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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

CHRISTOPHER M. SULYMA, and all others similarly situated,

Plaintiff,

v.

INTEL CORPORATION INVESTMENT POLICY COMMITTEE, FINANCE COMMITTEE OF THE INTEL CORPORATION BOARD OF DIRECTORS, INTEL RETIREMENT PLANS ADMINISTRATIVE COMMITTEE, CHARLENE BARSHEFSKY, FRANK D. YEARY, JAMES D. PLUMMER, REED E. HUNDT, SUSAN L. DECKER, JOHN J. DONAHOE, DAVID S. POTTRUCK, RAVI JACOB,

Defendants,

and

INTEL 401(K) SAVINGS PLAN and INTEL RETIREMENT CONTRIBUTION PLAN,

Nominal Defendants.

Case No: 5:15-cv-04977-NC
Case No. 5:16-cv-00522

CONSOLIDATED COMPLAINT

CLASS ACTION

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I. NATURE OF THE ACTION

1. This is an action brought under Sections 502(a)(2) and 502(a)(3) of the Employee Retirement Income Security Act of 1974, as amended ("ERISA"), 29 U.S.C. §§ 1132(a)(2) and 1132(a)(3), by Plaintiff Christopher M. Sulyma on behalf of the Intel 401(k) Savings Plan ("401(k) Plan") and the Intel Retirement Contribution Plan ("Retirement Plan") (collectively, "the Plans"), and on behalf of certain participants in the Plans, for breaches of fiduciary duty by the fiduciaries of those Plans, to obtain the relief provided under ERISA § 409, 29 U.S.C. § 1109, or other appropriate equitable relief pursuant to ERISA § 502(a)(3). Plaintiff claims that Defendants breached their fiduciary duties by (a) investing a significant portion of the Plans' assets in hedge fund and private equity investments which presented unconventional, significant and undue risks and unduly high fees and costs, and (b) adopting asset allocation models and asset allocations for participant accounts that departed dramatically from prevailing standards employed by professional investment managers and plan fiduciaries. As a result of these misguided and imprudent investment decisions, the fiduciaries of the Plans caused the Plans and many of their respective participants to suffer massive losses and enormous excess fees.

2. Plaintiff, a participant in both Plans, seeks to represent two classes: (1) participants in the 401(k) Plan and the Retirement Plan whose accounts were invested in Intel target date portfolios ("Intel TDPs"); and (2) participants in the 401(k) Plan and the Retirement Plan whose accounts were invested in the Intel Global Diversified Fund ("Diversified Fund"). Plaintiff's account in the 401(k) Plan was invested in the Intel Target Date 2045 "Fund" ("Intel 2045 TDP"). Plaintiff's account in the Retirement Plan was invested in the Diversified Fund.

3. The Intel Retirement Plans Investment Policy Committee ("Investment Committee") was the fiduciary for both Plans responsible for choosing, managing, and monitoring the Plans' investments. At least until 2015 when it hired an investment manager, the Investment Committee was responsible for and did: (1) create the Intel TDPs and Diversified Fund; (2) develop, choose and manage the asset allocation models for the Intel TDPs and Diversified Fund; and (3) choose and

1 manage the pooled investment funds (the "Investment Funds")[1] representing various asset classes
2 and investment strategies to which the Intel TDPs and Diversified Fund allocated their respective
3 investments.

4 4. The Investment Committee created a suite of custom target date portfolios, the Intel
5 Target Date Portfolios (or TDPs). The Intel TDPs are not actual "funds" as such but a set of
6 portfolios consisting of allocations to several underlying funds, namely the Investment Funds,
7 managed by the Investment Committee.

8 5. The Investment Committee also created the Diversified Fund, which too is a portfolio
9 consisting of allocations, not an actual fund as such. The Diversified Fund was the sole investment
10 available to the overwhelming majority of participants in the Retirement Plan, including Plaintiff.
11 Like the Intel TDPs, the Diversified Fund allocated participant accounts to the Investment Funds.

12 6. The Intel TDPs and the Diversified Fund invested in the same nine Investment Funds,
13 each of which is structured as a so-called master collective trust: the Alternative Investments Fund,
14 which invested largely in private equity investment partnerships ("Private Equity Fund") for most of
15 the relevant period, Commodities Fund, Emerging Markets Fund, Global Bond Fund, Hedge Fund,
16 International Stock Fund, U.S. Small Cap Fund, Stable Value Fund, and U.S. Large Cap Fund.

17 7. The Plans and their respective participants invested in the Investment Funds pursuant
18 to the asset allocation models adopted by the Investment Committee for the Intel TDPs and the
19 Diversified Fund. In other words, the Investment Committee, not the Plans and their participants,
20 chose the Investment Funds, managed the Investment Funds, and dictated the amount of the Plans'
21 and participants' assets allocated to each Investment Fund via the Intel TDPs and the Diversified
22 Fund.

23 8. Through at least the first quarter of 2015, the Investment Committee was responsible
24 for choosing the asset allocation models and Investment Funds for the Intel TDPs and the
25 Diversified Fund. Beginning in 2011, the Investment Committee dramatically altered the asset
26 allocation model for the Intel TDPs by increasing Intel TDP investments in hedge funds from about
27

28 [1] The Plans and the Intel Minimum Pension Plan own a percentage of the assets in each Investment Fund.

1 $50 million to $680 million, an increase of 1,300%.

2 9. Similarly, the Investment Committee increased the Diversified Fund's exposure to
3 hedge funds and private equity investments during 2009 through 2014. During this period the
4 Diversified Fund's investment in hedge funds increased from about $582 million to $1.665 billion,
5 an increase of approximately 286%; the fund's investment in private equity increased from about
6 $83 million to $810 million, an increase of 968%.

7 10. The Investment Committee's allocation decisions not only deviated greatly from
8 prevailing asset allocation models adopted by investment professionals and plan fiduciaries, but also
9 exposed the Plans and their participants to unreasonably costly and risky investments in hedge and
10 private equity funds.

11 11. The Investment Committee's decisions were imprudent because: (1) the allocations
12 and investments of the Intel TDPs and the Diversified Fund were unprecedented departures from
13 prevailing standards for the design and allocation of, respectively, target date funds ("TDFs") and
14 balanced funds without appropriate consideration of facts and circumstances relevant to this
15 investment course of action, including whether it was reasonably designed to further the purposes of
16 the Plans, in light of risk of loss, opportunity for gain, diversification and liquidity and without a
17 sufficiently rigorous, thorough and documented basis; (2) the Investment Committee knew or should
18 have known that the asset allocation models and heavy investments in hedge funds and private
19 equity would expose the Plans to the risk of losses (including opportunity cost); and (3) the asset
20 allocation models and heavy investments in hedge funds and private equity caused the Plans to incur
21 significant fees and expenses as compared to essentially all other professionally managed asset
22 allocation funds and exposed the Plans to significant risks without commensurate expected reward.

23 12. As a result of the Investment Committee's insufficient decision-making process and
24 unjustified decisions, the Plans and their participants suffered hundreds of millions of dollars in
25 losses during the six years preceding the filing of this Complaint as compared to what they would
26 have earned if the Defendants had given appropriate consideration to facts and circumstances
27 relevant to the purposes of the Plans, in light of the risk of loss, opportunity for gain, diversity and
28 liquidity.

13. The Intel TDPs have substantially underperformed peer TDFs, as detailed in Part V.C.3.b,below. Although Defendants failed to provide documents to Plaintiff disclosing the amount invested by the 401(k) Plan via Intel TDPs, the amount was estimated in June 2015 to be approximately $3.63 billion.[2] Given the underperformance compared to peer TDFs, and the billions of dollars allocated to Intel TDPs, the Plans have lost hundreds of millions of dollars that they would have otherwise earned had the Intel TDPs been prudently allocated since 2011, when the Investment Committee implemented the current Intel TDP asset allocation model and contemporaneously increased the Intel TDPs' allocations to hedge funds.

14. Similarly, the Diversified Fund has underperformed peer balanced funds.[3] From May 2007, when the Diversified Fund began investing in hedge funds and private equity, through May 2014, the fund underperformed a Vanguard balanced fund, the LifeStrategy Moderate Growth Fund (Ticker: VSMGX), by approximately 50 basis points (.50%) annually.[4] As of June 2015, the Retirement Plan invested the vast majority of its assets in the Diversified Fund – $5.82 billion out of $6.66 billion.[5] Thus, fifty basis points of underperformance annually between May 2007 and May 2014 translates into a loss of over $100 million. This underperformance is largely due to the massive allocations to hedge funds and private equity, almost $2.5 billion as of the end of 2014.

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[2] "Intel Corp. moved to external management for two big investment options that house all of the alternative investments in its $14.85 billion defined contribution plans." Robert Steyer, *Intel hires manager for target-date, global funds*, Pensions & Investments (June 15, 2015), http://www.pionline.com/article/20150615/PRINT/306159980/intel-hires-manager-for-target-date-global-funds.

[3] A "balanced fund" is "[a] fund that combines a stock component, a bond component and, sometimes, a money market component, in a single portfolio." *Balanced Fund Definition*, Investopedia, http://www.investopedia.com/terms/b/balancedfund.asp (last visited October 15, 2015).

[4] Hunsberger, Brent, *What's inside Intel's retirement plans. Hedge funds. Lots of 'em.*, The Oregonian (Aug. 30, 2014), http://www.oregonlive.com/finance/index.ssf/2014/08/whats_inside_intels_retirement.html.

[5] "Intel Corp. moved to external management for two big investment options that house all of the alternative investments in its $14.85 billion defined contribution plans." Steyer, *supra* note 2. As of the end of March 31, 2014, the Diversified Fund had approximately 37.59% of its portfolio in commodities, hedge funds, and private equity. Of that, 67.39% was allocated to hedge funds, 17.56% to private equity and venture capital, 11.74% to commodities, and 3.31% to real estate. *401K Global Diversified Fund*, Oregonian Live at 1 (Mar. 31, 2014), http://media.oregonlive.com/finance/other/401K%20Global%20Diversified%20Fund.pdf.

15. Additionally, the Administrative Committee, which is responsible for making disclosures to the participants in the Plans, failed to adequately disclose to participants the risks, fees and expenses associated with investment in hedge funds and private equity. Based on the disclosures provided to Plaintiff pursuant to his request for information, participants were given virtually no information about these investments. Even the information disclosed in filings with the Department of Labor discloses merely the name of the hedge fund or private equity investment, the costs and last year's value. Virtually nothing about the strategy, the risks, the fees or anything about underlying investments was disclosed in anything that Defendants provided to or made available to participants.

16. Accordingly, Plaintiff alleges claims on behalf of the Classes: (1) for breaches of duty under ERISA § 404(a) by the Investment Committee in managing 401(k) Plan and Retirement Plan assets in connection with the Intel TDPs, and breaches of duty by the Administrative Committee in making inadequate disclosures related to the Plans, on behalf of the Plans and a class of participants in the Plans whose accounts were invested in Intel TDPs from 2011 to the present; and (2) for breaches of duty under ERISA § 404(a) by the Investment Committee in managing the Plans' assets in connection with the Diversified Fund, and breaches of duty by the Administrative Committee in making inadequate disclosures related to the Plans, on behalf of the Plans and a class of participants in the Plans whose accounts were invested in the Diversified Fund from 2009 to the present.

II. JURISDICTION AND VENUE

17. This Court has exclusive and subject matter jurisdiction over this action under ERISA § 502(e)(1), 29 U.S.C. § 1132(e)(1), and 28 U.S.C. § 1331 because it is an action under 29U.S.C. §§ 1132(a)(2) and 1132(a)(3).

18. Venue is proper in this District pursuant to ERISA § 502(e)(2), 29 U.S.C. § 1132(e)(2), because, upon information and belief, most, if not all, of the individual Defendants can be found in this District.

19. Intradistrict Assignment. Assignment to the San Jose Division is appropriate because Intel is headquartered in Santa Clara County, where much of the complained of conduct occurred.

III. PARTIES

A. Plaintiff

20. Plaintiff Christopher M. Sulyma is a former employee of Intel Corporation and is a resident of New Mexico. Sulyma worked for Intel from June 2010 until September 2012. During his employment with Intel Sulyma was a participant, within the meaning of ERISA § 3(7), 29 U.S.C. § 1002(7), in the Intel Retirement Plan (n/k/a the Intel Retirement Contribution Plan) and a participant in the Intel 401(k) Savings Plan. As a result of his two years of employment, Sulyma partially vested in his account balance in the Retirement Plan. His account in the Retirement Plan was invested in the Diversified Fund. Sulyma was fully vested in his account in the 401(k) Plan. His account in the 401(k) Plan was invested entirely in the Intel 2045 TDP. As such, Sulyma participated in the Intel Retirement Plan and the Intel 401(k) Savings Plan during the relevant period.

B. Defendants

1. Intel Finance Committee Defendants

21. The Finance Committee of the Intel Corporation Board of Directors ("Finance Committee") is a named fiduciary with respect to the management and control of the Plans' assets pursuant to ERISA § 402(a), 29 U.S.C. § 1102(a). It is responsible for appointing, monitoring, and removing the Members of the Intel Retirement Plans Investment Policy Committee ("Investment Committee") and the Intel Retirement Plans Administrative Committee ("Administrative Committee") pursuant to Section 13(b) of the Plan Document for each of the Plans. Section 13(b) authorizes the Finance Committee to remove any member of the Administrative or the Investment Committees at will or "with or without cause" and the power to appoint any successor member. The Finance Committee also advises the Board on capital structure decisions, which includes the issuance of debt and equity securities, banking arrangements, such as the investment of corporate cash; and management of the corporate debt structure. The Finance Committee is comprised of Members of the Intel Board of Directors.

22. **Charlene Barshefsky** has been a member of the Finance Committee continuously since 2007 and has served as the Chair of the Finance Committee since 2009. She has been a Member of Intel's Board of Directors since 2004. Ms. Barshefsky is currently a Partner of the law

firm Wilmer Cutler Pickering Hale and Dorr LLP, where she is the Chair of the International Trade, Investment and Market Access Practice Group. She serves on the Boards of Directors of American Express Company, The Estée Lauder Companies Inc., and Starwood Hotels & Resorts Worldwide, Inc.

23. **Susan L. Decker** was a Member of the Finance Committee from 2009 to 2011. She has served on Intel's Board of Directors since 2004. Ms. Decker was the CFO of Yahoo!, Inc. from 2000 to 2007, and then President from June 2007 to April 2009. She has been a Director and Member of the Audit Committee for Costco Wholesale Corp. since 2004. She serves as a Director and Member of the Governance, Compensation & Nominating Committee, and Member of the Audit Committee of Berkshire Hathaway, Inc. since 2007. Ms. Decker was a Director and Member of the Audit and Compensation Committees of Pixar Inc. from 2004 to 2006. Ms. Decker lives in San Francisco, California.

24. **John J. Donahoe** has been a Member of the Finance Committee from 2009 to the Present. He has served on Intel's Board of Directors since 2009. He has been the Chairman of the Board of Directors of PayPal Holdings, Inc., located in San Jose, California since July 2015. He is a Member of the Advisory Board and Director of eVolution Global Partners, LLC, a global venture capital firm that specializes in early stage investments within the information technology and media sectors. Mr. Donahoe was President and CEO of eBay from March 2008 to July 2015. Since 1982, he worked as Worldwide Managing Director of Bain & Company, a global management consulting firm, becoming the firm's President and Chief Executive Officer ("CEO") in 1999 to 2006. Mr. Donahoe lives in Portola Valley, California.

25. **Reed E. Hundt** has been a Member of the Finance Committee from 2010 to the Present. Mr. Hundt has served on Intel's Board of Directors since 2001. He has been an advisor to the private equity firm Blackstone Group since 2010. He is also a Principal at REH Advisors, a business advisory firm. Mr. Hundt practiced law at Latham & Watkins LLP from 1975 to 1993.

26. **James D. Plummer** has been a Member of the Finance Committee from 2006 to the Present. He has served on Intel's Board of Directors since 2005. He is also a Professor and the Dean of the School of Engineering at Stanford University in Stanford, California. Mr. Plummer lives in

Portola Valley, California.

27. **Frank D. Yeary** has been a Member of the Finance Committee from 2009 to the Present. Mr. Yeary has served on Intel's Board of Directors since 2009. Mr. Yeary is an international investment banker. Prior to 2004, he served as the global head of the Technology, Media and Telecom investment banking practice at Salomon Smith Barney. He served at Citigroup as the Global Head of Mergers and Acquisitions from 2004 to July 2008. Mr. Yeary serves as an Executive Chairman of CamberView Partners, which describes itself as a "boutique advisory firm that provides public companies with the advice and expertise they need to succeed with their institutional investors." CamberView Partners is located in San Francisco, California. Mr. Yeary serves as a member of the Executive Council at Cohesive Capital Partners, a co-investment firm that makes "direct investments alongside high quality private equity sponsors that are leading the transactions."[6] According to his LinkedIn Profile, Frank D. Yeary lives in the San Francisco Bay Area.

28. Defendants Charlene Barshefsky, Susan L. Decker, John J. Donahoe, Reed E. Hundt, James D. Plummer, and Frank D. Yeary are collectively, referred to the the "Finance Committee Defendants." At all relevant times, the Finance Committee and the Finance Committee Defendants were fiduciaries within the meaning of ERISA § 3(21)(A), 29 U.S.C. § 1002(21)(A) as a result of their membership on the Committee and because they each exercised discretionary authority or discretionary control respecting management of the Plans and/or exercised authority or control respecting management or distribution of the Plans' assets, and/or had discretionary authority or discretionary responsibility in the administration of the Plans.

2. Investment Committee Defendants

29. The Investment Committee is a named fiduciary for the Plans pursuant to ERISA § 402(a), 29 U.S.C. § 1102(a), and Section 13(a) of the Plans with respect to the management and control of the Plans' assets. Pursuant to Section 13(a) of the Plans, the Investment Committee and its members have responsibility for asset management. It designates and evaluates the designated

[6] *Why CamberView*, CamberView Partners, http://www.camberview.com/why-camberview/ (last visited October 15, 2015).

investment alternatives offered to participants in the Plans. It manages and controls the Plans' assets. The Investment Committee also has the authority to appoint and remove the Trustees for the Plans, as well as to appoint and remove one or more investment managers for the Plans.

30. **Christopher Geczy** has been a Member of the Investment Committee from 2014 to the Present. He is the Founder, CEO and Chief Investment Officer of Forefront Analytics, where he oversees investment decision-making. Mr. Geczy acts as an editor of the Journal of Alternative Investments and serves on the Advisory Board of the Journal of Wealth Management. Mr. Geczy worked for the Board of Governors of the Federal Reserve System's Division of Research and Statistics in Washington, D.C. He has served on the Economic Advisory Board of NASDAQ. Mr. Geczy is a founding board member of the Mid-Atlantic Hedge Fund Association and former Chairman.

31. **Ravi Jacob** has been a Member of the Investment Committee from at least January of 2010, to the Present. Mr. Jacob has been a Corporate Vice President and the Treasurer of Intel since 2005. As Treasurer, Mr. Jacob manages Intel's cash and investments, capital markets activity, currency and other financial risks, credit and collections, retirement assets, and insurance. Mr. Jacob lives in the San Francisco Bay Area.

32. **Nanci S. Palmintere** was a Member of the Investment Committee from since at least October 2009 through 2010. Ms. Palmintere was the Vice President of Finance and Enterprise Services and Director of Global Tax and Trade for Intel Corporation until she retired in 2011. She was responsible for all tax, export licensing, and customs planning and compliance, all negotiations with the IRS, state and local tax authorities, and foreign tax authorities. According to Ms. Palmintere's LinkedIn Profile, she is an international consultant, who works with high technology clients and financial organizations invested in the high technology sector. Prior to her employment at Intel, Ms. Palmintere held positions at the law firm of Ruffo, Ferrari and McNeil (now Pillsbury Winthrop), and in the tax practice of Coopers and Lybrand (now PriceWaterhouseCoopers).

33. **David S. Pottruck** has served as the Chairman of the Investment Committee from at least 2009, to the Present. He has been a Member of Intel's Board of Directors since 1998. Mr. Pottruck is the Co-Chairman of HighTower Advisors, LLC a wealth management firm and CEO and

Chairman of Red-Eagle Adventures, both of which are located in San Francisco. He served in various high- level executive positions at Charles Schwab Corporation from 1984 to 2004. According to his LinkedIn Profile, David S. Pottruck lives in the San Francisco Bay Area.

34. **Arvind Sodhani** was a Member of the Investment Committee from at least October 2009 to 2016. Mr. Sodhani had been an Executive Vice President of Intel since 2007. He was also the President of Intel Capital since 2007. Mr. Sodhani oversaw Intel's internal new business incubation, external investments, and mergers and acquisitions. He served as a Senior Vice President of Intel Corporation from 2005 to 2007. Mr. Sodhani joined Intel-Europe in 1981 as Assistant Treasurer and was promoted to Assistant Treasurer of Intel in 1984. He was subsequently promoted to Treasurer in 1988. He served as Treasurer and Vice President from 1990-2005. In 2005, he was promoted to Senior Vice President. During his tenure at Intel, Mr. Sodhani was a Board Member of the NASDAQ Stock Market, Inc. and a Non-Industry Director of Nasdaq OMX Group from 1997to 2007.

35. **Richard Taylor** was a Member of the Investment Committee from at least October 2009 to 2016. He is the Senior Vice President and Director of Human Resources at Intel. He oversees all of the human resource policies and programs for the company worldwide. Mr. Taylor joined Intel in 1986 as an Audit Manager in Europe. From a period of 1989 to 1997, he held various positions at Intel, such as United Kingdom Finance Manager, European Controller, Controller Mobile Computing Group and Director of Operations-Europe. Mr. Taylor was promoted in 1998 to Corporate Controller, and in 1999 his duties were expanded to include delivery of worldwide employee services.

36. Defendants Christopher Geczy, Ravi Jacob, Nanci S. Palmintere, David S. Pottruck, Arvind Sodhani, Richard Taylor are collectively referred to as the "Investment Committee Defendants." At all relevant times, the Investment Committee and the Investment Committee Defendants were fiduciaries within the meaning of ERISA § 3(21)(A), 29 U.S.C. § 1002(21)(A) as a result of their membership on the Committee and because they each exercised discretionary authority or discretionary control respecting management of the Plans and/or exercised authority or control respecting management or distribution of the Plans' assets, and/or had discretionary authority

1 or discretionary responsibility in the administration of the Plans.

2 **3. Administrative Committee Defendants**

3 37. The Administrative Committee is a named fiduciary with respect to the operation and
4 administration of the Plans (except with respect to management or control of the Plans' assets) under
5 ERISA § 402(a), 29 U.S.C. § 1102(a), and Section 13(a) of the Plan Document of each of the Plans.
6 Pursuant to Section 13(e), the Administrative Committee was and is responsible for preparing and
7 furnishing to participants a general explanation of the Plans and all other information required to be
8 furnished to participants under federal law or the Plans, including disclosures regarding designated
9 investment alternatives.

10 38. **Terra Castaldi** has been a Member of the Administrative Committee from 2015 to
11 the Present. She has been a Senior Director in the Benefits Tax and Legal Department of Intel since
12 2005. Prior to joining Intel, she was a Partner at Morgan, Lewis & Bockius LLP. According to her
13 Linked-In Profile, Terra Castaldi lives in the San Francisco Bay Area.

14 39. **Ronald D. Dickel** was a Member of the Administrative Committee from 2010 to
15 2015. He has been the Vice President of Finance and the Director of Global Tax and Trade at Intel
16 since 2010. He is responsible for all tax planning and compliance. Mr. Dickel joined Intel in 2010 as
17 a Vice President and a Director. Mr. Dickel is currently the Chairperson of the R&D Tax Credit
18 Coalition. He is a Director and the Chair of The Tax Council's Nominations Committee. He has
19 been a Director of Altera Corporation since 2015. Prior to his employment at Intel, Mr. Dickel was a
20 Tax Associate at the law firm of Skadden, Arps, Slate, Meagher & Flom LLP.

21 40. **Tiffany Doon Silva** has been a Member of the Administrative Committee from 2015
22 to the Present. She is an attorney in the legal department at Intel. According to her LinkedIn Profile,
23 her practice consists of corporate law, corporate finance and securities. Prior to joining Intel, Ms.
24 Silva was an Attorney at Gibson, Dunn & Crutcher LLP from 1995 to1999. According to her
25 LinkedIn Profile, Tiffany Doon Silva lives in the San Francisco Bay Area.

26 41. **Tami Graham** has been a Member of the Administrative Committee from 2015 to
27 the Present. Ms. Graham is the Director of Global Benefits Design at Intel's Worldwide
28 Compensation and Benefits Group. She was formerly a member of Intel's HR Legal Group as a legal

advisor for the design and administration of Intel's compensation and benefit programs.

42. **Cary Klafter** was a Member of the Administrative Committee from at least 2009 to 2015. Mr. Klafter was the Corporate Vice President of Legal and Corporate Affairs of Intel from 1996 to 2015. He was elected to serve as the Corporate Secretary in 2003. He oversaw legal activities for Intel's financial matters, including Securities and Exchange Commision filings, investments, mergers and acquisitions and investor relations. As Intel's Corporate Secretary, he was responsible for corporate governance and Board of Directors' activities. He was Co-Chair of Intel's Ethics and Compliance Oversight Committee. Prior to joining Intel in 1996, Mr. Klafter was an Associate and Partner with Morrison & Foerster LLP, a law firm, from 1972 to 1996. According to his LinkedIn Profile, Cary Klafter lives in the San Francisco Bay Area.

43. **Stuart Odell** has been a Member of the Administrative Committee from 2015 to the Present. Mr. Odell serves as a Director of Retirement Investments and is the Assistant Treasurer in the Treasury Department of Intel. Mr. Odell and his investment team at Intel are responsible for oversight and management of Intel's $10 billion in qualified and nonqualified retirement plan assets. According to his LinkedIn Profile, Stuart Odell lives in the San Francisco Bay Area.

44. Defendants Terra Castaldi, Ronald Dickel, Ravi Jacob, Tami Graham, Cary Klafter, Stuart Odell, Nanci Palmintere, David Pottruck, Tiffany Doon Silva, and Richard Taylor are collectively referred to as the "Administrative Committee Defendants." At all relevant times, the Administrative Committee and the Administrative Committee Defendants were fiduciaries within the meaning of ERISA § 3(21)(A), 29 U.S.C. § 1002(21)(A) as a result of their membership on the Committee and because they each exercised discretionary authority or discretionary control respecting management of the Plans and/or exercised authority or control respecting management or distribution of the Plans' assets, and/or had discretionary authority or discretionary responsibility in the administration of the Plans.

4. <u>Nominal Defendants</u>

45. The Intel Corporation 401(k) Savings Plan (the "401(k) Plan") is a defined contribution plan or individual account plan within the meaning of ERISA § 3(34), 29 U.S.C. § 1002(34). The written instrument of the 401(k) Plan within the meaning of ERISA § 402 was titled

Intel 401(k) Savings Plan (As Amended and Restated Effective January 1, 2014). The Plan Sponsor of the 401(k) Plan within the meaning of ERISA § 3(16)(B) is Intel Corporation. The Plan Administrator of the 401(k) Plan within the meaning of ERISA § 3(16)(A) is the Intel Retirement Plans Administrative Committee.

46. The Intel Retirement Contribution Plan, formerly known as the Intel Corporation Retirement Plan (the "Retirement Plan"), is a defined contribution plan or individual account plan within the meaning of ERISA § 3(34), 29 U.S.C. § 1002(34). The written instrument of the Retirement Plan within the meaning of ERISA § 402 was titled: The Intel Retirement Contribution Plan (As Amended and Restated Effective January 1, 2014). The Plan Sponsor of the Retirement Plan within the meaning of ERISA § 3(16)(B) is Intel Corporation. The Plan Administrator of the Retirement Plan within the meaning of ERISA § 3(16)(A) is the Intel Retirement Plans Administrative Committee.

47. The Plans are "employee pension benefit plans" within the meaning of ERISA § 3(2)(A), 29 U.S.C. § 1002(2)(A).

C. <u>Relevant Non-Parties</u>

48. **Intel Corporation.** Intel Corporation is a multinational technology company headquartered in Santa Clara, California and is one of the world's largest and highest-valued semiconductor chip makers, based on revenue. According to Intel's 2014 Annual Report, Intel had over 106,000 employees worldwide as of December 29, 2014 with approximately 51% of those employees located in the United States. In the United States, Intel employs significant numbers of people in California, Colorado, Massachusetts, Arizona, New Mexico, Oregon, Texas, Washington and Utah.

49. **The Intel Minimum Pension Plan.** The Intel Minimum Pension Plan, formerly known as the Intel Defined Benefit Pension Plan (the "DB Plan"), is a defined benefit plan or individual account plan within the meaning of ERISA § 3(35), 29 U.S.C. § 1002(35). The DB Plan and the Retirement Plan operate as what is known as a "floor offset" arrangement, whereby the DB Plan provides the floor and benefits to be paid are offset to the extent that benefits under the Retirement Plan are greater than those provided by the DB Plan. The Plan Sponsor of the DB Plan

within the meaning of ERISA § 3(16)(B) is Intel Corporation.

50. **State Street Bank and Trust Company, Trustee ("State Street").** State Street is a trust company organized under the laws of the Commonwealth of Massachusetts. Effective January 1, 2010, State Street became the trustee for the Plans and the Master Trust, and thereafter held all of the assets of the Master Trust directly. State Street holds and invests the assets of the Plans, and thus is a fiduciary with respect to the Plans.

IV. CLASS ALLEGATIONS

51. Plaintiff brings this action as a class action pursuant to Rule 23 of the Federal Rules of Civil Procedure on behalf of the following Classes:

- All participants in the Intel Retirement Contribution Plan and the Intel 401(k) Savings Plan, whose accounts were invested pursuant to an Intel Target Date Portfolio from 2011 to the present (the "Target Date Class").
- All participants in the Intel Retirement Contribution Plan and the Intel 401(k) Savings Plan, whose accounts were invested in, respectively, the Intel Global Diversified Fund and the Intel 401(k) Global Diversified Fund from 2009 to the present (the "Diversified Fund Class").

52. Excluded from the Classes are the following persons: (a) Defendants, (b) any fiduciaries of the Plans; (c) any officers or directors of Intel; (d) any member of the immediate family of and any heirs, successors or assigns of any such excluded party.

A. Numerosity and Impracticability of Joinder

53. Joinder of all members of the Classes would be impracticable based on the number and geographic diversity of the members of the Classes. Based on the most recent Form 5500 filed with the Department of Labor for 2014, the 401(k) Plan had 63,518 participants and/or beneficiaries. Most of these participants had their Plan investments in or were defaulted to an Intel TDP, which necessarily included hedge funds and private equity. Based on the most recent Form 5500 filed with the Department of Labor for 2014, the Retirement Plan had 50,718 participants and/or beneficiaries. The Diversified Fund was the only available investment for the vast majority of Retirement Plan participants during the Diversified Fund Period. According to Intel's website, it has locations in at

least the following states: Arizona, California, Colorado, the District of Columbia, Idaho, Illinois, Kentucky, Massachusetts, Minnesota, New Hampshire, New Jersey, New Mexico, North Carolina, Oregon, Pennsylvania, South Carolina, Texas, Virginia, Washington and Wisconsin. As such, the members of the Classes are also geographically dispersed.

54. The Target Date Class satisfies the numerosity requirement because it is composed of thousands of persons, in numerous locations. The 401(k) Plan had billions of dollars in participant accounts allocated under the Intel TDPs, meaning that tens of thousands of participants must have had their accounts invested according to an asset allocation strategy set by the Intel TDPs and necessarily held interests in the Hedge and Private Equity Funds. During the Target Date Class Period (2011 to the present) many participants were defaulted into an Intel TDP. The number of Class members is so large that joinder of all its members is impracticable.

55. The Diversified Fund Class satisfies the numerosity requirement because it is composed of thousands of persons, in numerous locations. Participants under the age of 50 had to invest their accounts in the Retirement Plan in the Diversified Fund. During the Diversified Fund Class Period (2009 to present), approximately 99% of Retirement Plan assets were invested in the Diversified Fund. Therefore, virtually all of the Retirement Plan's participants, tens of thousands of persons, invested in the Diversified Fund and necessarily held interests in the Hedge and Private Equity Funds. The number of Class members is so large that joinder of all its members is impracticable.

B. Commonality

56. Plaintiff's claims raise common questions that will have common answers for each member of the Class with respect to liability and relief. Common questions of law and fact for both Classes include:

A. Whether the Investment Committee was a named fiduciary for the Plans;

B. Whether the Investment Committee's fiduciary duties included selecting and managing the Plans' assets, monitoring their investment performance over time and making appropriate adjustments accordingly;

C. Whether the Investment Committee selected and managed the underlying

funds to which the Intel TDPs and the Diversified Fund allocated the Plans' assets.

57. Common questions of law and fact with respect to the Target Date Class include:

A. Whether the Investment Committee breached its fiduciary duties to the Plans and their participants in constructing and managing the Intel TDPs including by failing to give appropriate consideration to facts and circumstances relevant to the investment course of action it adopted and implemented;

B. Whether the Intel TDP asset allocation models chosen by the Investment Committee for the Plans deviate and deviated from prevailing standards for target date funds;

C. Whether the Investment Committee prudently selected and managed the underlying funds to which the Intel TDPs allocated the Plans' assets;

D. Whether the Plans and their participants suffered losses as a result of the Investment Committee's fiduciary breaches; and

E. Whether the Administrative Committee breached its fiduciary duties to the Plans and their participants by failing to make adequate disclosures about the Intel TDPs and the Investment Funds.

58. Common questions of law and fact with respect to the Diversified Fund Class include:

A. Whether the Investment Committee breached its fiduciary duties to the Plans and their participants in constructing and managing the Diversified Fund;

B. Whether the asset allocation model chosen by the Investment Committee for the Diversified Fund deviates and deviated from prevailing standards for balanced funds;

C. Whether the Investment Committee Defendants prudently selected and managed the underlying funds to which the Diversified Fund allocated the Plans' assets;

D. Whether the Plans and their participants suffered losses as a result of the

Investment Committee Defendants' fiduciary breaches;

E. Whether the Administrative Committee breached its fiduciary duties to the Plans and their participants by failing to make adequate disclosures about the Diversified Fund and the Investment Funds.

C. Typicality

59. Plaintiff's claims are typical of the claims of the Classes because his claims arise from the same event, practice and/or course of conduct as other members of the Classes. Plaintiff's claims challenge whether the fiduciaries of the Intel Plans acted consistently with their fiduciary duties and whether their breaches caused losses or otherwise harmed the Plans and their participants. These are claims common to and typical of other Class members. Moreover, these claims seek recovery on behalf of the Plans.

1. Target Date Class

60. As is the case with all participants in the Plans, whose accounts were invested through an Intel TDP, the Investment Committee chose the asset allocation model, the asset classes, and the funds representing the selected asset classes for every Intel TDP, including the Intel 2045 TDP in which Sulyma invested in the 401(k) Plan.

61. Plaintiff's claims are also typical of the claims of the Target Date Class because, like all members of the Class, his claims arise from the Administrative Committee's failure to provide complete and adequate disclosures to him regarding the Intel TDPs.

2. Diversified Fund Class

62. As is the case with all participants in the Plans, whose accounts were invested through the Diversified Fund, the Investment Committee chose the asset allocation model, the asset classes, and the funds representing the selected asset classes for the Diversified Fund in which Sulyma invested in the Retirement Plan.

63. Plaintiff's claims are also typical of the claims of the Diversified Fund Class because, like all members of the Class, his claims arise from the Administrative Committee's failure to provide complete and adequate disclosures to him regarding the Diversified Fund.

D. Adequacy

64. Plaintiff will fairly and adequately protect the interests of the Target Date Class. He is committed to the vigorous representation of the Class.

65. Plaintiff will fairly and adequately protect the interests of the Diversified Fund Class. He is committed to the vigorous representation of the Class.

66. Defendants do not have any unique defenses against Plaintiff that would interfere with Plaintiff's representation of the Classes.

67. Plaintiff has engaged counsel with extensive experience prosecuting class actions in general and ERISA class actions in particular.

E. Rule 23(b)(1)

68. The requirements of Rule 23(b)(1)(A) are satisfied in this case. Fiduciaries of ERISA-covered plans have a legal obligation to act consistently with respect to all similarly situated participants and to uniformly act in the best interests of the Plans and their participants. As this action challenges whether Defendants acted consistently with their fiduciary duties to the Plans, prosecution of separate actions by individual members would create the risk of inconsistent or varying adjudications with respect to individual members of the Class that would establish incompatible standards of conduct for the fiduciaries of the Plans.

69. The requirements of Rule 23(b)(1)(B) are satisfied in this case. Administration of an ERISA plan requires that all similarly situated participants be treated consistently. As such, whether Defendants fulfilled their fiduciary obligations with respect to the Plans and the Plans' participants in this action would, as a practical matter, be dispositive of the interests of the other members of the Class regardless of whether they are parties to the adjudication.

F. Rule 23(b)(2)

70. The requirements of Rule 23(b)(2) are met in this action. Defendants have applied the same or substantially similar investment policies and investment options in the Plans that cover all members of the Classes. The breaches alleged against Defendants with respect to the Target Date Class and the Diversified Fund Class relate to policies that applied to, respectively, all members of the Target Date Class and the Diversified Fund Class. As such, Defendants have acted or refused to

act on grounds generally applicable to the Class as a whole.

71. The primary relief sought on behalf of the Classes is a determination that Defendants breached their fiduciary duties, a determination of the amount by which those breaches adversely affected the Plans rather than individual members of the Classes, and a consequent order requiring Defendants to make good those losses to the Plans. Such relief is accomplished by issuance of a declaration or an injunction and therefore the primary requested relief constitutes final injunctive or declaratory on behalf the Classes with respect to the Plans.

G. Rule 23(b)(3)

72. The requirements of Rule 23(b)(3) are also satisfied. The common questions of law and fact concern whether Defendants breached their fiduciary duties to the Plans. Because Class members are those participants whose accounts were invested in the affected investments, common questions related to liability will necessarily predominate over individual questions. Similarly, as relief will be on behalf of and will flow to the Plans, common questions related to remedies and relief will likewise predominate over individual issues.

73. A class action is superior to other available methods for the fair and efficient adjudication of this controversy. The losses suffered by many of the individual members of the Classes are relatively small in proportion to the substantial cost to bring this litigation, and it would therefore be impracticable for individual members to bear the expense and burden of individual litigation to enforce their rights. The fiduciaries of the Plans have an obligation to treat all similarly situated participants similarly and are subject to uniform standards of conduct under ERISA; thus the members of the Classes have an interest in having this action proceed in a single action. As such, no Class member has an interest in individually controlling the prosecution of this matter.

74. Plaintiff and his counsel are not aware of any other lawsuit, other than *Lo v. Intel Corp.*, No. 5:16-cv-00522 (N.D. Cal.), which the Court consolidated with this action, filed by any member of the Classes concerning this controversy pending in any other court.

75. This District is the most desirable forum for concentration of this litigation because: (1) Intel is headquartered in this District; (2) a number of the actions challenged by this Complaint took place in this District, chiefly, on information and belief, Investment Committee and

Administrative Committee meetings; (3) the Plans are administered in or near this District; (4) many of the employees of the company are located in or near this District; and (5) many of the employees of Intel named as Defendants can be found in this District.

76. Given the nature of the allegations, there are no difficulties likely to be encountered in the management of this matter as a class action.

V. FACTUAL ALLEGATIONS

A. The Plans

77. According to Section 1 of both the Plan Document of the Intel Retirement Plan and the Plan Document of the Intel 401(k) Plan, the Intel Corporation Profit-Sharing Retirement Plan ("the Profit Sharing Plan") was established in 1979 and is the predecessor plan of both the Intel Retirement Plan and the Intel 401(k) Plan. The Profit Sharing Plan was amended and restated effective on January 1, 1984 to permit Eligible Employees to contribute to the Plan through salary deferrals. Effective January 1, 1996, the Profit Sharing Plan was bifurcated into two separate plans, the Intel 401(k) Plan and the Intel Retirement Plan.

78. The Retirement Plan was amended and restated effective January 1, 2011. Among other changes, the 2011 amendments precluded employees who started employment on or after January 1, 2011 from participating in the Plan and eliminated the provisions requiring that company contributions be made from profits. The Retirement Plan was restated effective January 1, 2014. During the Diversified Fund Class Period, the Intel Retirement Plan was maintained pursuant to the Intel Retirement Contribution Plan Effective January 1, 2011. The Retirement Plan was again amended and restated effective January 1, 2014 ("Retirement Plan Document").

79. The Intel 401(k) Plan was amended and restated effective January 1, 2011. Among other changes, the 2011 amendments added Employer Contribution Accounts generally for employees who commenced employment on or after January 1, 2011. The 401(k) Plan was restated effective January 1, 2014. During the relevant period, the 401(k) Plan was maintained pursuant to the Intel 401(k) Savings Plan Effective January 1, 2006, and subsequently, pursuant to the Intel 401(k) Savings Plan Effective January 1, 2011. The 401(k) Plan was again amended and restated effective January 1, 2014 ("401(k) Plan Document").

1 **<u>Intel Retirement Plan</u>**

Participation

80. Section 3(a) of the Retirement Plan provides that Eligible Employees are automatically enrolled in the Plan as soon as they become eligible to participate (as defined under the Plan). Effective January 1, 2011, the Retirement Plan was closed to new participants. Even though closed to new participants, the Retirement Plan continues to cover eligible employees. According to the 2014 Form 5500 filed August 16, 2015, the Retirement Plan had 48,272 participants with account balances and $6,722,726,892 in total assets as of December 31, 2014.

Contributions

81. Section 4(a) of the Retirement Plan Document provides that Intel (and its affiliates that are Participating Companies) makes discretionary contributions to the Plan in such amounts as the Intel Board of Directors determines in its sole and absolute discretion. Eligible Employees do not and did not make contributions into the Intel Retirement Plan.

Vesting

82. Section 8 of the Retirement Plan Document sets forth the Vesting and Forfeiture terms of the Plan. Pursuant to Section 8(a) and (b), Participants' interests become 100% vested and nonforfeitable upon the occurrence of any of the following: (a) attainment of age 60 (if they became participants after January 1, 1987) or age 55 (if they became Participants on or before January 1, 1987); (b) death; (c) total and permanent disability; (d) job elimination; (e) termination of employment as a result of a divestiture or formation of the Care Innovations Joint Venture. Section 8(c) of the Retirement Plan Document provides the following vesting schedule for a Participant who was an Employee on or after December 31, 2007:

Completed Years of Service	Nonforfeitable Percentage
Less than 2	0 (Percent)
2 but less than 3	20 (Percent)
3 but less than 4	40 (Percent)
4 but less than 5	60 (Percent)
5 but less than 6	80 (Percent)

6 or more	100 (Percent)

83. Section 8(c) of the Retirement Plan Document provides the following vesting schedule for a Participant who was an Employee on or after December 31, 2007:

Completed Years of Service	Nonforfeitable Percentage
Less than 3	0 (Percent)
3 but less than 4	20 (Percent)
4 but less than 5	40 (Percent)
5 but less than 6	60 (Percent)
6 but less than 7	80 (Percent)
7 or more	100 (Percent)

84. Throughout the Diversified Fund Class Period until January 1, 2015, the participants in the Retirement Plan under the age of 50 were required to invest their accounts in the Diversified Fund. According to Section 12(a) of the Plan Document, between January 1, 2007 and March 31, 2009, participants over the age of 50 could elect to invest their Plan accounts in an Intel TDP. As of April 1, 2009, the Plan Document permitted participants over the age of 50 to elect to invest their Plan accounts in an Intel TDP or in the Intel Stable Value Fund.

85. Pursuant to the Second Amendment of the Intel Retirement Contribution Plan, effective January 1, 2015, participants in the Retirement Plan were allowed to elect to have their accounts in the Plan invested into whatever funds or portfolios t the Investment Committee determined to make available as an option.

2. <u>Intel 401(k) Plan</u>

Participation

86. Section 3(a) of the 401(k) Plan Document provides that Eligible Employees are automatically enrolled in the Plan as soon as administratively practicable following 45 days after becoming an Eligible Employee unless he or she affirmatively elects otherwise. According to the 2014 Form 5500 filed August 16, 2015, the 401(k) Plan had 62,838 participants with account balances and $7,895,030,553 in total assets as of December 31, 2014.

Contributions

87. Section 4(a) of the 401(k) Plan Document provides that an Eligible Employee (i) may elect to have his or her taxable compensation reduced and corresponding Pre-Tax Deferrals contributed to the Plan up to the maximum percentage established by the Company; (ii) who is automatically enrolled in the Plan shall be deemed to have elected to make Pre-Tax Deferrals in an amount equal to 3% to 6% of the regular pay portion of his or her earnings absent an affirmative election otherwise and/or (iii) may elect to have Roth Deferrals contributed to the Plan.

88. Starting in 2007, Intel began to automatically enroll employees who were eligible to participate in the 401(k) Plan but who had not yet enrolled, unless they opted out by affirmatively electing otherwise during a forty-five day opt-out period. According to Section 3 of the 401(k) Plan Document, such participants were deemed to have elected to contribute 3% of their regular earnings to their 401(k) Plan account, absent an affirmative election otherwise. This contribution then automatically increased by one percentage point each successive year, up to a maximum deferral of 10% of the participant's pre-tax earnings.

89. Pursuant to Section 3(a)(i) of the 401(k) Plan document, employees who became eligible to participate in the 401(k) Plan on or after January 1, 2013 were also automatically enrolled in the Plan. If such participants did not opt-out within a forty-five day opt-out period, they were deemed to have elected to contribute 6% of their regular earnings to their 401(k) Plan account, absent an affirmative election otherwise. This contribution then automatically increased by two percentage points each successive year, up to a maximum deferral of 16% of the participant's pre-tax earnings.

Vesting

90. Section 8 of the 401(k) Plan Document sets forth the Vesting and Forfeiture of the Plan. Pursuant to Section 8(a), Participants are 100% vested and nonforfeitable in their accounts in the Plan (other than their Retirement Contribution Accounts as explained below).

91. Pursuant to Section 8(a), Participants are 100% vested and nonforfeitable in their Retirement Contribution Account, representing the employer's contribution, in the Plan upon the occurrence of any of the following: (a) attainment of age 60; (b) death; (c) total and permanent

disability; (d) job elimination; (e) termination of employment as a result of a divestiture. Section 8(c) of the 401(k) Plan Document provides the following vesting schedule for a Participant:

Completed Years of Service	Nonforfeitable Percentage
Less than 2	0 (Percent)
2 but less than 3	20 (Percent)
3 but less than 4	40 (Percent)
4 but less than 5	60 (Percent)
5 but less than 6	80 (Percent)
6 or more	100 (Percent)

Investment of Plan Assets

92. Pursuant to Section 12(a) of the 401(k) Plan document, participants in the 401(k) Plan may invest in the Funds established by the Investment Committee in such amounts as elected by the Participant.

93. Pursuant to Section 12(a) of the 401(k) Plan document, participants in the 401(k) Plan who are automatically enrolled in the Plan pursuant to Section 3(a) and fail to make an affirmative investment election for their accounts are defaulted into the Intel TDP that corresponds with the Participant's age (*i.e.*, that matches his or her anticipated retirement date) as determined by the Investment Committee.

94. In 2011, Intel also mapped existing participant accounts in the 401(k) Plan into the customized Intel TDPs unless they opted out. According to a PIMCO DC Dialogue interview with Stuart Odell, in March/April 2014, as a result of this reallocation policy approximately two-thirds of existing participants were mapped into the TDPs.

B. Fiduciary Responsibility For Investment Of Assets

95. Pursuant to Section 13(f) of both Plan Documents, the Investment Committee, in accordance with the terms of the Plan and Trust Agreement, was responsible for designating and evaluating the Funds offered to Participants (including Funds designated as the default investment pursuant to Section 12(a)) and had all the powers necessary or appropriate to accomplish those purposes, including the following:

1 (i) To appoint and remove, as it deems advisable, the Trustee;

2 (ii) To appoint and remove, as it deems advisable, one or more investment
3 managers pursuant to the provisions of the Trust Agreement, each of which (A) shall be
4 (1) an investment adviser registered under the Investment Advisers Act of 1940; (2) a bank,
5 as defined in the Investment Advisers Act of 1940; or (3) an insurance company qualified to
6 manage, acquire, or dispose of qualified plan assets under the laws of more than one state;
7 and (B) shall acknowledge in writing to the Investment Committee that such investment
8 manager is a fiduciary with respect to the Plan;

9 (iii) To conduct periodic reviews of the performance, costs, and expenses of the
10 Funds, the Trustee, investment managers, and outside service providers;

11 (iv) To establish and communicate to the Trustee and the investment managers
12 from time to time its determination of the Plan's short- and long-term financial needs, so that
13 the Trustee's and investment managers' investment decisions with regard to Trust Fund
14 assets can be coordinated therewith; provided that such determination of the Plan's financial
15 needs shall be consistent with the funding policies and methods adopted by the Company and
16 in effect at the time of such determination;

17 (vii) To directly enter into and confirm any investment transaction or to direct the
18 Trustee pursuant to the Trust to enter into or confirm any investment transaction; in each case
19 the term "investment transaction" includes any investment permitted under the Trust,
20 including, but not limited to, any investment in a partnership, limited liability company, unit
21 investment trust, business development company, private equity fund, investment company
22 (registered or otherwise) or other similar arrangement (whether publicly traded or otherwise)
23 and, for all purposes under Section 13, to exercise all other fiduciary powers relating to the
24 management of Plan assets.

25 96. Pursuant to Section 13(m) of both Plan Documents, the Administrative Committee
26 and the Investment Committee were required to report to the Finance Committee at least annually
27 and provide information necessary or appropriate to permit the Finance Committee to review the
28 continued prudence of its appointments of the members of both Committees.

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C. The Plans' Assets

1. Master Trust Investment Funds

97. The Plans' assets are invested in relevant part in nine master trust investment funds ("Investment Funds"). The financial statements attached to the 2014 Forms 5500 for the Investment Funds report the following holdings:

(1) Alternative Investments (aka Private Equity Fund): invests in over fifty private equity investment partnerships.[7]

(2) Commodities Fund: invests in two commodities funds and a commodities hedge fund.[8]

(3) Emerging Markets Fund: invests in two emerging market funds and two emerging market private equity funds.

(4) Global Bond Fund: invests largely in debt securities.

(5) Hedge Fund: invests in over twenty hedge fund investment partnerships.

(6) International Stock Fund: invests in two international stock funds and equity securities.

(7) Small Cap Fund: invests in three small cap funds and small cap equity securities.

(8) Stable Value Fund: invests in several guaranteed investment contracts and pooled separate accounts.

(9) U.S. Large Cap Fund: invests in four large cap equity funds.

98. The Investment Funds are structured as Master Trusts. Some Investment Funds are structured as a fund-of-funds. Others invest in securities directly as well as in funds.

99. Each fund within an Investment Fund buys, holds, and sells securities (or other assets) under the direction of an investment manager or investment advisor. At least until Alliance

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[7]Early in the relevant period, the Alternative Investments Fund included hedge funds and commodities in addition to private equity. The hedge funds were subsequently broken out into two hedge funds of funds, an Absolute Return Fund and a Long Short Fund in 2010. Then, in 2011, the Investment Committee merged these two funds of funds into the Hedge Fund while at the same time increasing the number of hedge fund managers and increasing the Plans' investments in hedge funds from approximately $750 million to approximately $1.86 billion.

[8]The Commodities Fund was added in 2010.

Bernstein was hired as Investment Manager in 2015, the Investment Committee selected the funds, investment managers, advisors, and securities for the Investment Funds.

100. The Investment Funds represent the various asset classes and investment strategies to which the asset allocation portfolios in the Plans, namely the Intel TDPs and the Diversified Fund, allocated the Plans' and participants' assets.

101. An asset allocation fund is a portfolio consisting of a diverse set of asset classes such as domestic and/or international equities and bonds. Asset allocation funds are often structured as "funds-of-funds," meaning that the portfolio invests in underlying funds representing various asset classes rather than investing directly in securities representative of the asset classes.

102. Table 1 below lists, on December 31, 2011, respectively, the name of each Investment Fund, the total assets in the given Investment Fund, the 401(k) Plan's percentage ownership of the given Investment Fund, the dollar value of the 401(k) Plan's ownership of the given Investment Fund, the Retirement Plan's percentage ownership of the given Investment Fund, and the dollar value of the Retirement Plan's ownership of the given Investment Account.[9]

TABLE 1

Investment Fund	Assets in Fund	401(k) Plan %	401(k) Plan $	Ret. Plan %	Retirement Plan $
US Large Cap	$1,411,807,722	45.10%	$636,725,283	54.90%	$775,082,439
Int'l Stock	$1,216,444,003	48.10%	$585,109,565	51.90%	$631,334,438
Global Bond	$2,200,337,976	17.30%	$380,658,470	54.00%	$1,188,182,507
US Small Cap	$368,890,696	54.20%	$199,938,757	45.80%	$168,951,939
Em Mkts	$963,325,120	43.20%	$416,156,452	56.80%	$547,168,668
Stable Value	$596,326,952	79.70%	$475,272,581	20.30%	$121,054,371
Pvt Equity	$348,400,370	0.40%	$1,393,601	99.60%	$347,006,769
Commodities	$385,501,100	36.90%	$142,249,906	63.10%	$243,251,194
Hedge Fund	$1,860,015,367	36.60%	$680,765,624	58.20%	$1,082,528,944

[9] Table 1 represents the Plans' holdings in the Investment Funds, not the Diversified Fund's and Intel TDPs' dollar and percentage allocations to the Investment Funds, except as to the Private Equity, Commodities, and Hedge Funds, because the specific dollar and percentage allocations of the Diversified Fund and Intel TDPs are not available to participants. In other words, Table 1 does not represent the asset allocations of the Diversified Fund and Intel TDPs as such. Using Table 1 for that purpose would understate the percentage allocations to Private Equity, Commodities, and Hedge Funds because the remaining funds were held in part in participant accounts outside of the Diversified Fund and Intel TDP portfolios.

103. The Plans' financial statements filed with the Forms 5500 with the Department of Labor reflect similar allocations in 2012 to 2014.

2. The Retirement Plan and the Diversified Fund

104. Until January 1, 2015, participants in the Retirement Plan under the age of 50 did not have any ability to direct the investment of their individual accounts. Rather, until approximately January 1, 2015, the Investment Committee directed that the Retirement Plan allocate substantially all of its assets to the Diversified Fund. The Diversified Fund, in turn, invested in a mix of Investment Funds, as explained above.

105. The Intel Diversified "Fund" is a portfolio invested in the Investment Funds. It is not a fund as such, but rather a set of portfolios that directs the assets of the Retirement Plan and the 401(k) Plan into the various Investment Funds. The Retirement Plan and 401(k) Plan own a percentage of each Investment Fund, as shown in Table 1, above.

106. The Intel Diversified "Fund" is managed by the Investment Committee, and it dictates the asset allocation model, chooses and manages the Investment Funds representing the various asset classes, and chooses the investments and investment managers in the Investment Funds, e.g., the various limited partnerships that make up the Private Equity and Hedge Funds.

107. The Diversified Fund's substantial allocation to private equity, commodities, and hedge fund investments differs markedly from the typical allocation of peer balanced funds, which was the primary cause of the Fund's underperformance in recent years.

108. Beginning in 2009, the Investment Committee began dramatically increasing the Retirement Plan's investment in private equity, hedge funds, and commodities via the Diversified Fund.

109. At the end of 2008, the Diversified Fund held approximately 6.17% of its assets, or $214 million, in private equity, hedge funds, and commodities. By the end of 2009, the Diversified Fund held approximately 15.33%, or $667 million, of its assets in such investments.

110. In 2010, the Diversified Fund's investment in private equity tripled from about $83 million to $245 million. In 2010, the Diversified Fund added an investment in commodities, about $245 million, and its investment in hedge funds increased from approximately $583 million in 2009

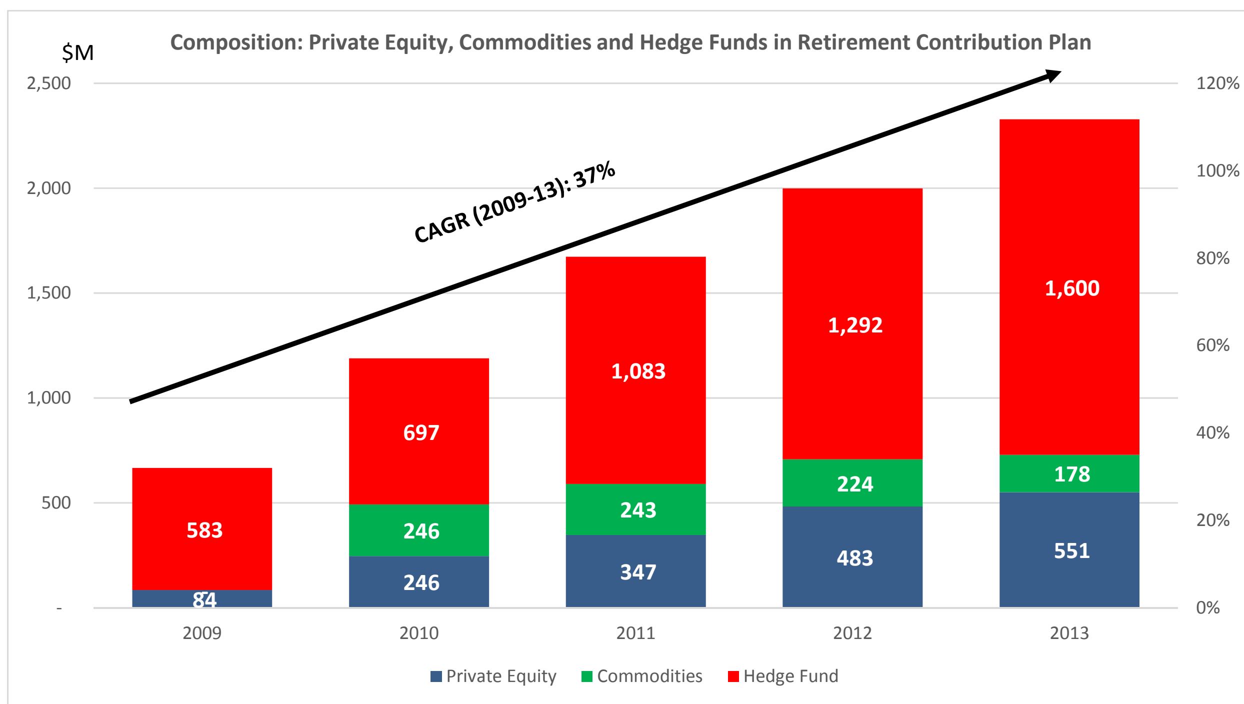
to approximately $697 million in 2010. By the end of the year, the Diversified Fund held about 22.23% of its assets in commodities, private equity, and hedge funds, or about $1.2 billion.

111. In 2011, the Investment Committee invested even more Diversified Fund money into private equity, hedge funds, and commodities, increasing such investments to almost 33% of the fund's portfolio, or approximately $1.67 billion.

112. By the end of 2013, the Diversified Fund held approximately 36.71% of its assets in private equity, hedge funds, and commodities, or approximately $2.4 billion.

113. Between 2009 and 2013, the Investment Committee caused the Diversified Fund to increase its allocation to private equity, hedge funds, and commodities by 595% and increase the dollar value of the Fund's investment in such investments from an estimated $214 million to almost $2.33 billion, an increase of 1,088%. These changes in investment allocations in the Diversified Fund are detailed in Figure 1 below.

FIGURE 1



3. The Intel TDPs

114. The Investment Committee has included Intel's custom TDPs in the Plans throughout the Target Date Class Period.

115. A target date fund is a one-stop fund which holds a mix of asset classes and follows

what is known as a "glide path." A glide path describes a fund's asset reallocation strategy, which (generally) becomes more conservative as the fund approaches its target date, that is, the retirement date of the plan participant. A target date fund's number represents the approximate year when a participant expects to withdraw benefits. The target date generally is a projected retirement date at age 65. Thus, a participant who anticipates retiring at 65 in or near 2045 would generally invest in a 2045 fund.

116. The Intel TDPs offered in the Plans are not actual funds as such in the sense that the Plans' participants hold units or shares of a fund.

117. Instead, the Intel TDPs are managed as an asset allocation service. The Investment Committee determined the allocations and selected the underlying Investment Funds to which the Intel TDPs allocate the Plans' and participants' assets, but there is no actual target date fund as a distinct entity. Rather, each participant is placed in a portfolio managed by the Investment Committee, which provides each such participant with a proportionate interest in the underlying Investment Funds, based on the allocation mandates of the Intel TDP set by the Investment Committee. Thus, the Intel TDPs are effectively an investment management service.

118. The Intel TDPs, in other words, are not mutual funds or collective investment vehicles that issue shares or units. Rather, a plan participant holds a specifically weighted selection of investments, which weighting changes over time, designed by the Investment Committee. And the selected investments, *i.e.*, the Investment Funds, also are chosen and managed by the Investment Committee.

119. All the Intel TDPs offered in the Plans are invested in the same nine Investment Funds, and share the same glide path. A "glide path" is the formula by which monies in the target date fund are reallocated across asset classes as the fund "glides" toward the target date. The amount allocated to the Investment Funds vary however. As the target date approaches, the particular Intel TDP adopts a purportedly more conservative allocation. Stated differently, each Intel TDP has adopted the same allocation and reallocation model (*i.e.*, glide path) and invests in the same underlying Investment Funds, but the TDPs are simply on staggered start dates and end dates such that each TDP is five years ahead of the TDP behind it, and five years behind the TDP ahead of it on

the glide path.

120. Prior to 2011, Defendants called the customized target date portfolios LifeStage Funds. In or around 2011, the Investment Committee restructured and renamed the portfolios, calling them Target Date Funds, and adding several additional target date portfolios.

121. As part of this new model, beginning in 2011, the Intel TDPs invested a very large percentage of 401(k) Plan TDP assets in hedge funds and commodities, approximately 23% in 2011. The Intel TDPs also adopted a heavy weighting in international equities in comparison to peer TDFs.

122. As Bill Parish, an independently registered investment advisor, observed in Intel Q4 2013 Earnings – Time to Fix Pension Plan (January 16, 2014), Intel's 401(k) and Retirement Plans "have been infiltrated by hedge funds," commenting that Intel's decision to invest heavily in hedge funds amounted to "institutional gambling with employees['] assets."[10]

123. As The Oregonian newspaper reported on August 30, 2014 in *What's Inside Intel's retirement plans? Hedge funds. Lots of 'em*: "Intel's 401k-type plans are unusual in a couple of ways that aren't comforting to some investors and financial advisers. It's embarked, essentially, on an experiment with nearly $14 billion in worker retirement money for more than 63,000 participants." As this article observed, Intel decided to use "expensive, opaque and potentially risky hedge funds in its main 401k investment options[]" and to "forc[e] company contributions into [hedge funds]."[11]

a. *The Investment Committee Adopted an Imprudent Allocation Model.*

124. Instead of adopting an asset allocation model consistent with prevailing standards adopted by investment professionals, the Investment Committee implemented an asset allocation strategy for the Intel TDPs that grossly over-weighted allocations to hedge funds, commodities, and international equities as compared to target date funds available in the marketplace.

125. The average asset allocations for 2030 target date funds offered by major fund companies in 2009 are reflected in Table 2:

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[10] Bill Parish, *Intel Q4 2013 Earnings- Time to Fix Pension Plan,* Bill Parish- Parish & Company Registered Investment Advisor Blog (January 16, 2014), http://blog.billparish.com/2014/01/16/intel-q4-2013-earnings-time-to-fix-pension-plan/.

[11] Hunsberger, *supra* note 4.

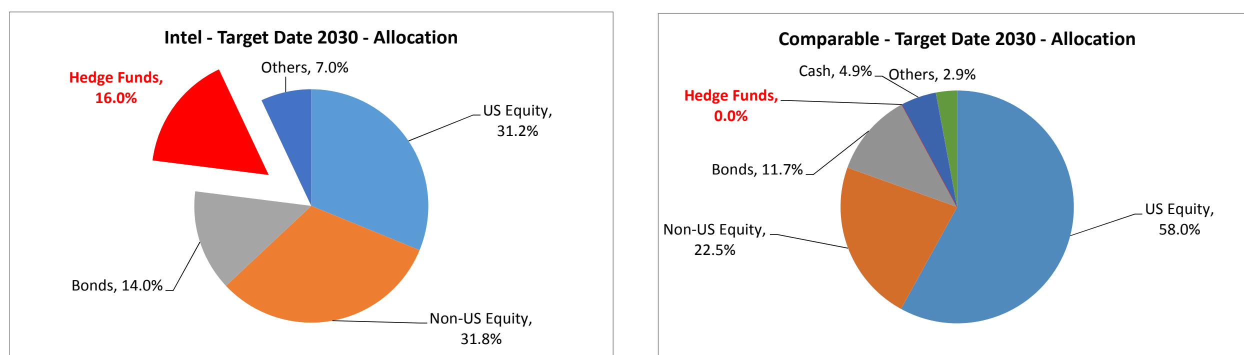
TABLE 2

Firm/Product	US Equity	Non-US Equity	Bond	Cash	Other
Fidelity	48.57%	18.29%	14.28%	4.26%	14.60%
American Century	60.48%	21.52%	6.74%	11.19%	0.07%
American Funds	50.13%	28.59%	11.09%	9.08%	1.10%
John Hancock	60.63%	27.70%	5.49%	5.10%	1.08%
Principal	53.46%	19.63%	23.58%	-0.43%	3.76%
Russell	58.55%	27.60%	7.01%	5.35%	1.48%
T Rowe Price	64.01%	19.96%	10.73%	4.29%	1.01%
Vanguard	68.09%	16.65%	14.28%	0.54%	0.43%
Average	**58.0%**	**22.5%**	**11.7%**	**4.9%**	**2.9%**

126. By comparison, the Intel 2030 TDP had approximately 21% of assets allocated to hedge funds and 5% to commodities by 2014.[12] Peer group TDFs – or funds with a "target date" of 2030 – do not allocate any assets to hedge funds and very few peer TDFs have even small commodity stakes. Further, peer TDFs allocate 70% of equity assets to U.S. stocks and 30% to foreign; whereas, the Intel 2030 TDP allocates over 50% of equity investments to foreign stocks.

127. Figure 2 below compares the asset allocation of the 2030 Intel TDP to the average asset allocations of the eight professional investment management firms represented in Table 2.[13]

FIGURE 2



[12] *Target Date 2030 Fund*, Oregonian Live at 2 (March 31, 2014), http://media.oregonlive.com/finance/other/Target%20Date%202030%20Fund-1.pdf.

[13] The categories represented in the pie chart for the 2030 Intel TDP correlate to the Investment Funds as follows: the Hedge Funds category represents the Hedge Fund; the Other category represents the Stable Value Fund, the Private Equity Fund, and the Commodities Fund; the U.S. Equity category represents the U.S. Large Cap Fund and U.S. Small Cap Fund; the Non U.S. Equity category represents the International Stock Fund and the Emerging Markets Fund; the Bonds category represents the Global Bond Fund. The allocations to these respective categories are based on the allocations represented in a Target Date Funds fact sheet published by Intel with the effective date of April 30, 2015.

128. Exhibit 1 to the Complaint provides comparisons between several Intel TDPs and the average allocations of the eight professional investment management firms represented in Table 2 for the TDF of the same year.

129. As of 2015, approximately $3.63 billion of the 401(k) Plan's assets are in the Intel TDPs.[14]

b. *The Intel TDPs Have Performed Poorly.*

130. As a result of the asset allocation and investment decisions, the Intel 2030 TDP underperformed peers by approximately 400 basis points (4%) in 2013.[15]

131. Because all twelve of the Intel TDPs share the same underlying investments and asset allocation model,[16] the Investment Committee's asset allocation and investment decisions have impacted the entire family of Intel TDPs in more or less the same fashion. Morningstar commented that the entire family of Intel TDPs has underperformed peers because of these allocation and investment decisions.[17]

132. Table 3[18] below compares the performance of the Intel TDPs to corresponding actively managed (the underlying funds are actively managed) target date funds offered by Fidelity Investments and passively managed (the underlying funds are index funds) target date funds offered by Vanguard Group.[19]

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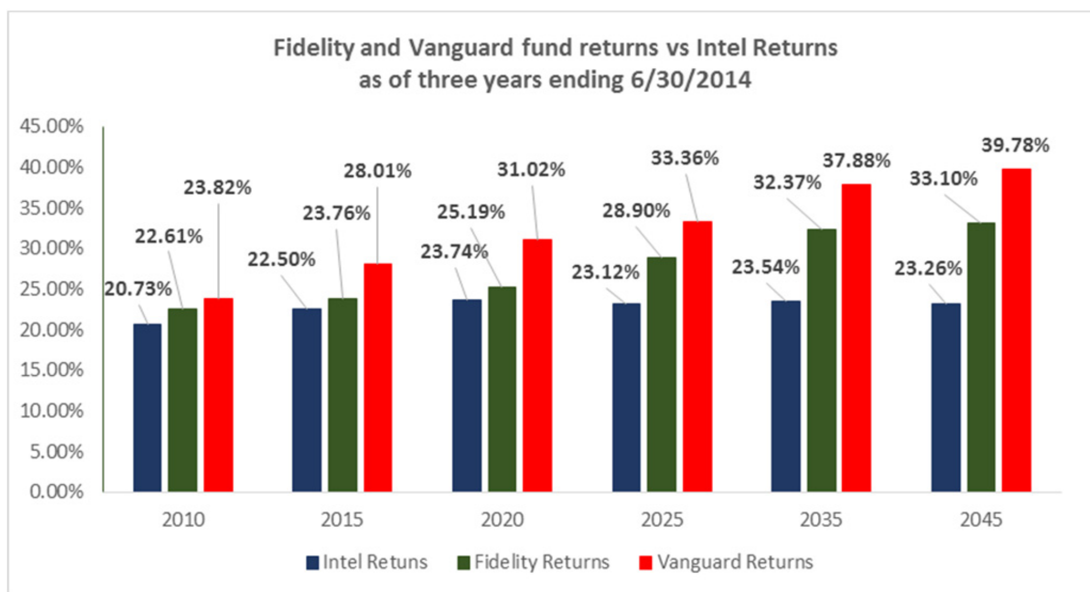
[14]Robert Steyer, *supra* note 2.
[15]*Target Date 2030 Fund*, *supra* note 9. The same fact sheet also reports that the fund underperformed the 2030 category average by 223 basis points from March 2013 to March 2014.
[16]Intel Target Date Funds (Apr. 30, 2015).
[17]*Target Date 2030 Fund*, *supra* note 9.
[18]Incomplete data prevented comparison of all Intel TDPs to corresponding Fidelity and Vanguard TDFs. Nevertheless, the results are sufficiently uniform to conclude that similar excess fees and underperformance would have been found for the Intel Income, 2030, 2040, 2050 and 2055 TDPs.
[19]The sources for Table 3 are respectively: an Intel 401(k) Plan (15105) Investment Options Performance Update as of June 30, 2014 for the investment performance of the Intel TDPs; and Yahoo Finance for the Fidelity and Vanguard funds (using the adjusted closing share price on the first and last day of the three-year period ending June 30, 2014).

TABLE 3[20]

Investment Returns 7/1/2011 - 6/30/2014							
TD Year	Intel Ret	Fid Tkr	Fid Ret	Fid Ex	Van Tkr	Van Ret	Van Ex
2010	20.73%	FFKCX	22.61%	1.88%	VTENX	23.82%	3.09%
2015	22.50%	FKVFX	23.76%	1.26%	VTXVX	28.01%	5.51%
2020	23.74%	FFKDX	25.19%	1.44%	VTWNX	31.02%	7.27%
2025	23.12%	FKTWX	28.90%	5.78%	VTTVX	33.36%	10.24%
2035	23.54%	FKTHX	32.37%	8.84%	VTTHX	37.88%	14.34%
2045	23.26%	FFKGX	33.10%	9.84%	VTIVX	39.78%	16.52%

133. Figure 3 below represents the data in Table 3 in a chart format.

FIGURE 3



134. If the Investment Committee had simply selected widely-accepted index funds for the Intel TDPs or commercially available TDFs managed by Fidelity or Vanguard, as hundreds of other plan fiduciaries have done (approximately 70% of 401(k) TDF assets are invested in Fidelity and Vanguard TDFs, *see* Part V.C.8, *infra*), the 401(k) Plan and its participants would be far better off today. Consider Figure 4 which contrasts the growth of a hypothetical $500,000,000[21] investment in

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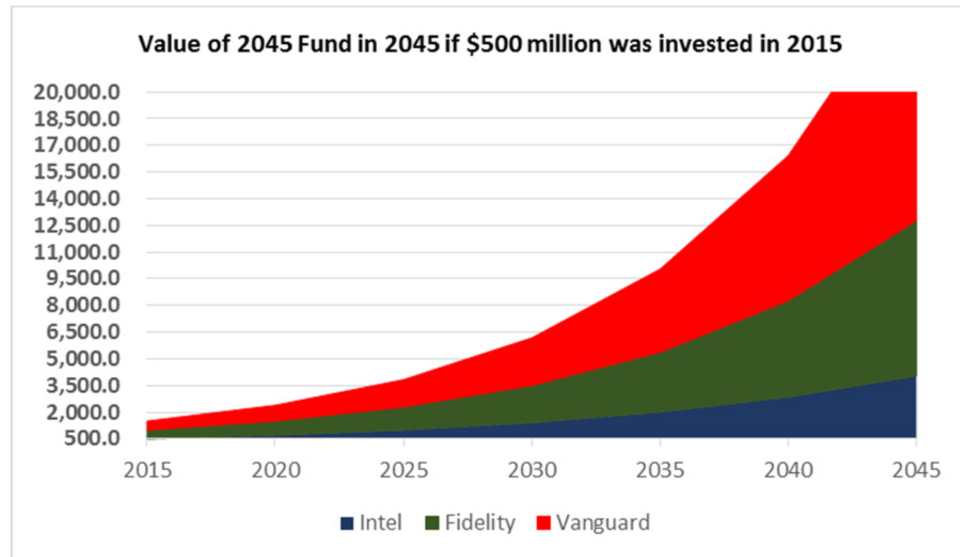
[20] The columns represent, respectively, TDF year, 3-year return for Intel TDP, ticker for Fidelity TDF, 3-year return for Fidelity TDF, difference between Fidelity return and Intel return in absolute terms, ticker for Vanguard TDF, 3-year return for Vanguard TDF, and difference between Vanguard return and Intel return in absolute terms.

[21] A $500,000,000 hypothetical investment is consistent with the 401(k) Plan's actual investments given the estimated $3.5 billion managed through the Intel TDPs and the seven Intel TDPs represented here.

the 2045 Intel (in which Sulyma invested), Fidelity, and Vanguard funds from 2015 to 2045, assuming the average annual investment returns for the years ending June 30, 2014, remain constant.[22]

FIGURE 4



135. Assuming a $500 million hypothetical investment in the Vanguard 2045 TDF to 2045 instead of the Intel 2045 TDP during the same period, the 401(k) Plan and its participants whose accounts were invested in the Intel 2045 TDP would have billions of dollars in additional retirement savings in 2045.

136. Even from July 1, 2011 to June 30, 2014, investing $500 million in the Vanguard 2045 TDF instead of the Intel 2045 TDP would have yielded hundreds of millions of dollars in additional retirement savings for the 401(k) Plan and its participants. A $500 million investment would have yielded, respectively, $355 million from the Vanguard fund and only $116 million from the Intel TDP. The 2045 Intel TDP earned only one third of the 2045 Vanguard fund.

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[22] Of course, the allocations for all three sets of TDFs will become more conservative over time, *i.e.*, assuming no change to the glide path and asset allocation, in 2045, the 2045 TDFs will be much like the 2015 TDFs are today. Thus, all three 2045 TDFs are expected to earn increasingly lower returns over time. But, as shown in Table 3 and Figure 3, the Intel TDP underperforms every corresponding Vanguard and Fidelity TDF. Thus, although Figure 4 overstates the growth of *all* three of the covered TDFs, the large disparity in returns across the fund families coupled with compounding will result in substantially lower savings for investors in the Intel TDPs.

1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28

c. *The Intel TDPs Charge Very High Fees.*

137. Before the Investment Committee changed the Intel TDP allocations in approximately 2011, the fees for the Intel TDPs ranged from 65 basis points to 71 basis points.[23]

138. Although the fees for the Intel TDPs were already substantially higher than index-based TDFs such as those offered by Vanguard, the increased allocation to hedge funds beginning in 2011 significantly increased the expenses of the Intel TDPs, almost doubling the range of fees to between 130 to 136 basis points. No explanation has been provided justifying or evidencing that the Investment Committee observed sufficiently rigorous, thorough and documented bases for incurring the significantly higher fees resulting from such exposure to high-fee hedge funds and private equity. To the contrary, investing in high-fee hedge funds and private equity caused the Intel TDPs to consistently and substantially underperform Vanguard index-based TDFs since 2011, as shown in Figures 3 and 4 above.

139. The Vanguard TDFs carry expense ratios of approximately 14-16 basis points. Table 4 compares the fees and expenses of the Intel TDPs to Vanguard's index-based TDF offerings.[24]

TABLE 4

TD Year	Tkr	Van Fee	Int Fee	Int Ex Fee Abs	Int Ex Fee %
2010	VTENX	0.0014	0.0137	0.0123	879%
2015	VTXVX	0.0014	0.0136	0.0122	871%
2020	VTWNX	0.0014	0.0135	0.0121	864%
2025	VTTVX	0.0014	0.0134	0.012	857%
2035	VTTHX	0.0015	0.0131	0.0116	773%
2045	VTIVX	0.0016	0.013	0.0114	713%

140. Figure 5 illustrates the fee differences.

[23]Intel 401(k) Savings Plan: Important Plan and Investment-Related Information, Including the Plan's Investment Options, Performance History, Fees and Expenses, at 6-8.
[24]The sources for Table 5 are an Intel Target Date Funds fact sheet dated April 15, 2015 and Vanguard's website.

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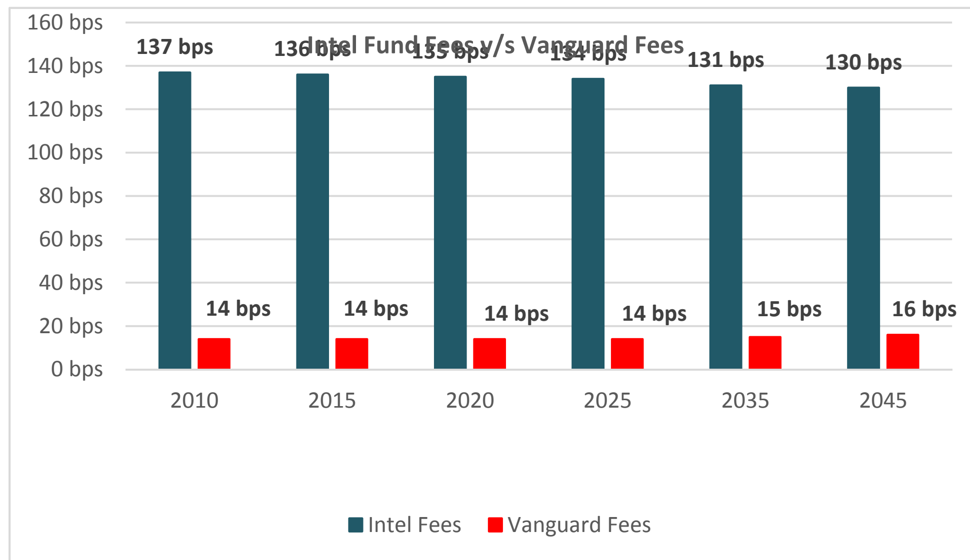
FIGURE 5



141. As *What's behind the changes to Intel's worker retirement plans,* commented, the Intel TDPs are rising in expenses in contrast to the general trend in the industry, which is lowering expenses.[25]

4. The Intel TDPs Imprudently Invested in Hedge Funds

142. Target date funds are based on two important investment theories: Modern Portfolio Theory ("MPT") and the importance of asset allocation to generating retirement savings.

143. MPT posits that the power of combining securities and asset classes that have low correlations to each other can reduce risk, as measured by the volatility of a portfolio.

144. Brinson, Beebower and Hood studied the impacts of asset allocation on 91 pension funds over a 10 year period and found that 94% of differences in performance can be explained purely by the asset allocation and only 6% is explained by market timing and security selection. [26] This underscores that trying to achieve excess returns by timing the markets is a generally superfluous strategy when considering a large pool of assets over a long investment horizon covering

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[25] Brent Hunsberger, *What's behind the changes to Intel's worker retirement plans*, The Oregonian (May 2, 2015), http://www.oregonlive.com/finance/index.ssf/2015/05/whats_behind_the_changes_to_in.html.
[26] Gary P. Brinson et al., *Determinants of Portfolio Performance*, 42 Financial Analysts Journal 133, 133-138 (1995).

many market cycles. Market timing and security selection tied to near-term cycles tend to wash out over time.

145. Many Hedge funds enable the manager to invest in near-term opportunities without adhering to a stated fund objective. By contrast, Mutual Funds regulated by the 1940 Act are obligated to state and adhere to their investment objectives. Mutual funds also have stringent fee disclosure requirements.

146. Most TDFs employ a sliding scale of equity, fixed income and cash allocations to provide substantial correlation benefits to market swings. Most off-the-shelf TDFs avoid any meaningful use of leverage (as leverage is strictly constrained in 1940 Act funds) and generally employ only minor use of derivatives, usually for proxy or liquidity needs (and typically in the fixed income allocation where bond liquidity is increasingly challenged). Thus, the portfolio manager of a 1940 Act-regulated Target Date Fund has strong guidance as to the exposures he or she will receive when incorporating standard, prospectus-driven mutual funds in a fund-of-fund lineup. Additionally, for index-based TDFs, computer programs dictate strict adherence to the given index and do not afford manager discretion to deviate from guidelines and strategies.

147. Hedge funds involved in event driven and directional bets are generally using either focused security selection or market timing strategies, while distressed (and/or stressed) and value-driven funds are generally security selection funds. Brinson, Beebower & Hood explain that these strategies do not make sense for a retirement investment.

148. Hedge funds have been traditionally limited to "accredited investors" who have over $200,000 in annual income and/or over $1,000,000 in net worth. The reason for limiting investment to those accredited investors is to restrict these investments to those who can afford to lose their invested principal.

149. The Intel Hedge Fund contained in the Intel TDPs purports to include 21 different hedge funds. Of those funds at least 6 are primarily deemed Multi-Strategy, 5 are deemed Directional, 5 involved Distressed (or Stressed) and 8 are Event Driven. Several list multiple strategies. Some of these represent the most potentially volatile of hedge fund strategies. Event driven strategies generally place bets on the chance that a particular market event – such as a merger

or a key interest rate change – takes place. If the event does not occur, or if the ramifications are not as impactful, then the leveraging and risk concentration employed will be for naught and potentially large losses can take place as a result. Distressed strategies tend to seek opportunities with either equity or debt in companies or other entities that are on the verge of a potentially calamitous event – such as a bankruptcy – thus driving the price of their securities down. The hedge fund managers bet the event will not happen and buy in. If the event does happen, the losses are usually deep and permanent. Conversely, if they "short" the event (i.e. a bet on the price of the securities going down) and it does not happen, losses can exceed even the invested principal.

150. A common feature of these strategies is that the managers often employ significant leverage through various means such as borrowing, shorting or the use of derivatives. For hedge funds that commit significant amounts of capital to sustain the collateral requirement through the cycle of the anticipated event, the funds are extremely illiquid. As a result, many hedge funds employ strict constraints around access to invested capital by their investors by requiring months of notice and reserving the right to deny such requests for redemptions at their discretion.

151. The impact or potential impact of the illiquidity of hedge funds on the scale invested in by the Plans is that if the hedge funds refuse to honor redemption requests, the Investment Committee will be forced to sell off other, more marketable investments (*i.e.*, publicly traded securities), thereby increasing the Plans' concentration in hedge funds. There is a significant risk that the lock-up of hedge fund investments will cause selling in traditional securities and further harm the invested principal of the plan participants.

152. Hedge fund managers often move illiquid or impaired assets out of the main fund into a separate holding vehicle known as a "side pocket." Creating a side pocket is solely within the discretion of the hedge fund manager. As the Wall Street Journal reported as early as 2006, regulators and investors were becoming concerned about the abusive use of side pockets to mask underperformance and inflate manager performance fees.[27] Because side pockets are often used for illiquid investments, hedge fund managers impose onerous withdrawal constraints. In the wake of

[27] Gregory Zuckerman & Scott Patterson, *"Side Pocket" Accounts of Hedge Funds Studied*, The Wall Street Journal (Aug. 4, 2006) http://www.wsj.com/articles/SB115465505123626547.

the 2008 financial crisis, the SEC instituted several enforcement proceedings against hedge fund managers for improper use of side pockets.[28]

153. As the vast majority of former employees will roll their 401(k) investments into an IRA (upon retirement or changing employers) or into a new employer's plan, portability and liquidity are important considerations in constructing and selecting a TDF. Because hedge funds are not liquid and not portable, the substantial allocation to hedge fund investments by the Investment Committee means that participants attempting to liquidate Intel TDP holdings were (and are) at significant risk of being forced to lock-in substantial realized losses during a down or volatile market upon the need to liquidate their investments in the Plans.

5. Significant Investment in Hedge Funds and Private Equity Are Generally Not Suitable For Balanced Funds

154. Like TDFs, balanced funds in retirement plans need certain levels of liquidity, and volatility.

155. For these reasons, significant investments in hedge funds and private equity generally are not suitable for balanced funds. Few, if any, balanced fund portfolio managers invest in hedge funds and private equity.

6. Risks and Costs of Hedge Funds and Private Equity

156. Hedge funds and private equity funds are generally structured as investment partnerships. The investors are limited partners and the managers are general partners. Managers are typically paid under a "2 and 20" formula, meaning that the manager gets 2% of the assets under management and 20% of the profits generated by the fund's investments.

a. *Hedge Funds.*

157. A "hedge fund" pools investor assets to pursue a variety of active management strategies.

158. Hedge funds invest in many different types of assets. They "do not constitute an asset class but rather provide access to particular trading strategies that may be employed by specific fund

[28] *SEC Charges Hedge Fund Managers With Fraudulently Overvaluing Side-Pocketed Assets, Defalcation, and Material Misrepresentation,* U.S. Securities and Exchange Commission (October 19, 2010), http://www.sec.gov/litigation/litreleases/2010/lr21699.htm.

managers."[29] Hedge funds usually are classified according to their investment strategy.

(1) Valuation Risk.

159. Because the investment holdings and investment strategies of many hedge funds are often not well known, even to institutional investors like the Plans, it is difficult for the fund assets to be marked to market. The Government Accountability Office noted in 2011 that "[b]ecause many hedge funds may own [securities traded infrequently or in low volume] and derivatives whose valuation can be complex and subjective, a retirement plan official may not be able to obtain timely information on the value of assets owned by a hedge fund. Further, hedge fund managers may decline to disclose information on asset holdings and the net value of individual assets largely because the release of such information could compromise their trading strategy."[30]

(2) Investment Risk.

160. Hedge funds pose risks not found with traditional investments managed by registered investment companies. For example, registered investment companies are subject to strict leverage limits; whereas, hedge funds "can make relatively unrestricted use of leverage."[31] Leverage – essentially borrowed money – "can magnify profits, but can also magnify losses to the fund if the market goes against the fund's expectations." [32]

(3) Lack of Liquidity.

161. Hedge funds tend to be illiquid investments, where investor redemptions are severely limited by the hedge fund manager. For example, hedge funds often require an initial "lock-up" period where investors must commit their money for one or two years, or more.

162. In some cases, hedge fund managers may only allow one capital redemption per quarter. Once invested in a hedge fund, it is difficult for an investor to sell its interest in the fund and move to another option. Unlike investments in other vehicles, like mutual funds, a hedge fund

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[29]Theda R. Haber, *et al.*, Report to the Secretary of Labor: *Hedge Funds and Private Equity Investments*, at 6 (November 2011), http://www.dol.gov/ebsa/pdf/2011ACReport3.pdf.
[30]Barbara Borbjerg, *Plans Face Challenges When Investing in Hedge Funds and Private Equity*, at 6 (August 31, 2011), http://www.gao.gov/assets/90/82457.pdf.
[31] *Id*. at 7.
[32] *Id*.

investment cannot simply be bought or sold any day of the week.

163. The hedge funds in Intel's Hedge Fund typically require at least thirty days' notice to receive or redeem capital.[33]

(4) High Fees.

164. The hedge funds in Intel's Hedge Fund (the Hedge Fund managed by Intel is a fund-of-hedge funds) charge incentive fees, and inclusion of hedge fund investments in the Plans' portfolios has increased fees.[34]

165. Even without an incentive fee, a two percent annual flat fee on assets under management is high and not justified in the defined contribution plan context. Such a fee is up to ten times higher than the average standard wholesale level fees for pension plan investments – for example, 2% versus 0.20%.[35] Indeed, one hedge fund industry expert has calculated that hedge fund managers collected 98% of the profits generated by hedge funds during the years 1998-2010.[36]

166. The high fees of hedge funds can have a significant negative impact on net investment returns. For example, under the typical two and twenty fee structure, a 12% return would be reduced to only 8% after deduction of fees.[37]

167. The Investment Committee purportedly chose to invest in hedge funds in an attempt to achieve at least three goals: to increase diversification of plan assets; to decrease the volatility of the plan's investment performance; and to enhance the plan's performance overall.[38]

168. For example, a number of hedge funds do not provide substantial risk reduction or

[33]Interview Moderated by Stacy L. Schaus, PIMCO Executive Vice President and Defined Contribution Practice Leader with Stuart Odell, Assistant Treasurer of Retirement Investments, Intel Corp., (March/April 2014), http://media.pimco.com/Documents/PIMCO_DC_Dialogue_Odell_Schaus_Mar_Apr_2014.pdf.
[34]*Id.*
[35]Bill Parish, *Intel Q4 2013 Earnings- Time to Fix Pension Plan,* Bill Parish- Parish & Company Registered Investment Advisor Blog (January 16, 2014) ,http://blog.billparish.com/2014/01/16/intel-q4-2013-earnings-time-to-fix-pension-plan/.
[36]Simon Lack, *How The Hedge Fund Industry Has Kept 98% of The Profits In Fees*, SL Advisors: The Hedge Fund Mirage Blog (January 23, 2012), http://www.sl-advisors.com/how-the-hedge-fund-industry-has-kept-98-of-the-profits-in-fees/.
[37]Borbjerg, *supra* note 24, at 8, n. 11.
[38]*401K Global Diversified Fund, supra* note 5, at 3.

risk diversification for pension plan assets because they are correlated to the equity market. According to data compiled by the hedge fund house AQR, the HFRI Fund Weighted Composite Index – a leading hedge fund industry index – was 0.93 correlated with equity markets, or nearly 100% correlated. Often, hedge funds provide insufficient plan visibility into the strategies of their investments to enable an investor to properly understand the risk profile of the investment.

(5) Lack of Transparency.

169. Hedge funds lack the transparency of publicly traded funds such as mutual funds. In particular, hedge funds lack transparency by design, because individual hedge fund managers claim a proprietary interest in their investment strategies.

170. The desire of the hedge fund manager to keep an investment methodology private conflicts with a plan fiduciary's duty to monitor the fund's methodology. As Randall Dodd, Director of the Financial Policy Forum, testified before the U.S. Department of Labor, Employee Benefits Security Administration: Advisory Council on Employee Welfare and Pension Benefit Plans on September 20, 2006 about hedge funds: "[t]he investment strategies of hedge funds are often not well known, or are so lacking in transparency – even to their own investors […]– that the investors cannot adequately assess the hedge fund investment's contribution to their overall portfolio risk."

171. It is difficult for retirement plan fiduciaries to evaluate the performance of hedge funds, because of the variety of hedge fund strategies; the substantial rate of turnover of funds opening and closing; the selection bias created when new funds choose not to report returns until after they have a run of good years; and the survivorship bias created when closed funds simply disappear from hedge fund indices.[39]

(6) Operational Risks.

172. Retirement plans investing in hedge funds are also exposed to greater operational risks than presented by traditional investments. As the GAO Report explained, operational risk is the "risk of investment loss because of inadequate or failed internal processes, people, and systems, or problems with external service providers." "Operational problems can arise from a number of

[39] Haber, *supra* note 22, at 13.

sources, including inexperienced operations personnel; inadequate internal controls; lack of compliance standards and enforcement; errors in analyzing, trading or recording positions; or outright fraud."[40]

173. Hedge funds are not registered with the SEC, and are subject to few regulatory controls. Unlike mutual funds and other registered investment companies in the United States, hedge funds may avoid the registration requirement imposed by the Investment Company Act.[41] As Mr. Dodd explained, the absence of such regulatory controls, coupled with the fact that many hedge funds make it difficult for their assets to be marked to market, make hedge fund investments "especially prone to financial fraud."

174. Hedge fund strategies are often very complex. A prudent fiduciary must be capable of understanding the strategy in order to evaluate whether it is appropriate for investment of retirement plan assets. "[P]articular care should be exercised in due diligence of hedge funds, because of the complex investment strategies they employ; the fact that hedge fund organizations are frequently young and small; their use of leverage and the associated risks; the possibilities of concentrated exposure to market and counterparty risks, and the generally more lightly regulated nature of these organizations."[42] "The process of selecting and monitoring hedge fund investments requires additional resources and continuous support from experienced professionals, which may be substantially more expensive than those required to select and monitor traditional investments. Fiduciaries should understand the effort and costs that will be required, and should commit these resources prior to investing in hedge funds."[43]

175. Even if the plan fiduciary is able to gain visibility of a hedge fund's investment strategy, the detailed holdings of a hedge fund portfolio are not disclosed to individual investors like Plaintiff and the participants invested in the Intel TDPs and the Diversified Fund.

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[40]Borbjerg, *supra* note 24, at 8.
[41]Haber, *supra* note 22.
[42]Gary Bruebaker, *et al.*, *Principles and Best Practice for Hedge Fund Investors*, U.S. Commodity Futures Trading Commission at 14 (Jan. 15, 2009), http://www.cftc.gov/idc/groups/public/@swaps/documents/file/principlespractices.pdf.
[43]*Id.* at 7.

b. *Private Equity.*

176. The term "private equity" refers to a form of alternative investment which uses pooled funds to invest in privately held companies. Investors are generally described as "limited partners."

177. Private equity advisors have been criticized for their valuation practices, such as using a valuation methodology that is different from the one that has been disclosed to investors or changing the valuation methodology from period to period without additional disclosure. Such valuation practices make it exceedingly difficult, if not impossible, to monitor manager performance and evaluate fees accurately where fees are tied to assets under management and therefore increase as valuations increase.

178. Private equity investments pose several challenges for retirement plans like the Intel Plans. The four largest TDF providers in the market, BlackRock, Fidelity, T. Rowe Price, and Vanguard, do not include private equity in their TDF funds.[44]

(1) High Fees, Hidden Fees, and Inflated Fees.

179. Contracts with private equity managers generally address two forms of manager compensation: a flat fee for all assets under management (generally about 2%), and a "carried interest" fee, which is a percentage of any profits after a "hurdle" has been met. A typical fee structure in the private equity industry is "two and twenty," where the fee for assets under management is 2% and the incentive fee is 20% of profits above the hurdle.

180. The private equity funds in Intel's Private Equity Fund charge incentive fees.

181. An examination of private equity firms by the SEC has found that many private equity managers charge hidden and inflated fees to investors in their funds. According to Andrew Bowden, Director of the SEC's Office of Compliance Inspections and Examinations ("OCIE"), the SEC identified "violations of law or material weaknesses in controls over 50% of the time" at private

[44]Margaret Collins& Devin Banerjee, *Would You Like Some Private Equity in Your 401(k)?,* Bloomberg Businessweek, (Apr. 4, 2013). http://www.bloomberg.com/bw/articles/2013-04-04/would-you-like-some-private-equity-in-your-401-k.

equity firms. This, according to Mr. Bowden, is "a remarkable statistic."[45] The SEC's examination found that the most egregious violations were in the areas of fees, where the SEC found inadequate disclosures to investors. Examples of hidden or undisclosed fees include:

(a) Accelerated Monitoring Fees. Many private equity managers charge monitoring fees to the portfolio companies in the fund. These fees are charged at the portfolio company level, not the fund level, and, thus, are generally invisible to investors. Moreover, private equity managers often force monitoring agreements of ten years or more on the portfolio companies they control. When the portfolio company is sold before the monitoring agreement expires, the private equity manager accelerates the fees for the remaining years of the contract, even though the manager is no longer monitoring the portfolio company. Disclosure of this practice is virtually nonexistent.

(b) Operating Partners. Private equity managers often foist "operating partners" or consultants in which they have an interest or affiliation on portfolio companies without the knowledge of investors. The fees collected by the private equity managers via these arrangements are not disclosed to investors. As Mr. Bowden commented: "Many of these Operating Partners, however, are paid directly by portfolio companies or the funds without sufficient disclosure to investors. This effectively creates an additional "back door" fee that many investors do not expect, especially since Operating Partners often look and act just like other adviser employees. They usually work exclusively for the manager; they have offices at the manager's offices; they invest in the manager's funds on the same terms as other employees; they have the title "partner"; and they appear both on the manager's website and marketing materials as full members of the team. Unlike the other employees of the adviser, however, often they are not paid by the adviser but instead are expensed to either the fund or to the portfolio companies that they advise." [46] Mr. Bowden continues: There are at least two problems with this. First, since these professionals are presented as full members of the adviser's team, investors often do not realize that they are paying for them a la carte, in addition to the management fee and carried interest. The adviser is able to generate a significant marketing benefit by presenting high-profile and capable operators as part of its team, but it is the investors who are unknowingly footing the bill for these resources. Second, most limited partnership agreements require that a fee generated by employees or affiliates of the adviser offset the management fee, in whole or in part. Operating Partners, however, are not usually treated as employees or affiliates of the manager, and the fees they receive therefore rarely offset management fees, even though in many cases the Operating Partners walk, talk, act, and look just like employees or affiliates."[47]

(c) Usurping Fee Discounts. Private equity firms leverage investor capital to obtain discounts on professional and vendor services for themselves, but cause their funds and portfolio companies to use the same professionals and vendors without any discounts.

(d) Charging undisclosed "administrative" or other fees not contemplated by the limited

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[45] Andrew J. Bowden, Director of the Office of Compliance Inspections and Examinations, Spreading Sunshine in Private Equity, Address Before Private Fund Compliance Forum (May 16, 2014). http://www.sec.gov/news/speech/2014--spch05062014ab.html.

[46] *Id.*

[47] *Id.*

partnership agreement.

(e) Exceeding the limits set in the limited partnership agreement around transaction fees or charging transaction fees in cases not contemplated by the limited partnership agreement, such as recapitalizations.

(f) Hiring related-party service providers, who deliver services of questionable value.[48]

182. The SEC has also found problems in how private equity managers report investment returns. Private equity managers generally report investment performance in the form of a "net internal rate of return" ("IRR"), which is supposed to reflect actual investor profits (or losses). But many managers invest their own money in their funds and that money does not pay fees at the fund level, i.e., the 2% asset fee and the 20% carried interest. Given that fees are a significant factor in net performance, including the manager's fee-free assets in the computation of IRR distorts investor experience because investors actually receive a lower return. Among the private equity firms that include manager assets in calculating IRR is Apollo Global Management LLC.

183. The high fees of private equity funds can have a significant negative impact on net investment returns. For example, under the typical two and twenty fee structure, a 12% return would be reduced to only 8% after deduction of fees.[49]

(2) Valuation and Reporting.

184. The SEC has found deep problems in the way private equity conducts valuations of Portfolio Companies. Common valuation problems identified by the SEC include: [50]

(a) Advisers using a valuation methodology that is different from the one that has been disclosed to investors.

(b) Cherry-picking comparables or adding back inappropriate items to EBITDA — especially costs that are recurring and persist even after a strategic sale — if there are not rational reasons for the changes, and/or if there are not sufficient disclosures to alert investors.

(c) Changing the valuation methodology from period to period without additional disclosure — even if such actions fit into a broadly defined valuation policy — unless there's a logical purpose for the change. For instance, the SEC has observed advisers changing from using trailing comparables to using forward comparables, which resulted in higher interim values for certain struggling investments. While making such changes is not wrong in and of itself, the change in valuation methodology

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[48] *Id.*
[49] GAO 11-901SP at 8, n.11.
[50] *Id.*

should be consistent with the adviser's valuation policy and should be sufficiently disclosed to investors.

185. These valuation practices make it difficult, to monitor manager performance and evaluate fees accurately where fees are tied to assets under management and therefore increase as valuations increase.

7. The Intel Fiduciaries Failed to Conduct an Appropriate Investigation

186. Despite the gravity and variety of the risks inherent in investing defined contribution plan assets in hedge funds, fiduciaries of the Plans allocated substantial Plan assets to hedge fund investments—eventually almost $2.5 billion as of the end of 2014. Upon information and belief, the Intel fiduciaries did not properly conduct a prudent investigation, "failed to conduct a sufficiently rigorous, thorough and well-documented investigation before implementing such an unconventional, unduly cost and in many ways risky investment program."

a. *The Performance of the Plans' Hedge Funds Portfolio in 2008 Was Poor.*

187. According to Brent Hunsberger, *What's inside Intel's retirement plans? Hedge funds. Lots of 'em,*.[51] Steven Odell, Intel's Assistant Treasurer for retirement plan investments, and the Investment Committee members strongly believe that hedge funds can reduce the ups and downs of traditional stock and bond markets.[52]

188. The Investment Committee supposedly included hedge funds in the Plans' asset allocation portfolios to increase diversification and reduce risk. But hedge funds should not be considered an independent asset class for purposes of diversification. Thus, it is a mistake to think of hedge funds as asset diversification. Instead, hedge funds are strategy diversification.

189. Mr. Odell also explained that he believes hedge funds have good risk-adjusted returns,[53] but conceded that the Plans' hedge fund portfolio did not meet expectations during the 2008 financial crisis—it lost 17% in 2008 as compared to a 5.2 percent gain in the Barclay's U.S. Aggregate Bond Index. This should have caused the Investment Committee to reconsider whether, to

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[51] *What's inside Intel's retirement plans? Hedge funds. Lots of 'em.* (Aug. 30. 2014),
[52] Hunsberger, *supra* note 4.
[53] Robert Steyer, *Intel's 401(k) reboot aims for better outcomes,* Pensions & Investments (March 5, 2012), http://www.pionline.com/article/20120305/PRINT/303059972/intels-401k-reboot-aims-for-better-outcomes/M.

what extent and in what form to continue its investments in hedge funds.

190. Based on the Forms 5500 filed with the Department of Labor, the Investment Committee added hedge funds after 2008, raising the number of managers in the hedge fund portfolio from about 10 or 12 to 21 by 2011. Indeed, in 2009, the 401(k) Plan had less than one million dollars in hedge fund investments and the Retirement Plan had approximately $550 million. By the end of 2011, the 401(k) Plan held $680 million in hedge fund assets and the Retirement Plan held approximately $1 billion. In short, the Investment Committee doubled down with the Retirement Plan and increased the 401(k) Plan's investment from under a million to over $680 million.

191. As of December 31, 2014, the Plans have almost $2.5 billion invested in hedge funds. All of that money was invested via the Intel TDPs and the Diversified Fund.

b. *Published Reports Questioned the Value of Hedge Funds.*

192. In addition to the Investment Committee's personal experience with hedge fund underperformance in 2008, numerous studies and reports published in the years before and after the 2008 financial crisis questioned the value of hedge funds. In light of its own experience and the wealth of data available to it, the Investment Committee knew or should have known during the Target Date and Diversified Fund Class Periods that hedge funds were, at the amount of the investment made by the Intel Plans, an imprudent investment for target date funds and balanced funds given the cost, performance and risk.

193. Unlike more traditional investment products, hedge funds typically charge both a management fee (typically 1-2% and sometimes more) based upon the amount of assets under management (the "Management Fee") and an annual performance fee (typically 20%) based on the success of the fund (the "Performance Fee").[54] Performance-based compensation arrangements with managers may create an incentive to make investments that are riskier or more speculative than would be the case if such arrangements were not in effect. In addition, because performance-based compensation is calculated on a basis that may include unrealized appreciation of assets,

[54] *The New Money Men*, The Economist (Feb. 17, 2005), http://www.economist.com/node/3666459.

compensation may be greater than if such compensation were based solely on realized gains.

194. By at least 2006, studies of the performance of alternative investments began to reveal that the returns produced by hedge funds – at least after 2000 – did not exceed the investment performance of index-tracking mutual funds (at least once fees were subtracted from performance). Reports of such studies were not buried in some obscure investment newsletter but were widely published in articles such as *Rolling in It: Why Investors should kick up a fuss about hedge-fund fees*, The Economist (Nov. 16, 2006), http://www.economist.com/node8173853 and *The New Money Men*, The Economist, Feb. 17, 2005 (citing studies). As a result, investors in hedge funds were taking greater risks and paying much higher fees for performance that could have been obtained for lower risk and lower fees.

195. As the Economist succinctly explained in *Rolling in It*, by November 2006, hedge fund managers were receiving "Alpha pay for beta performance." As Narayan Naik of the London Business School noted in that Economist article, "pension funds ha[d] been advised to move into hedge funds by consultants," but those consultants had relied on outdated data from the 1990s and biased data regarding performance and returns.[55]

196. As reported in a New York Times article, *How to Pay Millions and Lag Behind the Market* on October 19, 2013, many overseers of public pension funds, desperate to bolster returns and meet ballooning retiree obligations, have turned from traditional investments like stocks and bonds to hedge funds and private equity.[56]

197. In 2013, Benchmark Financial Services, a forensic firm hired by a Rhode Island council of the American Federation of State, County and Municipal Employees, issued a report[57] that concluded that the Rhode Island Pension system's $2 billion investment in high-cost and opaque alternative investments in hedge funds, private equity and venture capital had failed to outperform

[55] *Rolling in It: Why Investors should kick up a fuss about hedge-fund fees*, The Economist (Nov. 16, 2006), http://www.economist.com/node8173853.
[56] Gretchen Morgenson, *How to Pay Millions and Lag Behind the Market,* The New York Times (October 19, 2013), http://www.nytimes.com/2013/10/20/business/how-to-pay-millions-and-lag-behind-the-market.html?_r=0.
[57] http://www.ricouncil94.org/Portals/0/Uploads/Documents/Rhode%20Island%20X.pdf.

1 the pension plan's peer plans.[58]

2 198. As reported by *Reuters* on January 7, 2011, in *Hedge Funds Rise in 2010 but lag*
3 *broader market*, both the Hennessee Group and Hedge Fund Research groups that track performance
4 and asset flows, reported hedge funds gained approximately 10 percent in 2010, but lagged behind
5 the average stock market indexes and fell short of the average stock mutual fund's returns.[59] As
6 reported by Reuters, the S&P 500 index gained 12.8 percent and the average stock mutual fund rose
7 17.48 percent, according to data from Lipper Inc.

8 199. As reported in a 2012 Economist article, *Rich Managers, Poor Clients: A Devastating*
9 *Analysis of Hedge Fund Returns* (citing Simon Lack, *The Hedge Fund Mirage: The Illusion of Big*
10 *Money and Why It's Too Good to Be True*, (2012)) "since 1998, the effective return to hedge-fund
11 clients has only been 2.1% a year, half the return they could have achieved by investing in boring old
12 Treasury bills."[60]

13 200. Surveys conducted of pension funds (both public and private) showed that fewer than
14 half the pension funds surveyed have investments in private equity and about one quarter have
15 investments in hedge funds.[61] Among those pension plans that do invest in hedge funds and/or
16 private equity, the investments generally represent a small share of the total plan assets. According
17 to the GAO Report, one survey showed that "the average allocation to hedge funds among plans
18 with such investments was about 4 percent in 2007" and "among plans with investments in private
19 equity, the average was about 5 percent."[62]

20 201. The GAO Report summarized the level of pension plan investments in alternative
21 investments as follows:

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23 [58] Benchmark Financial Services, *Rhode Island Public Pension Reform: Wall Street's License to*
Steal, Rhode Island Council 94 (October 17,
24 2013), http://ricouncil94.org/portals/0/uploads/documents/rhode%20island%20x.pdf.
25 [59] Svea Herbst-Bayliss, *Hedge funds rise in 2010 but lag broader market,* Reuters (January 7,
2011), http://www.reuters.com/article/2011/01/07/us-hedgefunds-performance-
26 idUSTRE7063QR20110107.
[60] *Rich Managers, poor clients: A devastating analysis of hedge-fund returns,* The Economist:
27 Buttonwood's notebook blog (January 7, 2012), http://www.economist.com/node/21542452.
[61] Borbjerg*, supra* note 24, at 13-19.
28 [62] *Id.* at 13.

> Although the majority of plans with investments in hedge funds or private equity have small allocations to these assets, a few plans have relatively large allocations. . . . . Of the 62 plans that reported investments in hedge funds in 2007, 12 plans had allocations of 10 percent or more and, of those, 3 plans had allocations of 20 percent or more. The highest reported hedge fund allocation was 30 percent of total assets. Large allocations to private equity were even less common. A total of 106 surveyed plans reported investments in private equity in 2007, of which 11 plans had allocations of 10 percent or more and, of those, 1 plan had an allocation of about 20 percent.[63]

The data on hedge fund and private equity allocations set forth in the GAO Report was based on a survey conducted by Pension and Investments in 2007 of the largest 200 plans, ranked by combined defined benefit and defined contribution plan assets. Of the 200 plans surveyed, only 133 completed the survey and provided asset allocation information.

202. Hedge fund indices suffer from survivor bias. Hedge funds commonly shut down and experience relatively high attrition rates—about 8.5% fail each year. But these funds are routinely excluded from the indices. Thus, the indices primarily represent the returns of successful hedge funds, not those that fail, which biases returns upwards and lowers apparent downside volatility. Smoothed volatility also lowers correlations to other asset classes, thus falsely supporting the claim that hedge fund performance does not correlate to bonds and equities.

203. Hedge fund returns are self-reported. Many of the worst performing hedge funds do not report returns for obvious reasons. And even successful hedge fund managers may choose only to report the returns of their most successful funds, but not the returns of poor-performers. This problem is described as membership bias.

204. Even those funds and managers who do report returns may not do so on a regular basis. Infrequent fund valuations mask volatility—and reduced volatility is a primary selling point of hedge funds. For example, a hedge fund that reports performance quarterly can mask extreme swings in valuations over short periods of time.

205. Hedge funds also may hold illiquid investments that are valued at the discretion of the manager. Given that fees are based on assets under management, hedge fund managers have an

[63] *Id.* at 13-14.

incentive to inflate valuations to increase fees as well as to boost performance.

206. The various hedge fund indices do not have common standards. Indices differ on the number of funds covered, inclusion criteria, strategy definitions, etc. They even account for membership and survivorship bias differently. For instance, while Tremont Capital Management segments funds into 9 strategies, Hedge Fund Research uses 20 strategies, and the Hennessee Group uses 23 strategies. Inclusion criteria range from minimum assets to proof of an audited statement. Such differences can result in significant variation in performance statistics. As such, even simple comparisons among hedge funds can be misleading.

207. The concerns about hedge fund investments, fees, reporting, and performance are not new, but were widely reported before 2011.

208. In 2006, Vanguard published "Understanding Alternative Investments: A Primer on Hedge Fund Evaluation." Among other things, the author concluded: "Reported hedge fund returns contain significant biases that skew conventional mean-variance and regression analysis." The Vanguard Report observed that generally hedge funds do not mitigate market risk to the extent expected by investors.[64]

209. Hedge funds can be classified into two basic categories: non-directional and opportunistic. Opportunistic strategies generally seek to overweight or underweight exposure to systematic risk factors to exploit general market trends. Non-directional strategies are closest to the original intent of hedge funds, whereby long and short positions are established in securities that bear similar risk factor exposure or securities that don't have similar risk factors, (*e.g.*, long the companies bonds, short the equity). Consequently, security selection is critical.

210. Opportunistic strategies reveal similar mean returns, suggesting investors are exposed to greater than expected risk.[65]

211. Certain non-directional strategies, including convertible arbitrage and fixed income arbitrage, have recorded steeper losses than gains, suggesting that the significant relative downside

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[64] Christopher B. Phillips, *Understanding Alternative Investments: A Primer on Hedge Fund Evaluation,* Vanguard Investment Counseling and Research.
(2006), https://personal.vanguard.com/pdf/s554.pdf.
[65] *Id.* at 10.

1 risk of volatility is asymmetric, which disproportionately costs investors in down markets.

2 212. Hedge fund use of leverage and derivatives can cause disproportionate movements in
3 hedge funds returns as compared to underlying asset class returns. These non-linear movements can
4 distort interpretation of mean and variance.

5 213. And event-driven, convertible arbitrage and fixed income arbitrage strategies have
6 highly negatively skewed returns.[66]

7 214. "The implications of this are important, because even with [hedge fund] index
8 returns largely self-reported and concentrated on those funds that do not fail, investors remain
9 exposed to significant levels of extreme returns, particularly to the downside. Accounting for
10 survivorship bias and self-reporting would likely increase the non-normality represented in hedge
11 fund indexes. In sum, the experiences of individual and institutional investors probably differ greatly
12 from what might be expected from index-level analysis, with investors exposed to greater
13 probabilities of extreme returns."[67]

14 215. With respect to operational risk, financial experts were reporting as early as 2008 that
15 operational risk associated with conflicts of interest within the fund and external to the fund can lead
16 to reduced average annualized returns by 1.68%.[68]

17 216. With respect to actual investor experience, the authors of a study presented in 2009
18 and published in 2011 concluded that "the real alpha of hedge fund investors is close to zero."[69] In
19 other words, for all the active management and esoteric strategies employed by hedge fund
20 managers, the hedge fund managers add little or no value. "[I]n absolute terms, the dollar-weighted
21 returns [of hedge funds] are reliably lower than the return of the S&P 500 index, and are only
22 marginally higher than the risk-free rate as of the end of 2008."[70] These authors cite to other studies
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[66] *Id.* at 11.
[67] *Id.* at 11.
[68] Stephen Brown, *et al.*, *Mandatory Disclosure and Operational Risk: Evidence from Hedge Fund Registration,* Journal of Finance (2008), http://depot.som.yale.edu/icf/papers/fileuploads/2472/original/06-15.pdf.
[69] Ilia D. Dichev & Gewn Yu, *Higher risk, lower returns: What hedge fund investors really earn*, 100 Journal of Financial Economics 248 (July 20, 2009) available at: http://www.people.hbs.edu/gyu/higherrisklowerreturns.pdf.
[70] *Id.*

finding small and sporadic alpha in hedge funds, and conclude that actual investor returns are 3 to 7 percent lower than reported hedge fund returns. They responded in 2009 that the actual risk-return profile of hedge fund investors is much worse than investors would expect from observing hedge fund indices.

217. In 2010, Vanguard published a report titled "Do hedge funds hedge? The experience of the Great Recession,"[71] that compared the performance of hedge funds to broad market indices and a 60/40 portfolio of equities and bonds from October 2007 through February 2010. During the first part of this period, October 2007 to February 2009, hedge fund strategies declined at about -2% to -1.3%, substantially better than the broader equity indices, but not much better than a 60/40 portfolio, which had monthly returns of -2.3% during the same period.[72] From March 2009 to February 2010, however, the 60/40 portfolio outperformed all hedge fund categories except one. And equity indices outperformed all hedge fund strategies substantially.[73] Moreover, the authors reported a high performance correlation between all hedge fund categories, except one, and a 60/40 portfolio. The monthly correlation of the fund-of-hedge-funds index (the Intel Hedge Fund is a fund-of-hedge funds) to a 60/40 portfolio was 0.67 during the period, raising serious questions about whether there was any hedging at all.[74]

218. Just as the Investment Committee was making huge bets on hedge funds with retirement savings, the Economist was reporting on the pitfalls of hedge funds.[75] Among other things, the Economist noted that hedge funds were performing poorly in volatile markets, "the very conditions in which hedge funds are meant to prosper." The Economist presented a line chart comparing hedge fund index returns with the S&P 500, which showed extremely high correlation in volatility and performance, thus prompting the caption "Unhedged?"

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[71] Geetesh Bhardwaj, Ph.D., *Do hedge funds hedge? The experience of the GreatRecession,* Vanguard Research (2010), https://pressroom.vanguard.com/content/nonindexed/Do_hedge_funds_hedge_the_experience_of_the_great_recession.pdf.

[72] *Id.* at 3.

[73] *Id.*

[74] *Id.* at 3.

[75] *Many unhappy returns*, The Economist (Aug. 20, 2011), http://www.economist.com/node/21526326.

219. In sum, the downside performance of hedge funds in 2008, although superior to equity markets, nevertheless disappointed investors and did not provide the hedge that investors expected. Hedge funds failed to do much better than a 60/40 portfolio in 2008, and have done a lot worse since, including in the period March 2009 to 2011, when the Investment Committee significantly increased the Plans' investment in hedge funds.

220. Indeed, institutional investors were questioning the virtues of hedge fund investments just as the Investment Committee decided to substantially increase the Plans' investments in them. A survey of such investors revealed the following:

- 70% of institutional investors were demanding more transparency
- 80% of respondents reported a desire for better transparency into valuation methodologies
- Whereas the 2008 respondents ranked poor performance as their #1 concern, by Q1 2010 they ranked "lack of transparency" and "liquidity risk" as their top concerns
- 72% of investors in hedge funds in 2010 were institutions, not individuals such as retirement plan participants, and the vast majority did so for short time horizons: 94% for 3 years; 52% for 6 years; and only 31% for 10 years or more
- Only 8% of hedge fund investors sought decreased volatility by investing in hedge funds, suggesting that 92% of investors were well aware that hedge funds would likely introduce more volatility
- Even amongst this institutional respondent base, nearly 50% allocated less than 10% to hedge funds.[76]

221. More recently, hedge funds have continued to badly underperform and fail to provide downside market protections. As recently reported in the New York Times,[77] hedge fund investors suffered deep losses in 2015. Investors in prominent and lesser known hedge funds have seen all of 2015's gains wiped out, and are now in the red. Pershing Square Capitol Management lost 9.4%; Marcato International has lost 11.6%; Glenview Capital Management is down 13.5%. Because of continued poor performance, investors are withdrawing from hedge funds and causing many hedge funds to close. Preqin, which publishes quarterly reports on hedge fund performance, recently reported that the third quarter of 2015 was the worst quarter for hedge funds in several years, posting

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[76] *Institutional Hedge Fund Investing Comes of Age,* SEI (2010), https://www.seic.com/IMS/SEI_2011HedgeFundWhitePaper_US.pdf.

[77] Alexandra Stevenson, *Hedge Fund Assets Decline by Biggest Amount Since Financial Crisis*, New York Times (Oct. 20, 2015), http://www.nytimes.com/2015/10/21/business/dealbook/hedge-fund-assets-decline-by-biggest-amount-since-financial-crisis.html?_r=0.

average losses in its benchmark of 4.08%.[78] Thus the Plans and their respective participants whose accounts were invested in Intel TDPs and the Diversified Fund continue to suffer substantial losses due to Defendants' breaches of fiduciary duty.

222. As a result of this underperformance, a prudent fiduciary would have, at the least, re-evaluated the selection of the investments in hedge funds and private equity, if not begun divesting.

8. Intel Hires AllianceBernstein to Manage its TDPs and the Diversified Fund

223. As of April 30, 2015, Intel hired AllianceBernstein to manage its two asset allocation portfolios, namely the Intel TDPs and the Diversified Fund, which had previously been managed by the Investment Committee. As observed by Cordant Wealth, in Intel's Target Date Funds: Do They Hit the Mark?, according to Morningstar's target date fund research, AllianceBernstein target date funds "have some of the highest fees in the industry and poor past performance."[79] As reported by the Wall Street Journal in *Target Date 401(k)s Get a Taste of Hedge Funds*, on September 11, 2015, AllianceBernstein is one of the few mutual fund providers that actually include hedge funds in their target date funds. But, as the Wall Street Journal article observed, only the "smaller players" like AllianceBernstein who "are seeking to 'differentiate themselves and find a place in the market'" have added "hedge-fund-like 'alternative' mutual funds."[80] In contrast, "Fidelity Investments, Vanguard Group and T. Rowe Price Group, Inc., which manage more than 70% of the assets in target-date mutual funds, haven't embraced hedge-fund-like investments."[81] According to the Wall Street Journal article, even those smaller players, who invest some target date fund money in hedge funds invest 3% or less of their funds' assets in these alternative investments.

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[78] *The Preqin Quarterly Update*: *Hedge Funds, Q3 2015,* Preqin (2015), https://www.preqin.com/docs/quarterly/hf/Preqin-Quarterly-Hedge-Fund-Update-Q3-2015.pdf.
[79] Isaac Presley, *Intel's Target Date Funds: Do They Hit the Mark*, Cordant Wealth Partners: The Cordant Blog (May 18, 2015), https://cordantwealth.com/intels-target-date-funds-do-they-hit-the-target/.
[80] Anne Tergesen, *Target Date 401(k)s Get a Taste of Hedge Funds,* The Wall Street Journal (Sept. 11, 2015), http://www.wsj.com/articles/target-date-401-k-s-get-a-taste-of-hedge-funds-1442001842.
[81] *Id.*

224. In 2011 401(k) plans collectively had invested $270 billion in TDFs.[82] Approximately 75% of TDF assets in 2011 were managed by Fidelity, Vanguard, and T. Rowe Price.[83] Thus in 2011, plan fiduciaries for the overwhelming majority of retirement plan assets in TDFs selected providers that did not include hedge funds in their TDFs.[84] The Intel 401(k) Plan and its participants would have been better served had the Investment Committee acted consistently with the prevailing standard of care for 401(k) plan fiduciaries with respect to the selection of TDFs.

225. Shortly after the Investment Committee hired AllianceBernstein to manage the Intel TDPs, AllianceBernstein announced that it was closing its own target date fund offerings after years of poor performance and failure to attract investors.[85] According to Morningstar, AllianceBernstein's entire TDF family held little over $1 billion in total assets in 2015.[86] Yet, the Investment Committee handed AllianceBernstein over $3 billion in 401(k) TDP assets to manage.

226. Morningstar reported that AllianceBertnstein's "long-term risk-adjusted returns rank among the target-date industry's worst."[87] Figure 6 compares the risk-adjusted returns of the AllianceBernstein TDFs to Vanguard's TDFs and the entire category.

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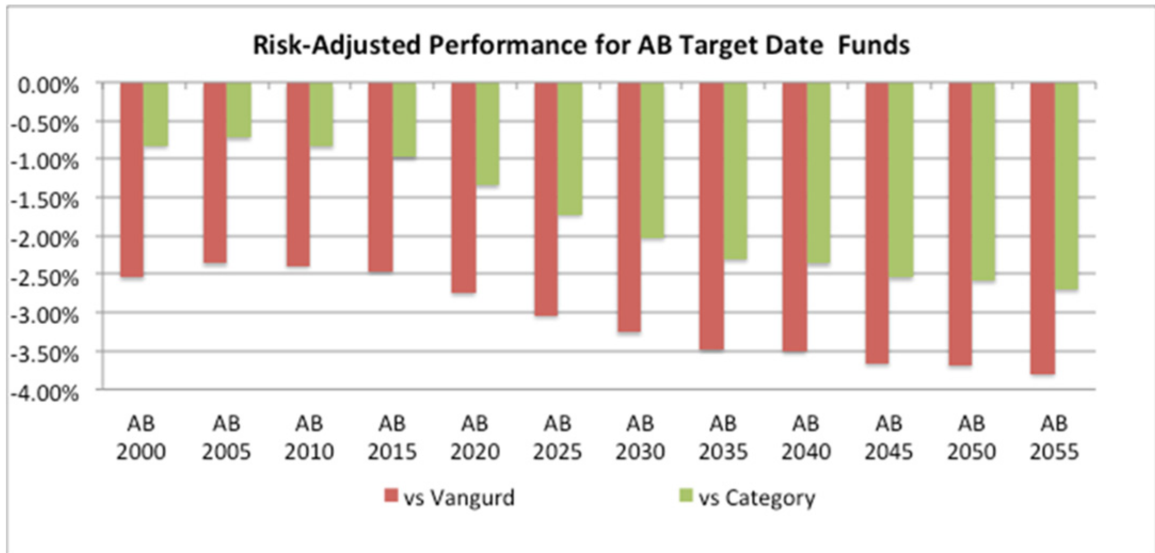
[82] Investment Company Institute Factbook, at 127 (2012).
[83] Morningstar 2012 Target-Date Series Research Paper, at 27 (July 1, 2012).
[84] Given the small market share of those providers that include hedge funds in TDFs, the percent of 401(k) plan assets in TDFs without hedge funds is well over 90%.
[85] Morningstar AB Retirement Strategy Target-Date Fund Series Report (June 30, 2015).
[86] *Id.*
[87] *Id.*

FIGURE 6



227. Further, of the three components that Morningstar evaluates to attribute TDF performance, AllianceBernstein ranked last in "Security Selection" of 45 fund families.[88] This means AllianceBernstein was the worst TDF provider of 45 providers covered by Morningstar at picking funds or securities for a TDF fund which is exactly what the Investment Committee hired AllianceBernstein to do for the Intel TDPs. Based on the foregoing and upon information and belief, the Investment Committee did not engage in a prudent process in selecting AlliancBernstein. Instead, the Investment Committee appears to have hired AllianceBernstein because it was one of the handful of tiny TDF managers that used hedge funds.

9. <u>Inadequate Disclosure of the Investments Underlying the Intel TDPs and Diversified Fund</u>

228. According to applicable regulations, 29 C.F.R. § 2550-404a-5(a), "Fiduciary requirements for disclosure in participant-directed individual account plans" (the "Disclosure Regulation"), the administrator of a participant-directed retirement plan must disclose several types of information to participants in such a plan, both prior to the initial investment and also on an ongoing basis, if there are material changes to the plan's investment options.

229. Under the Disclosure Regulation, the plan administrator – here, the Administrative Committee – must ensure that participants "are made aware of their rights and responsibilities with

[88] Morningstar 2014 Target-Date Series Research Paper, at 27 (July 1, 2014).

respect to the investment of assets held in, or contributed to, their accounts and are provided sufficient information regarding the plan, including fees and expenses, and regarding designated investment alternatives, including fees and expenses thereto, to make informed decisions with regard to the management of their individual accounts." 29 C.F.R. § 2550-404a-5(a).

230. In order to comply with the Disclosure Regulation, the Administrative Committee Defendants had to make the following complete and accurate disclosures, among other things:

a) An explanation of any specified limitations on investment instructions under the terms of the plan, including any restrictions on transfer to or from a designated investment alternative;

b) An identification of any designated investment alternatives offered under the plan;

c) An identification of any designated investment managers;

d) An explanation of any fees and expenses for general plan administrative services which may be charged against individual accounts of participants and which are not reflected in the total annual operating expenses of any designated investment alternative and the dollar amount of such fees and expenses that are actually charged to an individual account, on a quarterly basis;

e) The name of each designated investment alternative and the type or category of investment; performance and benchmark data for such investment; detailed fee and expense information such as expense ratios; the internet web site address containing information about the designated investment alternative.

29 C.F.R. § 2550-404a-5(c)-(d).

231. Based on the documents provided to Plaintiff, the Administrative Committee Defendants failed to make any of the required disclosures listed above, and failed to comply with their duties pursuant to the Disclosure Regulation as a whole, with respect to disclosure of the designated investment alternatives like the Investment Funds underlying the Intel TDPs and Diversified Fund.

232. Based on the documents provided to Plaintiff, the Administrative Committee Defendants failed to disclose the required information regarding the Hedge Fund, the Commodities Fund, or the Private Equity Fund.

233. These failures to disclose left the majority of participants in the Plans unaware regarding the true content and character of their retirement savings, because investment in Intel

TDPs was the primary investment options for Intel's 401(k) Plan participants and the Diversified Fund was the primary investment option for Retirement Plan participants. Even if participants were provided some information that the TDPs and Diversified Fund included investments in hedge funds and private equity, the plan fiduciaries failed to provide participants with adequate and sufficient information, so that they could make informed intelligent decisions about whether investing in these particular hedge funds and private equity funds was prudent.

234. The Investment Committee designed the 401(k) Plan to make Intel TDPs the main investment option; since 2011, eligible employees, who are auto-enrolled in the 401(k) Plan are automatically invested in the appropriate vintage Intel TDP as the default investment option. Participants who are auto-enrolled in the 401(k) Plan, and thus also the Intel TDP investment, must affirmatively opt-out of the investment option.

235. In 2014, Intel reported that 40% of the 401(k) Plan participants invested 100% of their account balance in a single Intel TDP.

236. But the account statements received by Plaintiff from the 401(k) Plan (the contents of which the Administrative Committee was responsible) described the asset allocation of his 401(k) account as invested approximately 63% in stocks, 16% in bonds, and 21% in "short-term/other" investments, as of December 2011 and again as of December 2012. The term "short-term/other" was not defined on the face of the statements Plaintiff received. Thus, Plaintiff's account statements did not reveal any investment or allocation to hedge funds, private equity, or commodities.

237. Similarly, the Investment Committee designed the Retirement Plan to make the Diversified Fund the main investment option for participants in the Plan. Until recently, the Diversified Fund was the only fund available to participants under the age of 50. As a result, over 90% of the Plan's and participants' assets were invested via the Diversified Fund.

VI. CLAIMS FOR RELIEF

Count I
(Violations of ERISA § 404(a) by the Investment Committee Defendants in Managing The Plans' Assets on Behalf of the Target Date Class)

238. Plaintiff repeats and realleges each of the allegations set forth in the foregoing paragraphs as if fully set forth herein.

239. As fiduciaries of the Plans, the Investment Committee Defendants were required pursuant to ERISA § 404(a)(1) to act solely in the interest of the participants and beneficiaries of the plans they serve and "(A) for the exclusive purpose of: (i) providing benefits to participants and their beneficiaries; and (ii) defraying reasonable expenses of administering the plan" and (B) to discharge their duties "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."

240. The Investment Committee Defendants breached those duties by adopting an asset allocation model such that the Intel TDPs were and are comprised of approximately 20-25% Hedge Funds, 4-5% commodities, and where international equities account for over 50% of equity holdings.

241. The investment allocation of the Intel TDPs represents a significant departure from the target date funds offered by professional managers, even the ones offered by Intel's new Investment Manager, AllianceBernstein.

242. As a result of the Investment Committee's allocation of assets to alternative investments, the Intel TDPs have all underperformed their peer funds during the Target Date Class Period. For example, as Morningstar observed with respect to the 2030 Intel TDP: "the fund has some vital differences from its Morningstar Target Date 2026-2030 category peers. For one the fund invests 21% of its assets in a wide mix of hedge fund strategies and has a 5% allocation to commodities, whereas none of its peers own hedge funds and only a few have small commodity stakes. Moreover, the fund's equity allocation favors foreign stocks over U.S. stocks, whereas its typical competitor invests 70% in domestic stocks and 30% overseas."[89] The substantial divergence from peer group allocations means that the Intel 2035 TDP underperformed the peer group by 400 basis points in 2013 alone.

243. According to Morningstar, the entire suite of Intel TDPs "have lagged their respective peers amid other market rallies, such as in 2012 and 2009." As a result of the investments and allocations made by the Investment Committee, Morningstar observed that the Intel 2030 TDP is

[89]Morningstar Report on *Target Date 2030 Fund*, Oregonian Live at 2 (Mar. 31, 2014), http://media.oregonlive.com/finance/other/Target%20Date%202030%20Fund-1.pdf.

"less likely to keep pace with competitors amid stock market booms."[90] As the Intel TDPs all share the same asset allocation model and the same underlying Investment Accounts, all of the Intel TDPs over-allocate the accounts of participants in the 401(k) Plan and the Retirement Plan to alternative investments and similarly underperformed.

244. In light of the well-known risks associated with investment in alternative investments like hedge funds, private equity, and commodities alleged above, the Investment Committee Defendants knew or should have known that such heavy allocation to these types of investments was imprudent and inappropriate for a defined contribution plan particularly in light of the risks, lack of transparency, and lack of liquidity of hedge fund investments.

245. On information and belief, including based on the statements of Stuart Odell, the Investment Committee Defendants did not understand and failed to give appropriate consideration to these risks, or disregarded such risks, when they selected and maintained the asset allocation for the Intel TDPs.

246. Through the foregoing conduct, the Investment Committee Defendants have (a) failed to act solely in the interest of the participants and beneficiaries of the Plans for the exclusive purpose of providing them benefits, in violation of ERISA § 404(a)(1)(A), 29 U.S.C. § 1104(a)(1)(A), and (b) failed to act 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, in violation of ERISA § 404(a)(1)(B), 29 U.S.C. § 1104(a)(1)(B). Thus the Investment Committee Defendants breached their fiduciary duties to the Plans and their participants and beneficiaries and are liable to restore all losses to the Plans resulting from their investment decisions with respect to the Intel TDPs.

247. As a result of the Investment Committee Defendants' breaches, the Plans, Plaintiff, and the Plans' participants and beneficiaries have suffered financial losses through the loss of return that would have been earned by the prudent investment of the Plans' assets.

[90] *Id.*

Count II
(Violations of ERISA § 404(a)(1)(B) by the Administrative Committee in Failing to Provide Disclosures to Participants Regarding Designated Investment Alternatives on Behalf of the Target Date Class)

248. Plaintiff repeats and realleges each of the allegations set forth in the foregoing paragraphs as if fully set forth herein.

249. As fiduciaries of the Plans with respect to the administration of the Plans, the Administrative Committee Defendants were required pursuant to ERISA § 404(a)(1) to act solely in the interest of the participants and beneficiaries of the plans they serve and "(A) for the exclusive purpose of: (i) providing benefits to participants and their beneficiaries; and (ii) defraying reasonable expenses of administering the plan" and (B) to discharge their duties "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."

250. Consistent with their obligations under ERISA § 404(a)(1)(A) and (B), the Administrative Committee Defendants were required to ensure that participants "are made aware of their rights and responsibilities with respect to the investment of assets held in, or contributed to, their accounts and are provided sufficient information regarding the plan, including fees and expenses, and regarding designated investment alternatives, including fees and expenses thereto, to make informed decisions with regard to the management of their individual accounts." 29 C.F.R. § 2550-404a-5(a).

251. The Administrative Committee Defendants failed to comply with the requirements of the Disclosure Regulation, because they failed to, among other things:

a) Provide an explanation of any specified limitations on investment instructions under the terms of the plan, including any restrictions on transfer to or from designated investment alternatives like the Hedge Fund and the Private Equity Fund;

b) Identify the Hedge Fund and the Private Equity Fund as designated investment alternatives offered under the plan;

c) Identify designated investment managers for the Hedge Fund and the Private Equity Fund;

d) Provide an explanation of any fees and expenses for general plan administrative services which may be charged against individual accounts of participants and which are not reflected in the total annual operating expenses of designated investment alternatives like the Hedge Fund and the Private Equity Fund and the dollar amount of such fees and expenses that are actually charged to an individual account, on a quarterly basis, for investment in such funds;

e) Provide the name of designated investment alternatives like the Hedge Fund and the Private Equity Fund and the type or category of investment; performance and benchmark data for each such investment; detailed fee and expense information such as expense ratios; the internet web site address containing information about such designated investment alternative.

See 29 C.F.R. § 2550-404a-5(c)-(d).

252. The Administrative Committee failed to adequately disclose to participants and beneficiaries in the Plans information regarding risks, fees and expenses associated with such hedge funds and private equity funds. Although the Administrative Committee disclosed information regarding the allocation strategy of the Intel TDPs as designated investment alternatives of the Plans, it failed to provide the required disclosure for the Hedge Fund and Private Equity Fund in which the Plans invested pursuant to the allocation models for the Intel TDPs. Among other things, the Administrative Committee failed to provide adequate disclosures about: (1) the arrangements between the Plans and the hedge fund and private equity funds, including the fees and expenses and the investment strategies and holdings for each fund; and the identity of the private equity and hedge fund firms and individual managers.

253. As a result of these failures, Plaintiff and participants in the Plans were not able to make informed decisions with regard to the management of their individual accounts.

254. As a result of the Administrative Committee Defendants' breaches of their fiduciary duty, Plaintiff and participants in the Plans have suffered financial losses through the loss of return that would have been earned on prudent investment of the Plans' assets.

Count III
(Violations of ERISA § 404(a)(1)(A) & (B) by the Investment Committee in Managing Global Diversified Fund on Behalf of Diversified Fund Class)

255. Plaintiff repeats and realleges each of the allegations set forth in the foregoing paragraphs as if fully set forth herein.

256. As fiduciaries of the Plans, the Investment Committee Defendants were required pursuant to ERISA § 404(a)(1) to act solely in the interest of the participants and beneficiaries of the plans they serve and "(A) for the exclusive purpose of: (i) providing benefits to participants and their beneficiaries; and (ii) defraying reasonable expenses of administering the plan" and (B) to discharge their duties "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."

257. The Investment Committee breached those duties to both the Retirement Plan and the 401(k) Plan and their participants by making asset allocation and investment decisions for the Diversified Fund.

258. At the end of 2008, the Diversified Fund held approximately 5.28% of its assets, about $243 million, in hedge fund and private equity investments. A year later, the Fund allocated 16.52% of its assets to hedge funds and private equity. In the following year, the Investment Committee increased the Diversified Fund's allocations to hedge funds and private equity and added allocations to commodities, resulting in 22.23% of fund assets, approximately $1.2 billion, allocated to these alternative investments. By the end of 2013, the Investment Committee had caused the Diversified Fund to allocate 36.71%, $2.33 billion, to such alternative investments.

259. In light of the well-known risks associated with investments such as hedge funds and private equity, alleged above, the Investment Committee Defendants knew or should have known that such heavy allocation to these types of investments was imprudent and inappropriate for a defined contribution plan particularly in light of the risks, lack of transparency, and lack of liquidity of hedge fund investments. Nothing in the prior performance indicated that the portfolio that the Investment Committee had assembled would be different.

260. Based on the statements of Stuart Odell, the Investment Committee Defendants did not understand and failed to give appropriate consideration to these risks, or disregarded such risks, when they selected and maintained the asset allocation for the Diversified Fund.

261. Through the foregoing conduct, the Investment Committee Defendants have (a) failed to act solely in the interest of the participants and beneficiaries of the Plans for the exclusive purpose

of providing them benefits, in violation of ERISA § 404(a)(1)(A), 29 U.S.C. § 1104(a)(1)(A), and (b) failed to act 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, in violation of ERISA § 404(a)(1)(B), 29 U.S.C. § 1104(a)(1)(B). Thus the Investment Committee Defendants breached their fiduciary duties to the Plans and their participants and beneficiaries and are liable to restore all losses to the Plans resulting from their investment decisions with respect to the Diversified Fund.

262. As a result of the Investment Committee Defendants' breaches, the Plans, Plaintiff, and the other participants and beneficiaries have suffered financial losses through the loss of return that would have been earned on prudent investment of the Plans' assets.

Count IV

(Violations of ERISA § 404(a)(1)(B) by the Administrative Committee in Failing to Provide Disclosures to Participants Regarding Designated Investment Alternatives on Behalf of the Diversified Fund Class)

263. Plaintiff repeats and realleges each of the allegations set forth in the foregoing paragraphs as if fully set forth herein.

264. As fiduciaries of the Plans with respect to the administration of the Plans, the Administrative Committee Defendants were required pursuant to ERISA § 404(a)(1) to act solely in the interest of the participants and beneficiaries of the plans they serve and "(A) for the exclusive purpose of: (i) providing benefits to participants and their beneficiaries; and (ii) defraying reasonable expenses of administering the plan" and (B) to discharge their duties "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."

265. Consistent with their obligations under ERISA § 404(a)(1)(A) and (B), the Administrative Committee Defendants were required to ensure that participants "are made aware of their rights and responsibilities with respect to the investment of assets held in, or contributed to, their accounts and are provided sufficient information regarding the plan, including fees and expenses, and regarding designated investment alternatives, including fees and expenses thereto, to

make informed decisions with regard to the management of their individual accounts." 29 C.F.R. § 2550-404a-5(a).

266. The Administrative Committee Defendants failed to comply with the requirements of the Disclosure Regulation, because they failed to, among other things:

a) Provide an explanation of any specified limitations on investment instructions under the terms of the plan, including any restrictions on transfer to or from designated investment alternatives like the Hedge Fund and the Private Equity Fund;

b) Identify the Hedge Fund and the Private Equity Fund as designated investment alternatives offered under the plan;

c) Identify designated investment managers for the Hedge Fund and the Private Equity Fund;

d) Provide an explanation of any fees and expenses for general plan administrative services which may be charged against individual accounts of participants and which are not reflected in the total annual operating expenses of designated investment alternatives like the Hedge Fund and the Private Equity Fund and the dollar amount of such fees and expenses that are actually charged to an individual account, on a quarterly basis, for investment in such funds;

e) Provide the name of designated investment alternatives like the Hedge Fund and the Private Equity Fund and the type or category of investment; performance and benchmark data for each such investment; detailed fee and expense information such as expense ratios; the internet web site address containing information about such designated investment alternative.

See 29 C.F.R. § 2550-404a-5(c)-(d).

267. The Administrative Committee failed to adequately disclose to participants and beneficiaries in the Plans information regarding risks, fees and expenses associated with such hedge funds and private equity funds. Although the Administrative Committee disclosed information regarding the allocation strategy of the Diversified Fund as the designated investment alternative of the Plans, it failed to provide the required disclosure for the Hedge Fund and Private Equity Fund in which the Plans invested pursuant to the allocation models for the Diversified Fund. Among other things, the Administrative Committee failed to provide adequate disclosures about: (1) the arrangements between the Plans and the hedge and private equity fund managers in the Hedge Fund and Private Equity Fund, respectively, including the fees and expenses and the investment strategies and holdings for each fund; and (2) the identity of the private equity and hedge fund firms and

individual managers.

268. As a result of the Administrative Committee Defendants' breaches of their fiduciary duty, Plaintiff and participants in the Plans have suffered financial losses through the loss of return that would have been earned on prudent investment of the Plans' assets.

Count V
(Breach of Fiduciary Duty Under ERISA § 404 for Failure to Monitor Other Fiduciaries of the Plans, Against the Finance Committee Defendants)

269. Plaintiff repeats and realleges each of the allegations set forth in the foregoing paragraphs as if fully set forth herein.

270. As fiduciaries of the Plans, the Finance Committee Defendants were required pursuant to ERISA § 404(a)(1) to act solely in the interest of the participants and beneficiaries of the plans they serve and "(A) for the exclusive purpose of: (i) providing benefits to participants and their beneficiaries; and (ii) defraying reasonable expenses of administering the plan" and (B) to discharge their duties "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."

271. Under ERISA, a fiduciary charged with the authority to select and remove other fiduciaries or who, as a practical matter, in fact appoints other fiduciaries, has an ongoing duty to monitor the performance of those persons whom the fiduciary is empowered to remove. An appointing fiduciary therefore must, at reasonable intervals, ensure that the fiduciary it has appointed is acting in compliance with the terms of the applicable plan, acting in accordance with ERISA and applicable law, and satisfying the needs of the plan.

272. Pursuant to Section 13 of the Plans, the Finance Committee Defendants were responsible for the appointment and removal, and for periodically monitoring the performance, of the Investment Committee Defendants and the Administrative Committee Defendants.

273. Each of the Finance Committee Defendants is/was individually and collectively responsible for periodically, or at least on a quarterly basis, monitoring the performance of each of the other named fiduciaries and for the removal of any breaching fiduciary. The Finance Defendants breached that duty to monitor by, inter alia:

a) Failing to properly monitor the performance of the Investment Committee Defendants to determine whether the Committee was prudently selecting an appropriate allocation for the assets of the Plans, including via the Intel TDPs and the Diversified Fund;

b) Failing to properly monitor the Investment Committee Defendants to ensure that the Committee was not pursuing an excessively expensive and complicated investment strategy, when other strategies that performed better with lower fees and expenses were available for investment of the assets of the Plans; and

c) Failing to properly monitor the performance of the Administrative Committee Defendants to determine whether the Committee was complying with its duties to disclose information regarding designated investment alternatives in the Plans.

274. By failing to properly monitor the performance of the Finance Committee Defendants, the Board of Directors (a) failed to act solely in the interest of the participants and beneficiaries of the Plans for the exclusive purpose of providing them benefits, in violation of ERISA § 404(a)(1)(A), 29 U.S.C. § 1104(a)(1)(A), and (b) failed to act 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, in violation of ERISA § 404(a)(1)(B), 29 U.S.C. § 1104(a)(1)(B).

275. As a result of their breaches, the Finance Committee Defendants caused the Plans to suffer losses, through the payment of excessive fees for active investment in alternatives like hedge funds and private equity, and through loss of investment return that would have been gained through prudent investment of the Plans' assets.

Count VI
(Co-fiduciary Liability Under ERISA § 405 Against All Defendants)

276. Plaintiff repeats and realleges each of the allegations set forth in the foregoing paragraphs as if fully set forth herein.

277. ERISA § 405(a), 29 U.S.C. § 1105(a), imposes liability on a fiduciary, in addition to any liability, which he may have had under any other provision of ERISA, if

(1) 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;

(2) by his failure to comply with ERISA § 404(a)(1) 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) he knows of a breach by another fiduciary and fails to make reasonable efforts to remedy it.

278. Defendants were fiduciaries within the meaning of ERISA, by the nature of their fiduciary duties with respect to the Plans, and they knew of each breach of fiduciary duty alleged herein arising out of the excessive and imprudent investment of the assets of the Plans in alternative investments. Yet, they knowingly participated in fiduciary breaches, breached their own duties enabling other breaches, and/or took no steps to remedy other fiduciary breaches.

279. The Finance Committee Defendants knew that the Plans were invested heavily in alternative investments such as the Hedge Fund Portfolio, the Commodities Fund, and the Alternative Investments Fund in the Intel Master Trust, because the Investment Committee created this asset allocation strategy, and pursuant to Section 13(m) of the Plan Documents, the Investment Committee was responsible for reporting not less than annually to the Finance Committee about its actions.

280. Each member of the Investment Committee knew that the Plans were invested heavily in alternative investments such as the Hedge Fund Portfolio, the Commodities Fund, and the Alternative Investments Fund in the Intel Master Trust, because the Investment Committee created this asset allocation strategy.

281. The Finance Committee Defendants also knew that the Administrative Committee did not disclose to participants the information required in the Disclosure Regulations, particularly regarding such designated investment alternatives as the Hedge Fund Portfolio, the Commodities Fund, and the Alternative Investments Fund in the Intel Master Trust, because pursuant to Section 13(m) of the Plan Documents, the Administrative Committee was responsible for reporting not less than annually to the Finance Committee about its actions.

282. The Investment Committee Defendants also knew or should have known that the

Administrative Committee did not disclose to participants the information required in the Disclosure Regulations, particularly regarding such designated investment alternatives as the Hedge Fund Portfolio, the Commodities Fund, and the Alternative Investments Fund in the Intel Master Trust, because they must have been aware of what information was being disclosed.

283. Each member of the Administrative Committee also knew that the Administrative Committee did not disclose to participants the information required in the Disclosure Regulations, particularly regarding such designated investment alternatives as the Hedge Fund Portfolio, the Commodities Fund, and the Alternative Investments Fund in the Intel Master Trust, because they were each responsible for making sure proper information was being disclosed.

284. Despite this knowledge, the Finance Committee Defendants, the Investment Committee Defendants and the Administrative Committee Defendants failed to act to remedy the several violations of ERISA alleged in Counts I-V.

285. As such, each member of the Investment Committee is liable for the breaches by the other Investment Committee Defendants pursuant to ERISA § 405(a)(1) and (2).

286. As such, each member of the Administrative Committee is liable for the breaches by the other Administrative Committee Defendants pursuant to ERISA § 405(a)(1) and (2).

287. As such, each member of the Finance Committee is liable for the breaches by the other Finance Committee Defendants pursuant to ERISA § 405(a)(1) and (2).

288. As such, each of the Defendants is liable for breaches by the Investment Committee Defendants and the Administrative Committee Defendants pursuant to Section 405(a)(3) of ERISA, 29 U.S.C. § 1105(a)(3).

VII. ENTITLEMENT TO RELIEF

289. By virtue of the violations set forth in the foregoing paragraphs, Plaintiff and the members of the Classes are entitled to sue each of the fiduciary Defendants pursuant to ERISA § 502(a)(2), 29 U.S.C. § 1132(a)(2), for relief on behalf of the Plans as provided in ERISA § 409, 29 U.S.C. § 1109, including for recovery of any losses to the Plans, the recovery of any profits resulting from the breaches of fiduciary duty, and such other equitable or remedial relief as the Court may deem appropriate.

290. By virtue of the violations set forth in the foregoing paragraphs, Plaintiff and the members of the Classes are entitled pursuant to ERISA § 502(a)(3), 29 U.S.C. § 1132(a)(3), to sue any of the Defendants for any appropriate equitable relief to redress the wrongs described above.

VIII. PRAYER FOR RELIEF

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

A. A declaration that the Defendants breached their fiduciary duties under ERISA;

B. An order compelling each fiduciary found to have breached his/her/its fiduciary duties to the Plans to jointly and severally restore all losses to the Plans that resulted from the breaches of fiduciary duty, or by virtue of liability pursuant to ERISA § 405;

C. An order requiring (a) the disgorgement of profit made by any Defendant, (b) a declaration of a constructive trust over any assets received by any breaching fiduciary in connection with his/her/its breach of fiduciary duties or violations of ERISA, (c) an order requiring the Plans to divest themselves of investments in hedge funds and commodity funds, or (d) any other appropriate equitable monetary relief, whichever is in the best interest of the Plans;

D. Ordering, pursuant to ERISA § 206(d)(4), 29 U.S.C. § 1056(d)(4), that any amount to be paid to or necessary to satisfy any breaching fiduciary's liability can be satisfied, in whole or in part, by attaching their accounts in or benefits from the Plans;

E. Removing any breaching fiduciaries as fiduciaries of the Plans and permanently enjoining them from serving as a fiduciary of any ERISA-covered plan in which Plaintiff or any member of the Classes is a participant or beneficiary;

F. Appointing an independent fiduciary, at the expense of the breaching fiduciaries, to administer the Plans and the management of the Plans' investments and/or selection of investment options and/or to oversee the divestment of the Plans' investments in hedge funds and commodity funds;

G. Ordering the Plans' fiduciaries to provide a full accounting of all fees paid, directly or indirectly, by the Plans;

H. Awarding Plaintiff and the Classes their attorneys' fees and costs pursuant to ERISA

§ 502(g), 29 U.S.C. § 1132(g), the common benefit doctrine and/or the common fund doctrine;

I. Awarding pre-judgment and post-judgment interest; and

J. Awarding such other remedial or equitable as the Court deems appropriate.

Dated: April 26, 2016 Respectfully submitted,

/s/ Joseph Creitz

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