize the record-

keeper's compensation, such as fee transparencies, fee analyses, fee summaries, relationship pricing analyses, cost-competitiveness analyses, and multi-practice and standalone pricing reports.

94. Second, to make an informed evaluation as to whether a recordkeeper is receiving no more than a reasonable fee for the quality and level of services provided to a plan, prudent hypothetical fiduciaries must identify all fees, including direct compensation and revenue sharing being paid to the plan's recordkeeper.

95. Third, a hypothetical plan fiduciary must remain informed about overall trends in the marketplace regarding the fees being paid by other plans, as well as the recordkeeping rates that are available. By soliciting bids from other recordkeepers, a prudent plan fiduciary can quickly and easily gain an understanding of the current market for the same level and quality of recordkeeping services.

96. Accordingly, the only way to determine the *reasonable*, as opposed to the *lowest*, *cheapest*, or *average*, market price for a given quality and level of recordkeeping services is to obtain competitive bids from other providers in the market.

**PLAN FIDUCIARIES DID NOT EFFECTIVELY MONITOR
RKA FEES AND THE PLAN PAID UNREASONABLE RKA FEES**

97. A plan fiduciary must continuously monitor its Bundled RKA fees by regularly conducting an independent evaluation of those fee to ensure they are reasonable and remove recordkeepers if those fees are unreasonable. *See Hughes*, 142 S. Ct. at 742.

98. During the Class Period, Defendants failed to regularly monitor the Plan's Bundled RKA fees paid to its recordkeepers, Voya.

99. During the Class Period, Defendants failed to regularly solicit quotes and/or competitive bids from recordkeepers, including but not limited to Voya, in order to avoid paying unreasonable Bundled RKA fees.

100. During the Class Period, and unlike a hypothetical prudent fiduciary, Defendants followed a fiduciary process that was done ineffectively given the objectively unreasonable Bundled RKA fees it paid to Voya, and in light of the level and quality of recordkeeper services it received from Voya.

101. Plan Expenses include two types of Bundled RKA fees according to the Plan's 2021 Summary Plan Description (SPD), which are both paid by Plan participants. These fees are in addition to any A La Carte fees charged to individuals for specific services like loans or QDROs.

102. First, Investment Fees are generally charged by the investment firms that manage the investment options offered under the Plan and are seen as expense ratios. Expense ratios are expressed as a percentage of assets (i.e., the total dollar value invested in that fund) and are factored in the Net Asset Value ("NAV") of each investment option under the Plan. NAV includes the investment fund management fee and other related investment fund fees of the investment options offered under the TDA Plan. These fees are not directly deducted from participant's individual accounts, but rather are deducted from the investment fund assets before investment returns are calculated for anyone invested in that particular fund.

103. Second, Administrative Fees generally cover costs related to the daily operation and administration of the Plan for the benefit of participants (e.g., record-keeping expenses paid to Voya). This is an asset-based fee where participants incur an annual administrative fee equal to 0.0640% (0.000640) of their account balance under the Plan. This fee will be charged to participant accounts at the end of each calendar quarter for various administrative services utilized by the Plan and participants see this as a separate line item on their quarterly statement.

104. From the years 2016 through 2020, the table below shows the actual year-end participants and annual RKA fees, illustrating that the Plan had on average 10,383 participants with account balances and paid an average effective annual Bundled RKA fee of at least approximately \$1,110,876, which equates to an average of at least approximately \$107 per participant. These are the minimum amounts that could have been paid:

Bundled Recordkeeping and Administration (Bundled RKA) Fees						
	2016	2017	2018	2019	2020	<i>Average</i>
Participants	9,536	10,021	10,221	10,469	11,669	<i>10,383</i>
Est. Bundled RKA Fees	\$1,556,513	\$1,019,453	\$830,485	\$1,007,251	\$1,140,680	<i>\$1,110,876</i>
Est. Bundled RKA Per participant	\$163	\$102	\$81	\$96	\$98	<i>\$107</i>

105. From the years 2016 through 2020, the table below illustrates the annual *Total* RKA fees (Bundled and A La Carte) paid by other comparable plans of similar sizes with similar amounts of money under management, receiving at least the same level and quality of services for less, compared to the average annual

Bundled RKA fees paid by the Plan (as identified in the table above). These other plans used different high-quality, national recordkeepers.

Comparable Plans' TOTAL RKA Fees Based on Publicly Available Information from Form 5500

(Price Calculations are based on 2018 Form 5500 information)

Plan	Partici- pants	Assets	Total RKA Fee	Total RKA Fee /pp	Record- keeper	Graph Color
The Boston Consulting Group, Inc. Employees' Savings Plan And Profit Sharing Retirement Fund	8,067	\$894,454,060	\$336,660	\$42	Vanguard	White
Bausch Health Companies Inc. Retirement Savings Plan	8,902	\$904,717,349	\$322,496	\$36	Fidelity	White
Ralph Lauren Corporation 401(K) Plan	9,389	\$552,586,935	\$290,066	\$31	T. Rowe Price	White
Republic National 401(K) Plan	9,922	\$671,989,837	\$324,171	\$33	Great-West	White
Northshore Plan Average Fee	10,383	\$1,438,299,630	\$1,110,876	\$107	Voya	Red
Southern California Permanente Medical Group Tax Savings Retirement Plan	10,770	\$773,795,904	\$333,038	\$31	Vanguard	White
Viacom 401(K) Plan	12,196	\$1,249,874,734	\$376,314	\$31	Great-West	White
Fortive Retirement Savings Plan	13,502	\$1,297,404,611	\$472,673	\$35	Fidelity	White

106. The RKA fees calculated for each similar comparable plan in the table above include all the direct compensation paid to the recordkeeper disclosed on each plan's Form 5500, as well as all indirect compensation. Specifically, if the plan's pricing structure as described in each plan's Form 5500 reveals that some or all of the revenue sharing is not returned to the plan, then the appropriate amount of

revenue sharing is also included to calculate the RKA fees. In some cases, the plan's investment options do not contain revenue sharing and, as a result, any indirect revenue is immaterial to the RKA fees. In other plans, all of the revenue sharing is returned to the plans and is therefore not included in the fee calculation.

107. The comparable plans above received at least the same RKA services received by the Plan for the fees paid. In other words, the fees in the table above are apples-to-apples comparisons in that they include all the fees being charged by each recordkeeper to provide the same RKA services to similar defined contribution plans.

108. As the table above indicates, the fees paid by the Plan for virtually the same package of services are much higher than those of plans with comparable, and in many cases smaller, participant counts. Based on fees paid by other large plans during the Class Period receiving materially identical RKA services, it is clear and more than reasonable to infer that Defendants failed to follow a prudent process to ensure that the Plan was paying only reasonable fees.

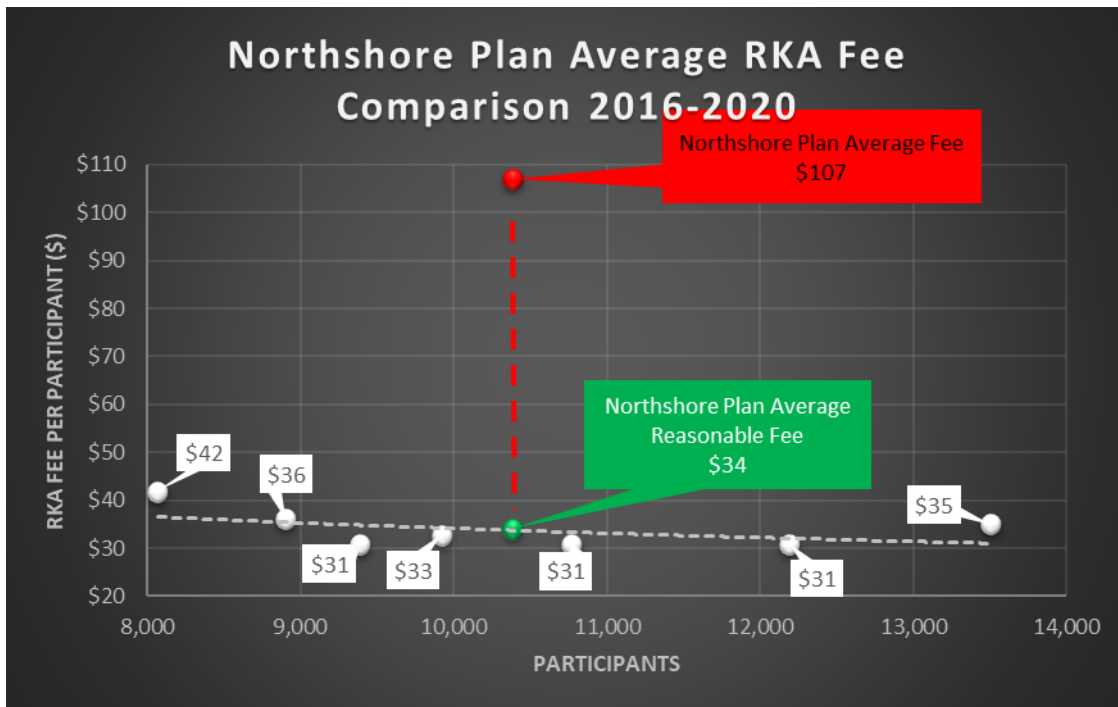
109. In light of the amounts remitted to Voya throughout the Class Period, Defendants clearly engaged in virtually no examination, comparison, or benchmarking of the RK&A fees of the Plan to those of other similarly sized defined contribution plans, or were complicit in paying grossly excessive fees.

110. Defendants' failure to recognize that the Plan and its participants were grossly overcharged for RKA services and their failure to take effective remedial actions amounts to a breach of their fiduciary duties to the Plan.

111. To the extent Defendants had a process in place, it was imprudent and ineffective given the objectively unreasonable level of fees the Plan paid for RKA services.

112. Had Defendants appropriately monitored the compensation paid to Voya and ensured that participants were only charged reasonable RKA fees, Plan participants would not have lost millions of dollars in their retirement savings over the last six-plus years

113. From the years 2016 through 2020, the graph below illustrates the annual *Total* RKA fees paid by other comparable plans of similar sizes with similar amounts of money under management, receiving a similar level and quality of services, compared to the average annual Bundled RKA fees paid by the NorthShore Plan (as identified in the table above), with the white data points representing Total RKA fees that recordkeepers offered to (and were accepted by) comparable plans.



114. From the years 2016 to 2020, the table and graph above illustrate that the Plan paid an effective average annual Bundled RKA fee of at least \$107 per participant for RKA.

115. Comparing the Bundled RKA fees of the NorthShore Plan with the Total RKA fees (Bundled + A La Carte) of the comparator plans means that the chart above significantly underestimates the excessive RKA fees paid by the NorthShore Plan to Voya during the Class Period.

116. As noted above, the more participants a plan has, the lower the effective fee per participant that recordkeepers are willing to provide. The trend line in the graph represents a per participant fee rate for a given number of participants around which a plan fiduciary would expect to receive initial bids for the Bundled RKA services.

117. The fact that the amount paid by the NorthShore Plan to Voya for RKA services *increased* during the Class Period, while the number of participants *increased*, is yet another indicia of the imprudence of Defendants' fiduciary process in continuing to contract with Voya throughout the Class Period.

118. When a plan fiduciary follows prudent practices as outlined by the Department of Labor ("DOL") and solicits bids from several recordkeepers in a competitive environment, some initial bids for the Bundled RKA services would be below the trend line and others would be above the trend line. Ultimately, a prudent plan fiduciary should be able to negotiate a Bundled RKA fee lower than the trend line such that the total RKA fee would be proximate to the trend line.

119. From the years 2016 through 2020, the table and graph above illustrate that a hypothetical prudent plan fiduciary would have paid on average an effective annual RKA fee of around \$34 per participant, if not lower.

120. From the years 2016 through 2020, and as also compared to other plans of similar sizes with similar amounts of money under management, had Defendants been acting prudently, the Plan actually would have paid significantly less than an average of approximately \$1,110,876 per year in Bundled RKA fees, which equated to an effective average of approximately \$107 per participant per year.

121. From the years 2016 through 2020, and as also compared to other plans of similar sizes with similar amounts of money under management, receiving a similar level and quality of services, had Defendants been acting prudently, the Plan actually would have paid on average a reasonable effective annual market rate for

Total RKA of approximately \$353,029 per year, which equates to approximately \$34 per participant per year. During the entirety of the Class Period, a hypothetical prudent plan fiduciary would not agree to pay *almost three times* what they could otherwise pay for Total RKA.

122. From the years 2016 through 2020, the Plan additionally cost its participants on average at least \$757,848 per year in Bundled RKA fees, which equates to on average approximately \$73 per participant per year.

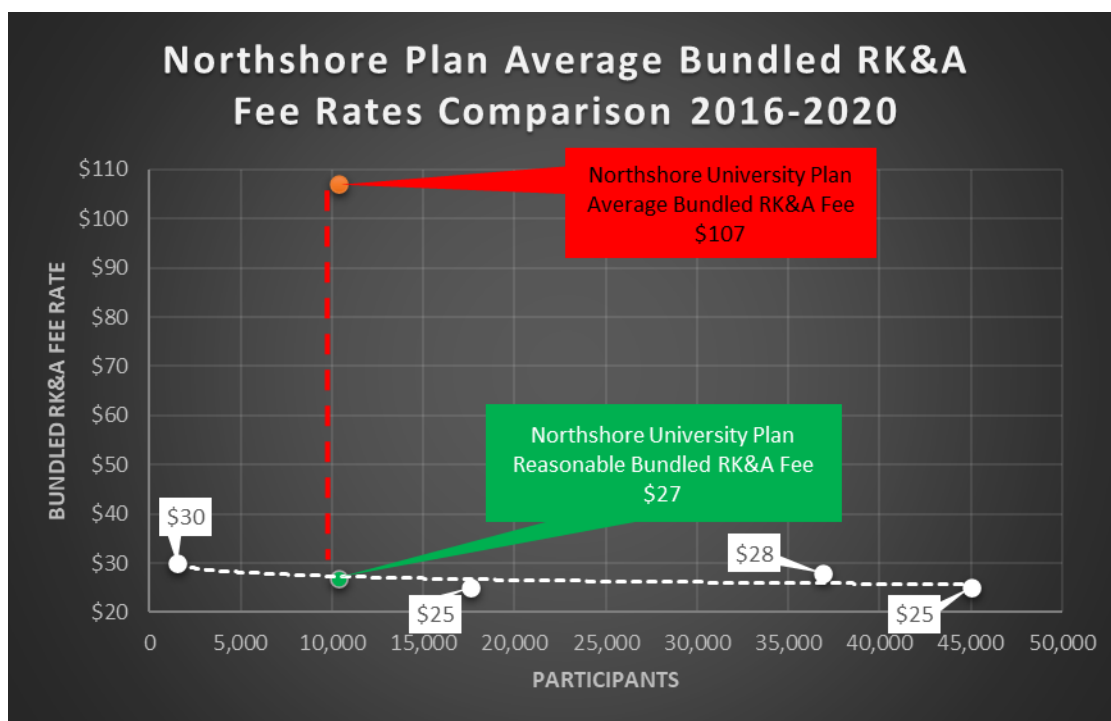
123. From the years 2016 to 2020, and because Defendants did not act prudently, and as compared to other plans of similar sizes with similar amounts of money under management, receiving a similar level and quality of services, the Plan actually cost its participants a total minimum amount of approximately \$3,789,238 in unreasonable and excessive Bundled RKA fees.

124. From the years 2016 to 2020, because Defendants did not act prudently, and as compared to other plans of similar sizes with similar amounts of money under management, receiving a similar level and quality of services, the Plan actually cost its participants (when accounting for compounding percentages) a total, cumulative amount in excess of \$4,684,605 in excessive Bundled RKA fees.

125. Alternatively, the chart below shows several examples of Bundled RK&A Fee rates from other comparable plan's Participant Fee Disclosures (404a-5's). The equivalent Bundled RK&A Fee Rate (%) column can be compared to the 0.064% as shown on the Northshore University Participant Fee disclosures from 2016 to 2020. The 0.064% Bundled RK&A Fee rate is equivalent to an average \$107/pp

for the years 2016 to 2020 compared to \$27/pp when compared to the other plans show in the chart below.

Bundled RK&A Fee Rates						
Plan	Participants	Assets	Bundled RK&A Fee Rate (\$ /pp)	Equivalent Bundled RK&A Fee Rate (%)	Recordkeeper	
Trinity Health 403(B) Retirement Savings Plan	1,501	\$429,131,672	\$30	0.0105%	Fidelity	
Northshore University Plan Average Bundled RK&A Fee	10,383	\$1,438,299,630	\$107	0.0772%	Voya	
Team Health 401(k)	17,585	\$1,144,142,462	\$25	0.0384%	Schwab	
Beaumont Health 403(b) Plan	36,916	\$2,098,360,517	\$28	0.0493%	Fidelity	
General Dynamics Corporation 401(K) Plan 6.0	45,018	\$8,193,372,264	\$25	0.0137%	Fidelity	



126. From the years 2016 to 2020, and because Defendants did not act prudently, and as compared to other plans of similar sizes, receiving a similar level and quality of services, under the 404a-5 model, the Plan actually cost its participants a total minimum amount of approximately \$3,672,004 in unreasonable and excessive Bundled RKA fees.

127. From the years 2016 to 2020, because Defendants did not act prudently, and as compared to other plans of similar sizes, receiving a similar level and quality of services, under the 404a-5 model, the Plan actually cost its participants (when accounting for compounding percentages) a total, cumulative amount in excess of \$5,145,083 in excessive Bundled RKA fees.

128. Under either comparison model, Defendants could have offered the exact same RKA services, at the same level and quality, at a more reasonable cost by using a different recordkeeper but did not do so.

129. Although the United States Supreme Court noted in *Hughes* that "[a]t times, the circumstances facing an ERISA fiduciary will implicate difficult tradeoffs, and courts must give due regard to the range of reasonable judgments a fiduciary may make based on her experience and expertise," *Hughes*, 142 S. Ct. at 742, no reasonable tradeoffs existed here because recordkeepers for mega plans are providing the exact same level and quality of services, as industry experts have observed.

130. Defendants failed to take advantage of the Plan's size to timely negotiate lower fees from its existing recordkeepers, Voya, and Defendants could have obtained the same RKA services for less from other, similar recordkeepers.

131. Plaintiff paid these excessive Bundled RKA fees in the form of direct and indirect compensation to the Plan and suffered injuries to his Plan account as a result.

132. Plaintiff has participated in several 401(k) and 403(b) plans from a number of employers and there have been no material differences in the Bundled RKA services that he has received.

133. Plaintiffs do not need to provide examples of similar plans receiving the same services in the same year where the primary drivers of price, as with the NorthShore Plan, are the number of accounts and whether the plan's fiduciaries solicited competitive bids, rather than the marginal cost of recordkeeping for each participant. *See Coyer et al. v. Univar Solutions USA Inc. et al.*, 2022 WL 4534791, at *5 (N.D. Ill. Sept. 28, 2022) (emphasis in original).

134. “The fact that each of the other similarly-sized plans were receiving at least the same services for less provides the kind of circumstantial evidence sufficient to create an inference of imprudence.” *Id.* (citing *Sweda v. Univ. of Pennsylvania*, 923 F.3d 320, 332 (3d Cir. 2019)) (emphasis in original).

135. During the entirety of the Class Period, Defendants knew or had knowledge that it must engage in regular and/or reasonable examination and competitive comparison of the Plan’s Bundled RKA fees it paid to Voya, but Defendants either simply failed to do so, or did so ineffectively given that it *paid nearly triple* for Bundled RKA fees than it should have.

136. The Plan Bundled RKA fees were also excessive relative to the RKA services received as indicated in both the administrative service agreement and the 408(b) plan sponsor fee disclosures, since the quality and level of such services are standard for mega 401(k) and 403(b) plans like this Plan and are provided on an “all-

you-can-eat-basis,” based primarily on the number of participants a plan has. Any difference in Bundled RKA fees between comparable Plans is not explained by the level and quality of services each recordkeeper provides.

137. The market for RKA services for mega plans, like the NorthShore University Plan, is such that all national recordkeepers can provide all the required services that a mega plan might need. Any differences in the quality or scope of the services delivered are immaterial to the difference between what the Plan paid for Bundled RKA services and what the reasonable fair market fee was for substantially identical services.

138. During the entirety of the Class Period and by failing to recognize that the Plan and its participants were being charged much higher Bundled RKA fees than they should have been and/or by failing to take effective remedial actions including removing Voya as the Plan recordkeeper, Defendants breached their fiduciary duty of prudence to Plaintiff and Plan participants.

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

139. For all practical purposes, there is a commonly accepted process to select and monitor investment options which is based on modern portfolio theory and the prudent investor standard.

140. Under ERISA, plan fiduciaries are required to engage investment consultants or advisors to the extent that the plan fiduciaries do not have the investment expertise necessary to select and monitor investments under modern portfolio theory.

141. That accepted process involves evaluating the performance history, tenure, and stability, of the current portfolio manager, the risk adjusted returns, and the fees.

142. Although there is nothing inappropriate in having active investment options as a plan investment options, when an active investment option is chosen, one of the most critical aspects of the analysis is to choose a portfolio manager because it is the skill of the portfolio manager that differentially impacts the performance of the investment.

143. From the perspective of a plan participant, the other critical component of the analysis is the fees. The “total expense ratio” of an investment option is often comprised of multiple different types of fees, only one of which is specifically associated with the fee of the actual portfolio manager.

144. As a result, a plan fiduciary is required to understand the interrelationship between the pricing structure it has negotiated with the recordkeeper for record-keeping services as well as the different fee components of the investment options selected to be made available to plan participants.

THE PLAN’S INVESTMENT IN HIGH-COST FUNDS

145. *Hughes v. Northwestern Univ.* holds that every investment on an ERISA plan's menu must be prudent, and "participants' ultimate choice over their investments [does not] excuse allegedly imprudent decisions by [fiduciaries]." 142 S. Ct. at 742.

146. During the Class Period, the chart below identifies several investment options that Defendants selected and/or made available to Plan participants as compared to prudent alternative and less expensive options in the same Morningstar investment category with the same investment approach and similar performance histories:

Defendants' Investment					Prudent Alternative Investments					Defendants' Plan's Investment Excessive Fees (%)
Ticker	Fund Name	Exp Ratio (%)	Revenue Sharing (%)	Net Investment Expense to Retirement Plans (%)	Ticker	Fund Name	Exp Ratio (%)	Revenue Sharing (%)	Net Investment Expense to Retirement Plans (%)	
HLMEX	Harding Loevner Instl Emerg Mkts I	1.10%	0.10%	1.00%	RNWGX	American Funds New World R6	0.57%	0.00%	0.57%	75%
LSVEX	LSV Value Equity	0.65%	0.00%	0.65%	RMFGX	American Funds American Mutual R6	0.27%	0.00%	0.27%	141%
NRGSX	Neuberger Berman Genesis R6	0.74%	0.00%	0.74%	ODIIX	Invesco Discovery R6	0.63%	0.00%	0.63%	17%
TBCIX	T. Rowe Price Blue Chip Growth I	0.56%	0.00%	0.56%	JLGMX	JPMorgan Large Cap Growth R6	0.44%	0.00%	0.44%	27%
VYAXX	Voya Government Money Market A	0.40%	0.15%	0.25%	VUSXX	Vanguard Treasury Money Market Investor	0.09%	0.00%	0.09%	178%
VYSEX	Voya Small Company R6	1.03%	0.00%	1.03%	MSCDX	MassMutual Small Cap Opps R5	0.75%	0.15%	0.60%	72%
Average		0.75%	0.04%	0.71%	Average		0.46%	0.03%	0.43%	85.06%

147. During the Class Period and based on the chart above, the average net expense ratio of the investments selected and made available to Plan participants by the Plan fiduciaries identified above was 0.71%, or 71 basis points.

148. During the Class Period and based on the charts above, the investment options selected by the Plan fiduciaries were 85.06% more expensive than prudent alternative and less expensive options covering the same Morningstar investment category, providing the same investment approach, and having similar performance histories.

149. The prudent alternative investment options below (listed second) would have provided to Plan participants less expensive, substantially similar, investment options in the same Morningstar investment category:

Current Investment Name	Current Investment Category	Prudent Alternative Investment Name	Prudent Alternative Investment Category
Harding Loevner Instl Emerg Mkts I	US Fund Diversified Emerging Mkts	American Funds New World R6	US Fund Diversified Emerging Mkts
LSV Value Equity	US Fund Large Value	American Funds American Mutual R6	US Fund Large Value
Neuberger Berman Genesis R6	US Fund Small Growth	Invesco Discovery R6	US Fund Small Growth
T. Rowe Price Blue Chip Growth I	US Fund Large Growth	JPMorgan Large Cap Growth R6	US Fund Large Growth
Voya Government Money Market A	Money Market-Taxable	Vanguard Treasury Money Market Investor	Money Market-Taxable
Voya Small Company R6	US Fund Small Blend	MassMutual Small Cap Opps R5	US Fund Small Blend

150. During the Class Period and had Defendants been acting prudently, Defendants would have selected funds with more reasonable expense ratios than those funds actually selected by Defendants, such as the ones identified in the chart above.

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

152. During the Class Period, Plaintiff had no knowledge of how the fees charged to and paid by the Plan participants compared to any other funds.

153. During the Class Period, Plaintiff did not know about the availability of lower-cost and other essentially identical investment options that Defendants failed to reasonably offer because Defendants provided no comparative information to allow Plaintiff to evaluate and compare Defendants' investment options.

154. During the Class Period, Defendants failed to consider materially similar but less-costly alternatives to the Plan's investment options. The chart above demonstrates that the expense ratios of the Plan's investment options between the years 2016 to 2020 were more expensive by significant multiples of comparable actively managed, alternative funds in the same Morningstar investment categories. A reasonable investigation would have revealed the existence of these alternatives.

155. During the Class Period and because Defendants failed to act prudently by engaging in an objectively reasonable investigation process when selecting its investments, resulting in the selection of unreasonable fund selections, Plaintiff and the Plan's participants incurred objectively unreasonable investment expenses and costs.

156. During the Class Period, and had Defendants acted prudently by engaging in an objectively reasonable investigation process when selecting its investments, Defendants would have chosen lower-cost investment alternatives.

157. During the Class Period and because Defendants failed to act prudently by engaging in an objectively reasonable investigation process when selecting its investments, Defendants caused objectively unreasonable and unnecessary losses to Plaintiff and the Plan's participants in the amount of approximately \$3,923,297 through 2020 and as detailed in the following chart:

Actual Investment Lineup					
	2016	2017	2018	2019	2020
Net Investment Expense to Retirement Plans	\$5,326,241	\$6,080,787	\$5,668,307	\$6,573,897	\$7,445,365

Prudent Alternative Investments					
Net Investment Expense to Retirement Plans	\$4,809,761	\$5,478,518	\$5,170,665	\$5,977,871	\$6,835,212

Est. Investment Damages	\$516,480	\$602,268	\$497,642	\$596,026	\$610,153
Compounding Percentage (VIII)		21.82%	-4.41%	31.48%	18.41%
Est. Cumulative Investment Damages	\$516,480	\$1,231,445	\$1,674,780	\$2,798,027	\$3,923,297

158. During the entirety of the Class Period and by failing to engage in an objectively reasonable investigation process when selecting its investments, Defendants breached their fiduciary duties of prudence to Plaintiff and Plan participants, causing millions of dollars of losses to their retirement accounts.

CLASS ACTION ALLEGATIONS

159. 29 U.S.C. § 1132(a)(2) authorizes any participant or beneficiary of the Plan to bring an action individually on behalf of the Plan to enforce a breaching fiduciary's liability to the Plan under 29 U.S.C. § 1109(a).

160. In acting in this representative capacity, Plaintiffs seek to certify this action as a class action on behalf of all participants and beneficiaries of the Plan. Plaintiffs seek to certify, and to be appointed as representatives of, the following Class:

All participants and beneficiaries of the NorthShore University HealthSystem Tax Deferred Annuity Plan (excluding the Defendants or any participant/beneficiary who is a fiduciary to the Plan) beginning May 16, 2016 and running through the date of judgment.

161. The Class includes approximately 12,000 members and is so large that joinder of all its members is impracticable, pursuant to Federal Rule of Civil Procedure 23(a)(1).

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

- a. Whether Defendants are fiduciaries liable for the remedies provided by 29 U.S.C. § 1109(a);
- b. Whether Defendants breached their fiduciary duties to the Plan;
- c. What are the losses to the Plan resulting from each breach of fiduciary duty; and
- d. What Plan-wide equitable and other relief the Court should impose in light of Defendants' breach of duty and engaging in prohibited transactions.

163. Plaintiffs' claims are typical of the claims of the Class pursuant to Federal Rule of Civil Procedure 23(a)(3), because Plaintiffs were Participants during the time period at issue and all Participants in the Plan were harmed by Defendants' misconduct.

164. Plaintiffs will adequately represent the Class pursuant to Federal Rule of Civil Procedure 23(a)(4), because they are Participants in the Plan during the Class period, have no interest that conflicts with the Class, are committed to the vigorous representation of the Class, and have engaged experienced and competent lawyers to represent the Class.

165. Certification is appropriate under Federal Rule of Civil Procedure 23(b)(1), because prosecution of separate actions for these breaches of fiduciary duties by individual participants and beneficiaries would create the risk of (1) inconsistent or varying adjudications that would establish incompatible standards of conduct for Defendant concerning its discharge of fiduciary duties to the Plan and personal liability to the Plan under 29 U.S.C. § 1109(a), and (2) adjudications by individual participants and beneficiaries regarding these breaches of fiduciary duties and remedies for the Plan would, as a practical matter, be dispositive of the interests of the participants and beneficiaries who are not parties to the adjudication, or would substantially impair those participants' and beneficiaries' ability to protect their interests.

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

167. Plaintiffs' attorneys are experienced in complex ERISA and class litigation and will adequately represent the Class.

168. The claims brought by the Plaintiffs arise from fiduciary breaches and prohibited transactions as to the Plan in its entirety and do not involve mismanagement of individual accounts.

169. The claims asserted on behalf of the Plans in this case fall outside the scope of any exhaustion language in individual participants' Plans. Exhaustion is intended to serve as an administrative procedure for participants and beneficiaries

whose claims have been denied and not where a participant or beneficiary brings suit on behalf of a Plan for breaches of fiduciary duty.

170. Under ERISA, an individual “participant” or “beneficiary” are distinct from an ERISA Plan. A participant’s obligation – such as a requirement to exhaust administrative remedies – does not, by itself, bind the Plan.

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

FIRST CLAIM FOR RELIEF

Breach of Duty of Prudence of ERISA, as Amended (Plaintiff, on behalf of himself and Class, Against Committee Defendants – Bundled RKA Fees)

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

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

174. 29 U.S.C. § 1104(a)(1)(B) imposes a fiduciary duty of prudence upon Committee Defendants in their administration of the Plan.

175. Committee Defendants, as fiduciaries of the Plan, are responsible for selecting a recordkeeper that charges objectively reasonable Bundled RKA fees.

176. During the Class Period, Committee Defendants had a fiduciary duty to do all of the following: ensure that the Plan's Bundled RKA fees were objectively reasonable; defray reasonable expenses of administering the Plan; and act with the care, skill, diligence, and prudence required by ERISA.

177. During the Class Period, Committee Defendants breached their fiduciary duty of prudence to Plan participants, including to Plaintiff, by failing to: ensure that the Plan's Bundled RKA fees were objectively reasonable, defray reasonable expenses of administering the Plan, and act with the care, skill, diligence, and prudence required by ERISA.

178. During the Class Period, Committee Defendants further had a continuing duty to regularly monitor and evaluate the Plan's recordkeeper, Voya, to make sure it was providing the Bundled RKA services at reasonable costs, given the highly competitive market surrounding recordkeeping and the significant bargaining power the Plan had to negotiate the best fees, and remove the recordkeeper if it provided Bundled RKA services at objectively unreasonable costs.

179. During the Class Period, Committee Defendants breached their duty to Plan participants, including Plaintiff, by failing to employ a prudent process and by failing to evaluate the cost of the Plan's Bundled RKA fees critically or objectively in comparison to other recordkeeper options.

180. Through these actions and omissions, Committee Defendants breached their fiduciary duty of prudence with respect to the Plan in violation 29 U.S.C. § 1104(a)(1)(B).

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

182. As a result of Committee Defendants' breach of fiduciary duty of prudence with respect to the Plan's Bundled RKA fees, the Plaintiff and Plan participants suffered millions of dollars in objectively unreasonable and unnecessary monetary losses.

183. Committee Defendants are liable under 29 U.S.C. §§ 1109(a) and 1132(a)(2) to make good to the NorthShore University Plan the losses resulting from the breaches, to restore to the Plan any profits Committee Defendants made through the use of Plan assets, and to restore to the Plan any profits resulting from the breaches of fiduciary duties alleged in this Count. In addition, Committee Defendants are subject to other equitable relief as set forth in the Prayer for Relief.

SECOND CLAIM FOR RELIEF
Breaches of Duty of Prudence of ERISA, as Amended
(Plaintiff, on behalf of himself and Class, Against Committee
Defendants – Investment Management Fees)

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

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

186. 29 U.S.C. § 1104(a)(1)(B) imposes a fiduciary duty of prudence upon Committee Defendants in managing the investments of the Plan.

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

188. During the Class Period, Committee Defendants had a fiduciary duty to do all of the following: manage the assets of the Plan in a prudent manner; defray reasonable expenses of administering the Plan; and act with the care, skill, diligence, and prudence required by ERISA.

189. During the Class Period, Committee Defendants breached their fiduciary duties of prudence to Plan Participants, including Plaintiff, by failing to manage the assets of the Plan in a prudent manner, defray reasonable expenses of administering the Plan, act with the care, skill, diligence, and prudence required by ERISA.

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

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

192. Committee Defendants were directly responsible for ensuring that the Plan's investment management fees were reasonable, selecting investment options

in a prudent fashion in the best interest of Plan participants, prudently evaluating and monitoring the Plan's investments on an ongoing basis, and taking all necessary steps to ensure that the Plan's assets were invested prudently and appropriately.

193. Committee Defendants failed to employ a prudent process by failing to evaluate the cost and performance of the Plan's investments and fees critically or objectively in comparison to other more reasonable investment options. Defendants selected and retained for years as Plan investment options mutual funds with high expenses relative to other investment options that were readily available to the Plan at all relevant times in the same asset category and with the same investment approach.

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

195. As a result of Committee Defendants' breach of their fiduciary duties of prudence with respect to the Plan with regard to high cost funds, the Plaintiff and Plan participants suffered unreasonable and unnecessary monetary losses.

196. Committee Defendants are liable under 29 U.S.C. §§ 1109(a) and 1132(a)(2) to make good to the Plan the losses resulting from the breaches, to restore to the Plan any profits Committee Defendants made through the use of Plan

assets, and to restore to the Plan any profits resulting from the breaches of fiduciary duties alleged in this Count. In addition, Committee Defendants are subject to other equitable relief pursuant to 29 U.S.C. §§ 1109(a) and 1132(a)(2).

THIRD CLAIM FOR RELIEF

Failure to Adequately Monitor Other Fiduciaries under ERISA, as Amended (Plaintiff, on behalf of himself and Class, Against Defendant NorthShore University and Gallagher – Bundled RKA Fees)

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

198. Defendant NorthShore University and Gallagher had the authority to appoint and remove members or individuals responsible for Plan Bundled RKA fees on the Retirement Plan Administration Committee and knew or should have known that these fiduciaries had critical responsibilities for the Plan.

199. In light of this authority, Defendant NorthShore University and Gallagher had a duty to monitor those individuals responsible for Plan Bundled RKA fees on the Committee to ensure that they were adequately performing their fiduciary obligations, and to take prompt and effective action to protect the Plan in the event that these individuals were not fulfilling those duties.

200. Defendant NorthShore University and Gallagher had a duty to ensure that the individuals responsible for Plan Bundled RKA fees possessed the needed qualifications and experience to carry out their duties (or use qualified advisors and service providers to fulfill their duties); had adequate financial resources and information; maintained adequate records of the information on which they based their decisions and analysis with respect to the Plan's investments; and reported regularly to Defendant NorthShore University and Gallagher.

201. The objectively unreasonable and excessive recordkeeping fees paid by the Plan inferentially establish that Defendant NorthShore University and Gallagher breached their duty to monitor by, among other things:

- a. Failing to monitor and evaluate the performance of individuals responsible for Plan recordkeeping fees on the Committee or have a system in place for doing so, standing idly by as the Plan suffered significant losses in the form of objectively unreasonably Bundled and Total RKA fees;
- b. Failing to monitor the process by which the Plan's recordkeeper, Voya, was evaluated and failing to investigate the availability of more reasonably-priced recordkeepers; and
- c. Failing to remove individuals responsible for Plan recordkeeping fees on the Committee whose performance was inadequate in that these individuals continued to pay the same Bundled and Total RKA fees even though solicitation of competitive bids would have shown that maintaining Voya as the recordkeeper at the contracted price was imprudent, excessively costly, all to the detriment of Plan participants' retirement savings.

202. As the consequences of the breaches of the duty to monitor for Bundled RKA fees the Plaintiff and Plan participants suffered millions of dollars of objectively unreasonable and unnecessary monetary losses.

203. Pursuant to 29 U.S.C. §§1109(a) and 1132(a)(2), Defendant NorthShore University and Gallagher are liable to restore to the NorthShore University Plan all losses caused by their failure to adequately monitor individuals responsible for Plan Bundled and Total RKA fees on the Committee. In addition, Plaintiff is entitled to equitable relief and other appropriate relief as set forth in the Prayer for Relief.

FOURTH CLAIM FOR RELIEF

Failure to Adequately Monitor Other Fiduciaries under ERISA, as Amended (Plaintiff, on behalf of himself and Class, Against Defendant NorthShore University and Gallagher – Investment Management Fees)

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

205. Defendant NorthShore University and Gallagher had the authority to appoint and remove members or individuals responsible for Plan investment management fees on the Committee and knew or should have known that these fiduciaries had critical responsibilities for the Plan.

206. In light of this authority, Defendant NorthShore University and Gallagher had a duty to monitor those individuals responsible for Plan investment management fees on the Committee to ensure that they were adequately performing their fiduciary obligations, and to take prompt and effective action to protect the Plan in the event that these individuals were not fulfilling those duties.

207. Defendant NorthShore University and Gallagher had a duty to ensure that the individuals responsible for Plan investment management fees possessed the needed qualifications and experience to carry out their duties (or use qualified advisors and service providers to fulfill their duties); had adequate financial resources and information; maintained adequate records of the information on which they based their decisions and analysis with respect to the Plan's investments; and reported regularly to Defendant NorthShore University and Gallagher.

208. The objectively unreasonable and excessive investment management fees paid by the Plan inferentially establish that Defendant NorthShore University and Gallagher breached their duty to monitor by, among other things:

- a. Failing to monitor and evaluate the performance of individuals responsible for Plan investment management fees on the Committee or have a system in place for doing so, standing idly by as the Plan suffered significant losses in the form of objectively unreasonable investment management expenses;
- b. Failing to monitor the process by which the Committee investigated the availability of more reasonably-priced investment management fees; and
- c. Failing to remove individuals responsible for Plan investment management fees on the Committee whose performance was inadequate in that these individuals continued to pay the same investment management costs even though solicitation of competitive bids would have shown that maintaining those high-cost funds, was imprudent, excessively costly, all to the detriment of Plan participants' retirement savings.

209. As the consequences of the foregoing breaches of the duty to monitor for investment management fees the Plaintiff and Plan participants suffered millions of dollars of objectively unreasonable and unnecessary monetary losses.

210. Pursuant to 29 U.S.C. §§1109(a) and 1132(a)(2), Defendant NorthShore University and Gallagher are liable to restore to the NorthShore University Plan all losses caused by their failure to adequately monitor individuals responsible for Plan investment management fees on the Committee. In addition, Plaintiff is entitled to equitable relief and other appropriate relief as set forth in the Prayer for Relief.

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

- A. A determination that this action may proceed as a class action under Rule 23(b)(1), or in the alternative Rule 23(b)(2), of the Federal Rules of Civil Procedure;
- B. Designation of Plaintiff as Class Representative and designation of Plaintiff's counsel as Class Counsel;

- C. A Declaration the Defendants have breached their fiduciary duties under ERISA;
- D. An Order compelling the Defendants to make good to the Plan all losses to Plan resulting from Defendants' breaches of fiduciary duty, including restoring to the Plan all losses resulting from paying unreasonable Bundled and Total RKA fees and investment management costs, and restoring to the Plan all profits the Defendants made through use of the Plan's assets, and restoring to the Plan all profits which the participants would have made if the Defendants had fulfilled their fiduciary obligations;
- E. An Order requiring NorthShore University to disgorge all profits received from, or in respect of, the Plan, and/or equitable relief pursuant to 29 U.S.C. § 1132(a)(3) in the form of an accounting for profits, imposition of constructive trust, or surcharge against NorthShore University, and to prevent NorthShore University's unjust enrichment;
- F. An Order enjoining Defendants from any further violation of their ERISA fiduciary responsibilities, obligations, and duties;
- G. Other equitable relief to redress Defendants' illegal practices and to enforce the provisions of ERISA as may be appropriate, including appointment of an independent fiduciary/consultant or removal of plan fiduciaries deemed to have breached their fiduciary duties;
- H. An award of pre-judgment interest;
- I. An award of attorneys' fees and costs pursuant to 29 U.S.C. § 1132(g) and the common fund doctrine; and
- J. Such other and further relief as the Court deems equitable and just.

Dated this 7th day of November, 2022

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