

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF TEXAS
FORT WORTH DIVISION**

MANOJ P. SINGH, individually and on behalf of all)
others similarly situated,)

Plaintiff,)

v.)

RADIOSHACK CORPORATION, JAMES F.)
GOOCH, JOSEPH C. MAGNACCA, MARTIN O.)
MOAD, ROBERT E. ABERNATHY, FRANK J.)
BELATTI, JULIA A. DOBSON, DANIEL R.)
FEEHAN, H. EUGENE LOCKHART, JACK L.)
MESSMAN, THOMAS G. PLASKETT, EDWINA)
D. WOODBURY, RADIOSHACK 401(K) PLAN)
ADMINISTRATIVE COMMITTEE,)
RADIOSHACK PUERTO RICO PLAN)
ADMINISTRATIVE COMMITTEE,)
RADIOSHACK 401(K) PLAN EMPLOYEE)
BENEFITS COMMITTEE, RADIOSHACK)
PUERTO RICO PLAN EMPLOYEE BENEFITS)
COMMITTEE, AND DOES 1-10,)

Defendants)

Case No.

JURY DEMANDED

CLASS ACTION COMPLAINT

Plaintiff Manoj P. Singh, (“Plaintiff”), on behalf of the RadioShack 401(k) Plan (the “401(k) Plan”) and the RadioShack Puerto Rico 1165(e) Plan (the “Puerto Rico Plan,” and together with the 401(k) Plan, the “Plan” or the “Plans”), himself, and a class of similarly situated participants and beneficiaries of the Plans (the “Participants”), alleges as follows:

INTRODUCTION

1. This is a class action brought pursuant to §§ 409 and 502 of the Employee Retirement Income Security Act of 1974 (“ERISA”), 29 U.S.C. §§ 1109 and 1132, against the Plans’ fiduciaries.

2. The Plans are legal entities that can sue and be sued. ERISA § 502(d)(1), 29 U.S.C. § 1132(d)(1). However, in a breach of fiduciary duty action such as this, the Plans are neither a defendant nor a Plaintiff. Rather, pursuant to ERISA § 409, and the law interpreting it, the relief requested in this action is for the benefit of the Plans and their Participants.

3. Plaintiff was a Participant in the 401(k) Plan during the Class Period (defined below), during which time the 401(k) Plan and the Puerto Rico Plan held interests in the common stock of RadioShack Corporation (“RadioShack Stock” or “Company Stock”). Plaintiff’s individual account in the 401(k) Plan during the Class Period included RadioShack Stock.

4. 401(k) plans confer tax benefits on participating employees to incentivize saving for retirement. An employee participating in a 401(k) plan may have the option of purchasing the common stock of his or her employer, often the sponsor of the plan, for part of his or her retirement investment portfolio. RadioShack Stock was one of the investment alternatives of the Plans throughout the Class Period.

5. Plaintiff alleges that Defendants, as “fiduciaries” of the Plans, as that term is defined under ERISA § 3(21)(A), 29 U.S.C. § 1002(21)(A), breached their duties owed to the Plans, to him, and to the other Participants of the Plans by, *inter alia*, retaining RadioShack Stock as an investment option in the Plans when a reasonable fiduciary using the “care, skill, prudence, and diligence... that a prudent man acting in a like capacity and familiar with such

matters would use” would have done otherwise. *See* ERISA § 404(a)(1), 29 U.S.C. § 1104(a)(1).

6. Specifically, Plaintiff alleges in Count I that Defendants, each having certain responsibilities regarding the management and investment of the Plans’ assets, breached their fiduciary duties to the Plans, to him, and the proposed Class by: (a) continuing to offer RadioShack Stock as a Plan investment option when it was imprudent to do so; and (b) maintaining the Plans’ pre-existing significant investment in RadioShack’s equity when Company Stock was no longer a prudent investment for the Plans. These actions/inactions run directly counter to the express purpose of ERISA-governed 401(k) plans, which are designed to help provide funds for participants’ retirement. *See* ERISA § 2, 29 U.S.C. § 1001 (“CONGRESSIONAL FINDINGS AND DECLARATION OF POLICY”).

7. Plaintiff’s Count II alleges that certain Defendants failed to avoid or ameliorate inherent conflicts of interests which crippled their ability to function as independent, “single-minded” fiduciaries with only the Plans’ and their Participants’ best interests in mind.

8. Plaintiff’s Count III alleges that certain Defendants breached their fiduciary duties by failing to adequately monitor other persons to whom management/administration of the Plans’ assets was delegated, despite the fact that such Defendants knew or should have known that such other fiduciaries were imprudently allowing the Plans to continue offering RadioShack Stock as an investment option, and investing the Plans’ assets in RadioShack Stock when it was no longer prudent to do so.

9. The thrust of Plaintiff’s allegations is that Defendants allowed the imprudent investment of the Plans’ assets in RadioShack equity throughout the Class Period despite the fact that they knew or should have known that such investment was imprudent as a retirement

vehicle because of the sea-change in the central risk/profile and business prospects of the Company caused in part by corporate mismanagement and, *inter alia*: (a) the massive consumer shift away from brick-and-mortar stores like RadioShack towards online retailers; (b) the drastic deterioration in consumer demand for RadioShack's outdated products and services; and (c) the severely deteriorating financial condition of the Company, including the collapse of the Company Stock price, and the Company's increasing risk of bankruptcy. As a consequence of the foregoing, significant investment of employees' retirement savings in Company Stock would inevitably result in substantial losses to the Plans and, consequently, to the Plans' Participants.

10. Defendants recognized or should have recognized the severity of the crisis at the Company during the Class Period as a result of the above factors yet took no steps to protect the Plans and their Participants as conditions worsened. A trustee who simply ignores changed circumstances that have increased the risk of loss to the trust's beneficiaries is imprudent.

11. ERISA requires fiduciaries to employ appropriate methods to investigate the merits of an investment as well as to engage in a reasoned decision-making process, consistent with that of a prudent man acting in a like capacity. The duty of prudence also requires fiduciaries to monitor the prudence of their investment decisions to ensure that they remain in the best interest of the plans' participants.

12. Prudent investment management demands, *inter alia*, that Defendants not merely rely upon the fact that RadioShack's Stock price currently remains above \$0 and the Company has not yet filed for bankruptcy to determine whether investing in Company Stock is appropriate for the Plans. ERISA requires Defendants to scrutinize the risk of continued Plan

investment in RadioShack Stock – based upon, *inter alia*, the public information upon which the stock price is based – to protect the Plans’ Participants’ retirement savings.

13. Aside from its price, which has plummeted drastically and steadily since January 2011 through the present, RadioShack Stock was and is an imprudent investment for the Participants of the Plans. Even if it may have been a permissible investment for some outside investors, ERISA requires fiduciaries to avoid taking excessive risk with retirement assets. After all, “the duties of prudence and loyalty embodied in [ERISA § 404(a)(2)] have been characterized as the ‘highest known to law.’” *See, e.g., Shannahan v. Dynegy, Inc.*, No. 06-cv-0160, 2006 WL 3227319, at *4 (S.D. Tex. Nov. 6, 2006) (quoting *Sommers Drug Stores Co. Employee Profit Sharing Trust v. Corrigan*, 793 F.2d 1456, 1468 (5th Cir. 1986)).

14. Evaluating the prudence of an investment decision requires a totality-of-the-circumstances inquiry that takes into account the character and aim of the particular plan and decision at issue and the circumstances prevailing at the time. The Plans, which were meant to be a vehicle for retirement savings, required less risky, more prudent investments.

15. The Company emphasized that the Plan was intended to assist Participants in accumulating benefits for retirement. *See* Prospectus and Summary Plan Description for the RadioShack 401(k) Plan dated December 7, 2009 (the “2009 401(k) Plan SPD”), attached hereto as Exhibit A, at 2. Trust Law, from which ERISA is derived, cautions that “[t]he duty of care requires the trustee to exercise reasonable effort and diligence in planning the administration of the trust, in making and implementing administrative decisions, and in monitoring the trust situation, *with due attention to the trust’s objectives and the interests of the beneficiaries.*” Restatement (Third) of Trusts §77, Comment b (emphasis added).

16. The Participants of the Plans had every right under ERISA to expect the Plans' fiduciaries to act in their interest and protect them from unduly risky investments, whether in Company Stock or any other asset. Indeed, the 2009 401(k) Plan SPD specifically stated: "ERISA imposes duties upon the people who are responsible for the operation of the Plan. The people who operate the Plan, called 'fiduciaries' of the Plan, have a duty to do so prudently and in the interest of you and other Plan participants and beneficiaries." 2009 401(k) Plan SPD at 28.

17. Moreover, at least some of the Defendants, given the facts described herein failed to provide the Participants information necessary to make informed decisions regarding RadioShack Stock. Plaintiff does not allege that RadioShack Stock was artificially inflated because of the withholding of such information, but rather that Defendants had a duty under ERISA to disclose that information, cause the Plans to cease purchasing RadioShack Stock, and/or take other steps as necessary and appropriate to avoid massive Plan losses.

18. By apparently conducting absolutely no investigation, analysis, or review with respect to whether it was prudent to continue investment in RadioShack Stock in the Plans, Defendants acted with procedural imprudence. Had Defendants conducted a prudent evaluation of whether RadioShack Stock was an appropriate investment for the Plans during the Class Period, and taken protective action, such as ceasing its purchase, divesting the Plans of RadioShack Stock, or any of the other actions as described below, Plan Participants would not have suffered such devastating losses to their retirement savings.

19. This action is brought on behalf of the Plans and seeks recovery of the losses to the Plans for which Defendants are liable because of their actions or lack thereof. *See* ERISA §§ 409 and 502, 29 U.S.C. §§ 1109 and 1132. Given the totality of circumstances prevailing

during the Class Period, no prudent fiduciary would have made the same decision to retain the clearly imprudent RadioShack Stock as a Plan investment.

20. This action is brought derivatively on behalf of the Plans pursuant to ERISA §§ 409 and 502, 29 U.S.C. §§ 1109 and 1132, and seeks recovery of losses to the Plans for which Defendants are liable. Because Plaintiff's claims apply to the Plans as a whole, inclusive of all Participants with accounts invested in Company Stock during the Class Period, and because ERISA specifically authorizes participants such as Plaintiff to sue for Plan-wide relief for breaches of fiduciary duty such as those alleged herein, Plaintiff brings this action on behalf of all Participants of the Plans during the proposed Class Period.

JURISDICTION AND VENUE

21. ***Subject Matter Jurisdiction.*** This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. § 1331 and ERISA § 502(e)(1), 29 U.S.C. § 1132(e)(1).

22. ***Personal Jurisdiction.*** This Court has personal jurisdiction over all Defendants because they are all residents of the United States and ERISA provides for nation-wide service of process pursuant to ERISA § 502(e)(2), 29 U.S.C. § 1132(e)(2).

23. ***Venue.*** Venue is proper in this district pursuant to ERISA § 502(e)(2), 29 U.S.C. § 1132(e)(2) because the Plan is administered in this district, some or all of the fiduciary breaches for which relief is sought occurred in this district, and one or more Defendants reside or may be found in this district.

PARTIES

Plaintiff

24. Plaintiff Manoj P. Singh is a former RadioShack employee. He is a "participant" in the 401(k) Plan, within the meaning of ERISA § 3(7), 29 U.S.C. § 1102(7), and held shares of RadioShack Stock in his retirement investment portfolio during the Class Period.

Defendants

The Company

25. Defendant RadioShack Corporation (“RadioShack”) is a Delaware corporation with its principal office located at 300 RadioShack Circle, Fort Worth, Texas 76102. RadioShack engages in the retail sale of consumer electronic goods and services primarily through its chain of stores. RadioShack is the sponsor of the Plans, *see* 2009 401(k) Plan SPD at 3, and as described more fully below, is a fiduciary of the Plans.

Director Defendants

26. Defendant James F. Gooch (“Gooch”) served as President, Chief Executive Officer, Chief Financial Officer, and Director of RadioShack during the Class Period. Specifically, Defendant Gooch served as President and CEO of RadioShack from May 2011 to September 2012. Prior to the Class Period, Defendant Gooch also served as President and Chief Financial Officer of RadioShack. Defendant Gooch was a fiduciary of the Plan, within the meaning of ERISA Section 3(21)(A), 29 U.S.C. § 1002(21)(A), because he exercised discretionary authority or control over Plan management and/or authority or control over management or disposition of Plan assets.

27. Defendant Joseph C. Magnacca (“Magnacca”) served as Chief Executive Officer and Director of RadioShack during the Class Period, joining RadioShack as CEO February 11, 2013. Defendant Magnacca was a fiduciary of the Plan, within the meaning of ERISA Section 3(21)(A), 29 U.S.C. § 1002(21)(A), because he exercised discretionary authority or control over Plan management and/or authority or control over management or disposition of Plan assets.

28. Defendant Robert E. Abernathy (“Abernathy”) served as a director of RadioShack during the Class Period. Defendant Abernathy was a fiduciary of the Plan, within the meaning of ERISA Section 3(21)(A), 29 U.S.C. § 1002(21)(A), because he exercised

discretionary authority or control over Plan management and/or authority or control over management or disposition of Plan assets.

29. Defendant Frank J. Belatti (“Belatti”) served as a director of RadioShack during the Class Period. Defendant Belatti was a fiduciary of the Plan, within the meaning of ERISA Section 3(21)(A), 29 U.S.C. § 1002(21)(A), because he exercised discretionary authority or control over Plan management and/or authority or control over management or disposition of Plan assets.

30. Defendant Julia A. Dobson (“Dobson”) served as a director of RadioShack during the Class Period. Defendant Dobson was a fiduciary of the Plan, within the meaning of ERISA Section 3(21)(A), 29 U.S.C. § 1002(21)(A), because she exercised discretionary authority or control over Plan management and/or authority or control over management or disposition of Plan assets.

31. Defendant Daniel A. Feehan (“Feehan”) served as Non-Executive Chairman of the Board and a director of RadioShack during the Class Period. Defendant Feehan was a fiduciary of the Plan, within the meaning of ERISA Section 3(21)(A), 29 U.S.C. § 1002(21)(A), because he exercised discretionary authority or control over Plan management and/or authority or control over management or disposition of Plan assets.

32. Defendant H. Eugene Lockhart (“Lockhart”) served as a director of RadioShack during the Class Period. Defendant Lockhart was a fiduciary of the Plan, within the meaning of ERISA Section 3(21)(A), 29 U.S.C. § 1002(21)(A), because he exercised discretionary authority or control over Plan management and/or authority or control over management or disposition of Plan assets.

33. Defendant Jack L. Messman (“Messman”) served as a director of RadioShack during the Class Period. Defendant Messman was a fiduciary of the Plan, within the meaning of ERISA Section 3(21)(A), 29 U.S.C. § 1002(21)(A), because he exercised discretionary authority or control over Plan management and/or authority or control over management or disposition of Plan assets.

34. Defendant Thomas G. Plaskell (“Plaskell”) served as a director of RadioShack during the Class Period until his retirement in November 2013. Defendant Plaskell was a fiduciary of the Plan, within the meaning of ERISA Section 3(21)(A), 29 U.S.C. § 1002(21)(A), because he exercised discretionary authority or control over Plan management and/or authority or control over management or disposition of Plan assets.

35. Defendant Edwina D. Woodbury (“Woodbury”) served as a director of RadioShack during the Class Period. Defendant Woodbury was a fiduciary of the Plan, within the meaning of ERISA Section 3(21)(A), 29 U.S.C. § 1002(21)(A), because she exercised discretionary authority or control over Plan management and/or authority or control over management or disposition of Plan assets.

Administrative Committees and Defendants

36. Pursuant to the RadioShack 401(k) Plan Eighth Amended and Restated Trust Agreement, effective July 1, 2012 (the “2012 401(k) Plan Document”), attached hereto as Exhibit B, the Board of Directors had the explicit authority to appoint a committee to administer the 401(k) Plan.

37. As specified in the 2012 401(k) Plan Document, the Board appointed the RadioShack 401(k) Plan Administrative Committee to fulfill this role. *See* 2012 401(k) Plan Document at 11 (“The Board of Directors of RadioShack shall appoint an Administrative

Committee (the ‘Committee’) to administer the Plan.”). *See also* 2009 401(k) Plan SPD at 3 (noting the Company “has appointed the Administrative Committee to oversee the administration of the Plan”).

38. As the 2012 401(k) Plan Document specifies, the 401(k) Plan Administrative Committee “shall be the ‘plan administrator’ of the [401(k)] Plan as defined in Section 3(16)(A) of ERISA, and a ‘named fiduciary’ within the meaning of Section 402(a) of ERISA.” 2012 401(k) Plan Document at 11.

39. The 2012 401(k) Plan Document further noted that the 401(k) Plan Administrative Committee “in its sole and absolute discretion, shall administer the Plan in accordance with its terms and shall have all powers necessary to carry out the provisions of the Plan.” *Id.* Among the 401(k) Plan Administrative Committees’ powers and duties as delineated in the 2008 401(k) Plan Document is the power to “direct the investment and reinvestment of the Trust Fund and the income therefrom.” *Id.* at 11.

40. Mirror provisions to those in the 2012 401(k) Plan Document are found in the RadioShack Puerto Rico 1165(e) Plan Document, dated November 1, 2009 (the “2009 Puerto Rico Plan Document”), attached hereto as Exhibit C. *See* 2009 Puerto Rico Plan Document at 9 (“The Board of Directors of RadioShack shall appoint an Administrative Committee (the ‘Committee’) to administer the Plan. ... The [Puerto Rico Plan Administrative] Committee¹ shall be the ‘plan administrator’ of the [Puerto Rico] Plan as defined in Section 3(16)(A) of ERISA, and a ‘named fiduciary’ within the meaning of Section 402(a) of ERISA.”); *id.* at 9-10 (noting the Committee “in its sole and absolute discretion, shall administer the Plan in accordance with its terms and shall have all powers necessary to carry out the provisions of the

¹ The RadioShack 401(k) Plan Administrative Committee and the RadioShack Puerto Rico Plan Administrative Committee are collectively referred to as the “Administrative Committees.”

Plan,” and that the Committee has the power to “direct the investment and reinvestment of the Trust Fund and the income therefrom.”)

41. Both Plan Documents specify that the Administrative Committees shall consist of three or more members. *See* 2012 401(k) Plan Document at 11; 2009 Puerto Rico Plan Document at 9.²

42. The 2009 401(k) Plan SPD informs that the 401(k) Plan “Administrative Committee is also responsible for selecting the investment funds offered under the Plan.” 2009 401(k) Plan SPD at 3. Upon information and belief, the Puerto Rico Plan Administrative Committee has the same responsibility for the Puerto Rico Plan.

43. Defendant Mark Barfield (“Barfield”) was, upon information and belief, a member of the 401(k) and Puerto Rico Administrative Committees. Defendant Barfield signed the 401(k) Plan’s Forms 11-K filed with the Securities and Exchange Commission (“SEC”) on December 12, 2011 (the “401(k) Plan 2011 Form 11-K”),³ and on December 20, 2012 (the “401(k) Plan 2012 Form 11-K”), as well as the 401(k) Plan’s Form 5500 filed with the Department of the Treasury, Internal Revenue Service, and Department of Labor (“DOL”) for the plan year ending 2011 (the “401(k) Plan 2011 Form 5500”), on behalf of the 401(k)

² The entire composition of the Administrative Committees is not presently known to Plaintiff. Upon information and belief the Administrative Committees are comprised of the same individuals. Plaintiff believes that after a reasonable opportunity for discovery to obtain any committee charters, trust agreements, and other relevant information, the aforementioned documents will provide additional evidentiary support for the allegations set forth herein, including with respect to the composition of the Plans’ committees during the Class Period. Indeed, while Plaintiff has identified the Defendant-fiduciaries in the instant submission in accordance with the information they have obtained thus far, they reserve the right to further amend during and after discovery, as determining the identity and full breadth of responsibilities of ERISA fiduciaries is an inherently fact-intensive effort.

³ The 2011, 2012, and 2013 Forms 11-K filed on behalf of the 401(k) Plan all note that “[t]he Plan is administered by an Administrative Committee appointed by the Board of Directors of the Company” further evidencing the Administrative Committee’s role. *See* 2011, 2012, 2013 401(k) Plan Forms 11-K at 7. The Puerto Rico Plan Forms 11-K contain the same provision. *See* 2011, 2012, 2013 Puerto Rico Plan Forms 11-K at 7.

Administrative Committee, as the Plan Administrator. Further, Defendant Barfield signed the Puerto Rico Plan's Forms 11-K filed with the SEC on December 12, 2011 (the "Puerto Rico 2011 Form 11-K"), and on December 20, 2012 (the "Puerto Rico Plan 2012 Form 11-K"), as well as the Puerto Rico Plan's Form 5500 filed with the Department of the Treasury, Internal Revenue Service, and DOL for the plan year ending 2011 (the "Puerto Rico Plan 2011 Form 5500"), on behalf of the Puerto Rico Administrative Committee, as the Plan Administrator. Upon information and belief, Defendant Barfield was a fiduciary of the Plans, within the meaning of ERISA Section 3(21)(A), 29 U.S.C. § 1002(21)(A), because he exercised discretionary authority or control over Plan management and/or authority or control over management or disposition of Plan assets.

44. Defendant Justin Johnson, ("Johnson") was, upon information and belief, a member of the 401(k) and Puerto Rico Administrative Committees. Defendant Johnson signed the 401(k) Plan's Form 11-K filed with the SEC on December 23, 2013 (the "401(k) Plan 2013 Form 11-K"), as well as the 401(k) Plan's Form 5500 filed with the Department of the Treasury, Internal Revenue Service, and DOL for the plan years ending 2012 (the "401(k) Plan 2012 Form 5500") on behalf of the 401(k) Administrative Committee, as the Plan Administrator. Further, Defendant Barfield signed the Puerto Rico Plan's Forms 11-K filed with the SEC on December 23, 2013 (the "Puerto Rico Plan 2013 Form 11-K"), as well as the Puerto Rico Plan's Form 5500 filed with the Department of the Treasury, Internal Revenue Service, and DOL for the plan years ending 2012 (the "Puerto Rico Plan 2012 Form 5500") on behalf of the Puerto Rico Administrative Committee, as the Plan Administrator. Upon information and belief, Defendant Johnson was a fiduciary of the Plans, within the meaning of ERISA Section

3(21)(A), 29 U.S.C. § 1002(21)(A), because he exercised discretionary authority or control over Plan management and/or authority or control over management or disposition of Plan assets.

45. Defendants 401(k) Administrative Committee and the Puerto Rico Administrative Committee, as well as all individual members of the Committees during the Class Period, including but not limited to, Defendants Barfield and Johnson, are collectively referred to herein as the “Administrative Committee Defendants.”

Employee Benefits Committees and Defendants

46. As noted in the 2009 401(k) Plan SPD, in carrying out its duties, the “Administrative Committee has delegated certain administrative tasks or functions to Employee Benefits.” *See* 2009 401(k) Plan SPD at 3.

47. Upon information and belief, pursuant to this grant of authority, the 401(k) Plan Administrative Committee and the Puerto Rico Plan Administrative Committee delegated to the 401(k) Plan Employee Benefits Committee and the Puerto Rico Plan Employee Benefits Committee and their individual members such certain administrative tasks or functions (collectively, the “Employee Benefits Committees”). Accordingly, the Defendants 401(k) Plan Employee Benefits Committee and the Puerto Rico Plan Employee Benefits Committee and their individual members are fiduciaries of the Plans, within the meaning of ERISA Section 3(21)(A), 29 U.S.C. § 1002(21)(A), because each exercised discretionary authority or control over Plan management and/or authority or control over management or disposition of Plan assets.

48. Defendants 401(k) Plan Employee Benefits Committee and the Puerto Rico Plan Employee Benefits Committee, as well as all individual members of the Committees during the

Class Period, are collectively referred to herein as the “Employee Benefits Committee Defendants.”

Additional “John Doe Defendants”

49. To the extent that there are additional Company officers, directors, and employees who were fiduciaries of the Plans during the Class Period, including members of the Administrative Committees and/or members of the Employee Benefits Committees, the identities of whom are currently unknown to Plaintiff, Plaintiff reserves the right, once their identities are ascertained, to seek leave to join to the instant action. Thus, without limitation, unknown “John Doe” Defendants 1-10 include other individuals, including Company officers, directors, and employees who were fiduciaries of the Plans within the meaning of ERISA Section 3(21)(A), 29 U.S.C. § 1002(21)(A) during the Class Period.

THE PLANS

The 401(k) Plan

a. Purpose

50. The 401(k) Plan became effective January 1, 1996. *See* 2009 SPD at 3. Since 1996, the Plan has been amended and restated numerous times. However, upon information and belief, the version of the Plan effective July 1, 2012 as embodied in the 2012 401(k) Plan Document is the operative 401(k) Plan Document.

51. The Plan year is defined to commence on July 1 and end on the immediately subsequent June 30. *See* 2012 401(k) Plan Document at 9.

52. The 401(k) Plan documents make clear that the purpose of the Plan is to allow Participants “to save for [their] retirement.” 2009 401(k) Plan SPD at 2. *See also* 2012 401(k) Plan Document at 1 (“RadioShack has established a fund to be managed as a trust for the purpose of paying certain benefits.”) *Id.* at 1.

b. Eligibility to Participate

53. As the 2009 401(k) Plan SPD explains, employees are eligible to participate in the Plan on the one year anniversary of the date of employment with the Company, provided however, that such employee complete a year of service – defined as a consecutive 12 month period during which the employee completes at least 1,000 hours of service with RadioShack – prior to the one year anniversary of the employment commencement date. 2009 401(k) Plan SPD at 5. Employees must also be at least 18 years old. *Id.* at 5.

c. Contributions

54. The 401(k) Plan provided for the following types of contributions:

- Pre-tax deferred salary contributions (“Deferred Salary Contribution”)
- Rollover contributions
- Company matching contributions (“Company Matching Contribution”)

Id. at 7.

55. The 2009 401(k) Plan SPD informed Participants that the total amount of Deferred Salary Contributions a Participant could make to the Plan for any pay period could not exceed 75% of the employee’s compensation for that period. *Id.*

56. If an employee made a Deferred Salary Contribution for a payroll period, the Company provided a Company Matching Contribution to the Plan on the employee’s behalf equal to 100% of the Deferred Salary Contribution up to four percent (4%) of the employee’s compensation. *Id.* at 8. *See also* 2012 401(k) Plan Document at 18 (“Matching contributions for each applicable Participant shall equal 100% of the Participant Deferred Salary Contribution up to four percent of the Participant’s Compensation for the payroll period.”)

57. The 2009 401(k) Plan SPD further noted that the Company Matching Contribution may be in the form of cash or shares of RadioShack Stock. 2009 401(k) Plan SPD

at 8. *See also* 2012 401(k) Plan Document at 18 (“The contribution by the Employer may be in the form of either Company Stock or cash.”)

d. Vesting

58. According to the 2009 401(k) Plan SPD, provided employees did not leave the Company prior to July 1, 2006, Participants always owned 100% of the balance in Plan accounts, including the Company Matching portion. *Id.* at 10.

e. Investments Under the Plan

59. The Administrative Committee was explicitly tasked with adding or eliminating investment choices. *See* 2009 401(k) Plan SPD at 12.

60. The 2009 401(k) Plan SPD informed Participants that “[i]n addition to the other investment choices, the Plan offers RadioShack Common Stock as an investment choice.” 2009 401(k) Plan SPD at 13. The 2012 401(k) Plan Document notes that the Plan has an ESOP⁴ component. *See* 2008 401(k) Plan Document at 30.

61. For the plan year ended June 30, 2011, the Plan offered 24 investment options, including RadioShack Stock. *See* 2011 401(k) Plan Form 11-K at 13. By the end of plan year 2012, that number was down to 23, but still included Company Stock. *See* 2012 401(k) Plan Form 11-K at 14. For plan year end June 30, 2013, the 401(k) Plan offered 26 investment options, including RadioShack Stock. *See* 2013 401(k) Plan Form 11-K at 14.

62. As of June 30, 2011, the Plan held 2,973,742 shares of RadioShack Stock valued at \$39,580,506, or \$13.31/share. *See* 2011 401(k) Plan Form 11-K at 11. During the Plan year ended June 30, 2011, the value of the Plan’s investment in RadioShack Stock declined by over \$18 million. *Id.*

⁴ Employee Stock Ownership Plan.

63. As of June 30, 2012, the Plan held 3,264,115 shares of RadioShack Stock valued at \$12,534,202, or \$3.84/share. *See* 2012 401(k) Plan Form 11-K at 12. During the Plan year ended June 30, 2012, the value of the Plan's investment in Company Stock dropped more than \$28 million.

64. As of June 30, 2013, the Plan held 3,560,569 shares of RadioShack Stock valued at \$11,251,398, or \$3.16/share. *See* 2012 401(k) Plan Form 11-K at 11-12. During the Plan year ended June 30, 2013, the Plan's investment in Company Stock lost another \$2.2 million. *Id.* at 12.

The Puerto Rico Plan

a. Purpose

65. The Puerto Rico Plan became effective November 1, 2009. The 2009 Puerto Rico Plan Document explains, “[b]ecause of legal and administrative reasons, effective November 1, 2009, the Company establishes the Plan in order to provide retirement benefits to its employees who are bona fide residents of Puerto Rico, or who perform labor or services primarily within Puerto Rico, regardless of residence for other purposes.” 2009 Puerto Rico Plan Document at 1.

66. “Soon after the effective date of the Plan,” the document continues, “all of the accounts of the Company’s Puerto Rico employees under the RadioShack 401(k) Plan will be transferred to this Plan in the name of such employees.” *Id.*

67. The Plan year is defined to commence on July 1 and end on the immediately subsequent June 30. *Id.* at 7.

b. Eligibility to Participate

68. Each eligible employee who was a participant in the RadioShack 401(k) Plan immediately prior to the effective date – November 1, 2009 – automatically became a participant in the Puerto Rico Plan on the effective date. *Id.* at 11.

69. Further, on or after November 1, 2009, the Plan specified that a person could participate in the Plan on, or at any time after, the date he completes the one year anniversary of his employment date if during such period he completed a year of service, which like the 401(k) Plan requires not less than one thousand hours during a year. *Id.*

c. Contributions

70. The Puerto Rico Plan provided for the following types of contributions:

- Deferred salary contributions
- Company matching contributions

Id. at 14.

71. Participants were able to elect to defer an amount equal to between 1% and 75% in whole percentages of their compensation and have RadioShack contribute the amount to the employee's Plan fund. *Id.*

72. Further, each payroll period, the Company would contribute a matching amount to the employee's Plan fund. Company matching contributions for each applicable Participant was equal to 100% of the Participant's deferred salary contributions up to 4 percent (4%) of the Participant's compensation for the payroll period. *Id.* at 15.

73. The 2009 Puerto Rico Plan Document specifically noted that the Company matching contribution "may be in the form of either Company Stock or cash." *Id.*

74. Additionally, the 2009 Puerto Rico Plan provided for the payment of dividends. *Id.* at 23. “Cash dividends paid on shares of Company Stock shall be invested in Company Stock.” *Id.*

d. Vesting

75. Participants were always 100% vested in their accounts in the Puerto Rico Plan, including in the Company Matching portion. *Id.* at 24.

e. Investments Under the Plan

76. For the plan years ended June 30, 2011, and June 30, 2012, the Plan offered 23 investment options, including the RadioShack Stock. *See* 2011 Puerto Rico Plan Form 11-K at 13, 2012 Puerto Rico Plan Form 11-K at 13. For plan yearend June 30, 2013, the Puerto Rico Plan offered 26 investment options, including RadioShack Stock. *See* 2013 Puerto Rico Plan Form 11-K at 14.

77. As of June 30, 2011, the Plan held 60,115 shares of RadioShack Stock valued at \$800,131, or \$13.31/share. *See* 2011 Puerto Rico Plan Form 11-K at 11. During the Plan year ended June 30, 2011, the value of the Plan’s investment in RadioShack Stock declined by \$373,568. *Id.*

78. As of June 30, 2012, the Plan held 73,506 shares of RadioShack Stock valued at \$282,263, or \$3.84/share. *See* 2012 Puerto Rico Plan Form 11-K at 11. During the Plan year ended June 30, 2012, the value of the Plan’s investment in Company Stock dropped another \$619,158, a staggering 77% loss. *Id.* at 12.

79. As of June 30, 2013, the Plan held 94,404 shares of RadioShack Stock valued at \$298,317, or \$3.16/share. *See* 2012 Puerto Rico Plan Form 11-K at 14. During the Plan year

ended June 30, 2013, the Plan's investment in Company Stock lost another \$40,795 or 14%. *Id.* at 12.

Plan Fiduciaries Are Bound By ERISA's Strict Standards

80. Despite the 401(k) and Puerto Rico Plans' substantial investment in RadioShack Stock, Defendants failed to protect the Plans and their Participants from the risks of the Company's reckless and improper conduct detailed below. Defendants not only continued to hold the Plans' shares of RadioShack Stock, they compounded the problem and the Plans' losses by purchasing additional shares during the Class Period.

81. Fiduciaries of retirement plans such as the Plans here are bound by core ERISA fiduciary duties, including the duties to act loyally, prudently, and for the exclusive purpose of providing benefits to plan participants. This is true regardless of the structure of the plan, including whether the plan is styled as an ESOP like a portion of the 401(k) Plan at issue here. *See* 2012 401(k) Plan Document at § 4.12.

82. Accordingly, if the fiduciaries of a plan know, or if an adequate investigation would reveal, that company stock is no longer a prudent investment for the plan, then fiduciaries must disregard any plan direction to maintain investments in such stock and protect the plan by investing the plan assets in other, suitable, prudent investments.

CLASS ACTION ALLEGATIONS

83. Plaintiff brings this action derivatively on the Plans' behalf pursuant to ERISA §§ 409 and 502, 29 U.S.C. §§ 1109 and 1132, and as a class action pursuant to Rules 23(a), (b)(1), and/or (b)(2) of the Federal Rules of Civil Procedure on behalf of the Plans, Plaintiff, and the following class of persons similarly situated (the "Class"):

All persons, except Defendants and their immediate family members, who were participants in or beneficiaries of the

RadioShack 401(k) Plan and the RadioShack Puerto Rico 1165(e) Plan at any time between November 30, 2011⁵ and the present (the “Class Period”) and whose Plan accounts included investments in RadioShack Stock.

84. The members of the Class are so numerous that joinder of all members is impracticable. While the exact number of Class members is unknown to Plaintiff at this time, and can only be ascertained through appropriate discovery, Plaintiff believes there are thousands of employees of RadioShack who participated in, or were beneficiaries of, the Plans during the Class Period and whose Plan accounts included investment in RadioShack Stock.⁶

85. Common questions of law and fact exist as to all members of the Class and predominate over any questions affecting solely individual members of the Class. Among the questions of law and fact common to the Class are:

- (a) whether Defendants each owed a fiduciary duty to the Plans, Plaintiff, and members of the Class;
- (b) whether Defendants breached their fiduciary duties to the Plans, Plaintiff, and members of the Class by failing to act prudently and solely in the interests of the Plans and the Plans’ participants and beneficiaries;
- (c) whether Defendants violated ERISA; and
- (d) whether the Plans, Plaintiff, and members of the Class have sustained damages and, if so, what is the proper measure of damages.

⁵ Plaintiff reserves his right to modify the Class Period definition in the event that further investigation/discovery reveals a more appropriate and/or broader time period during which RadioShack Stock was an imprudent investment option for the Plan.

⁶ According to the 2011 and 2012 Forms 5500 filed on behalf of the 401(k) Plan there were approximately 18,310 and 18,291 Plan participants in the 401(k) Plan in 2011 and 2012, respectively. According to the 2011 and 2012 Forms 5500 filed on behalf of the Puerto Rico Plan there were approximately 452 and 447 Plan participants in the Puerto Rico Plan in 2011 and 2012, respectively.

86. Plaintiff's claims are typical of the claims of the members of the Class because the Plans, Plaintiff, and the other members of the Class each sustained damages arising out of Defendants' wrongful conduct in violation of ERISA as complained of herein.

87. Plaintiff will fairly and adequately protect the interests of the members of the Class and has retained counsel competent and experienced in class actions, complex, and ERISA litigation. Plaintiff has no interests antagonistic to or in conflict with those of the Plans or the Class.

88. Class action status in this ERISA action is warranted under Rule 23(b)(1)(B) because prosecution of separate actions by the members of the Class would create a risk of adjudications with respect to individual members of the Class which would, as a practical matter, be dispositive of the interests of the other members not parties to the actions, or substantially impair or impede their ability to protect their interests.

89. Class action status is also warranted under the other subsections of Rule 23(b) because: (i) prosecution of separate actions by the members of the Class would create a risk of establishing incompatible standards of conduct for Defendants; and (ii) Defendants have acted or refused to act on grounds generally applicable to the Class, thereby making appropriate final injunctive, declaratory, or other appropriate equitable relief with respect to the Class as a whole.

DEFENDANTS' FIDUCIARY STATUS

90. ERISA requires every plan to provide for one or more named fiduciaries who will have "authority to control and manage the operation and administration of the plan." ERISA § 402(a)(1), 29 U.S.C. § 1102(a)(1).

91. ERISA treats as fiduciaries not only persons explicitly named as fiduciaries under § 402(a)(1), 29 U.S.C. § 1102(a)(1), but also any other persons who in fact perform fiduciary functions (*e.g.*, *de facto* fiduciaries). Thus a person is a fiduciary to the extent "(i) he

exercises any discretionary authority or discretionary control respecting management of such plan or exercises any authority or control respecting management or disposition of its assets, (ii) he renders investment advice for a fee or other compensation, direct or indirect, with respect to any moneys or other property of such plan, or has any authority or responsibility to do so, or (iii) he has any discretionary authority or discretionary responsibility in the administration of such plan.” ERISA § 3(21)(A)(i), 29 U.S.C. § 1002(21)(A)(i).

92. During the Class Period, upon information and belief, each of the Defendants was a fiduciary – *i.e.* either a named fiduciary or a *de facto* fiduciary – with respect to the Plans and owed fiduciary duties to the Plans and their Participants under ERISA in the manner and to the extent set forth in the Plans’ documents, through their conduct, and under ERISA.

93. As fiduciaries, Defendants were required by ERISA § 404(a)(1), 29 U.S.C. § 1104(a)(1), to manage and administer the Plans, and the Plans’ investments solely in the interest of the Plans’ participants and beneficiaries and 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.

94. The 2009 401(k) Plan SPD acknowledges as much, setting out standards of prudent conduct consistent with ERISA’s prudent man standard (*see* ERISA § 404(a)(1)(B)). It provides:

In addition to creating rights for Plan participants, ERISA imposes duties upon the people who are responsible for the operation of the Plan. The people who operate the Plan, called “fiduciaries” of the Plan, have a duty to do so prudently and in the interest of you and other Plan participants and beneficiaries.

2009 401(k) Plan SPD at 28.

95. Plaintiff does not allege that each Defendant was a fiduciary with respect to all aspects of the Plans' management and administration. Rather, as set forth below, Defendants were fiduciaries to the extent of the specific fiduciary discretion and authority assigned to or exercised by each of them, and, as further set forth below, the claims against each Defendant are based on such specific discretion and authority.

96. Instead of delegating all fiduciary responsibility for the Plans to external service providers, the Company chose to assign the appointment and removal of fiduciaries, such as the members of the Administrative Committee, and the Employee Benefits Committee, to itself.

97. ERISA permits fiduciary functions to be delegated to insiders without an automatic violation of the rules against prohibited transactions, ERISA § 408(c)(3), 29 U.S.C. § 1108(c)(3), but insider fiduciaries, like external fiduciaries, must act solely in the interest of participants and beneficiaries, not in the interest of the Plans sponsors.

98. During the Class Period, all of Defendants acted as fiduciaries of the Plans pursuant to ERISA § 3(21)(A), 29 U.S.C. § 1002(21)(A), and the law interpreting that section.

The Company's Fiduciary Status

99. According to the 2009 401(k) Plan SPD, the 401(k) Plan is sponsored and maintained by RadioShack. *See* 2009 401(k) Plan SPD at 3. The document further notes that RadioShack is responsible for the operation of the Plan and RadioShack is the named Plan Administrator for the Plan. *Id.*

The Director Defendants' Fiduciary Status

100. As noted above, the Director Defendants were responsible for appointing the Administrative Committee of the 401(k) Plan and the Puerto Rico Plan. *See* 2012 401(k) Plan Document at 11; 2009 Puerto Rico Plan Document at 9.

101. Moreover, because the Board had the authority to appoint the members of the Administrative Committees, and the Administrative Committees were responsible for administering the Plans, the Board had the duty to monitor the activities of the Administrative Committees. *See* 2012 401(k) Plan Document at 11 (“Any member of the [Administrative] Committee may be removed by the Board of Directors of RadioShack at its discretion”); 2009 Puerto Rico Plan Document at 9 (same).

102. As a result, the Director Defendants had the ultimate responsibility for appointing, monitoring, and if necessary, removing RadioShack officers/employees delegated duties with respect to the administration and management of the Plans and management of the Plans’ assets, including members of the Administrative Committees for both Plans.

The Administrative Committees’ Fiduciary Status

103. The Administrative Committees of the Plans are both the “plan administrator” and the “named fiduciary” of their respective Plans. *See* 2012 401(k) Plan Document at 11 (“The [Administrative] Committee shall be the ‘plan administrator’ of the Plan, as defined in Section 3(16)(A) of ERISA, and a ‘named fiduciary’ within the meaning of Section 402(a) of ERISA”); 2009 Puerto Rico Plan Document at 9 (same).

104. The Company officers/employees who comprised the Plans’ Administrative Committees were appointed by the RadioShack Board and were delegated the day-to-day responsibility for the administration of the Plans and the Plans’ assets.

105. The 2009 401(k) Plan SPD notes the 401(k) Plan Administrative Committee is “responsible for selecting the investment funds offered under the Plan.” 2009 401(k) Plan SPD at 3. Upon information and belief, the Puerto Rico Plan Administrative Committee has the same responsibility for the Puerto Rico Plan.

106. Further, the respective Plan Documents both instruct, “[t]he Committee, in its sole and absolute discretion, shall administer the Plan in accordance with its terms and shall have all powers necessary to carry out the provisions of the Plan.” *See* 2012 401(k) Plan Document at 11; 2009 Puerto Rico Plan Document at 9. *See also* 2009 401(k) Plan SPD at 3 (“the Administrative Committee does have the responsibility and discretion to interpret and enforce all Plan provisions in its sole and absolute discretion”).

107. The Plan documents further specify that the Administrative Committees have the powers to “direct the investment and reinvestment of the Trust Fund” and “to construe, in its sole and absolute discretion, the provisions of the Plan.” *See* 2012 401(k) Plan Document at 11-12; 2009 Puerto Rico Plan Document at 10.

108. The 2012 401(k) Plan Document also notes that the Administrative Committees have the power to “appoint one or more Investment Managers (as that term is defined in Section 3(38) of ERISA) to manage (including the power to acquire and dispose of) all or any portion or portions of the Trust.” 2012 401(k) Plan Document at 59-60. Further, regarding such Investment Managers, the document notes “the Committee shall retain the right to remove and discharge any Investment Manager,” and that such Investment Manager is “a fiduciary with respect to the Plan.” *Id.* at 60.

109. The 2009 401(k) Plan SPD vests the 401(k) Plan Administrative Committee with the power to “delegate certain administrative tasks or functions to Employee Benefits.” 2009 401(k) Plan SPD at 3.

110. The SPD also notes that the 401(k) Plan Administrative Committee is responsible for directing the Trustee. *See id.* at 4.

Additional Fiduciary Aspects of Defendants' Actions/Inactions

111. ERISA mandates that pension plan fiduciaries have a duty of loyalty to the Plans and their participants which includes the duty to speak truthfully to the Plans and their participants when communicating with them. “[L]ying is inconsistent with the duty of loyalty owed by all fiduciaries and codified in section 404(a)(1) of ERISA.” *Varity Corp. v. Howe*, 516 U.S. 489, 506 (1996).

112. Moreover, an ERISA fiduciary’s duty of loyalty requires the fiduciary to correct the inaccurate, incomplete or misleading information so that plan participants will not be injured.

113. During the Class Period, upon information and belief, the Company made direct and indirect communications with the Plans’ Participants, including statements regarding investments in Company Stock. These communications included, but were not limited to, SEC filings, annual reports, press releases, and Plan documents (including SPDs and/or prospectuses regarding Plan/participant holdings of Company Stock), which included and/or reiterated these statements. *See* 2009 401(k) Plan SPD at 29 (incorporating by reference in the SPD the Company’s SEC filings in 2009 and filings “by the Company pursuant to Section 13(a), 13(c), 14 or 15(d) of the Exchange Act subsequent to the date of the [SPD].”)

114. Plaintiff does not herein allege that the Company’s SEC filings themselves were fiduciary communications. However, as the Solicitor General and the Solicitor of Labor asserted in their brief to the Supreme Court in the Brief for the United States as *Amicus Curiae* in *Fifth Third Bancorp v. Dudenhoeffer*, No. 12-751 (the “*Fifth Third Amicus*”),⁷ the incorporation of material misrepresentations contained in SEC filings into a SPD is actionable

⁷ Available at: [http://www.dol.gov/sol/media/briefs/dudenhoffer\(A\)-11-01-2013.pdf](http://www.dol.gov/sol/media/briefs/dudenhoffer(A)-11-01-2013.pdf)

under ERISA. *Id.* at 20-23; *accord Rinehart v. Akers*, 722 F.3d 137, 152 (2d Cir. 2013) (overruled in part on other grounds) (persons “act[] as ERISA fiduciaries when they incorporate[] [an employer’s] SEC filings into the SPD distributed to plan-participants.”)

115. Thus, Defendants also acted as fiduciaries to the extent of their communications with Plan Participants regarding the Plans’ investments, including Company Stock.

116. In their communications to the Plans’ Participants, given the facts described herein, Defendants failed to provide the Participants information necessary to make informed decisions regarding RadioShack Stock. Plaintiff does not allege that RadioShack Stock was artificially inflated because of the withholding of such information, but rather that Defendants had a duty under ERISA to disclose that information, cause the Plans to cease purchasing RadioShack Stock, and/or take other steps as necessary and appropriate to avoid massive Plan losses.

117. Further, Defendants, as the Plans’ fiduciaries, knew or should have known certain basic facts about the characteristics and behavior of the Plans’ participants, well-recognized in the 401(k) literature and the trade press⁸ concerning investment in company stock, including that:

⁸ See, e.g., David K. Randall, *Danger in Your 401(k)*, Forbes.com (August 30, 2010), available at: http://www.forbes.com/forbes/2010/0830/health-retirement-savings-erisa-danger-in-401k_print.html; Liz Pulliam Weston, *7 Ways to Mess Up Your 401(k)*, MSN.com (December 31, 2007), available at: <http://articles.moneycentral.msn.com/RetirementandWills/InvestForRetirement/7MostCommon401kBlunders.aspx>; Joanne Sammer, *Managed Accounts: A new direction for 401(k) plans*, Journal of Accountancy, Vol. 204, No. 2 (August 2007), available at: <http://www.aicpa.org/pubs/jofa/aug2007/sammer.htm>; Roland Jones, *How Americans Mess Up Their 401(k)s*, MSNBC.com (June 20, 2006), available at: <http://www.msnbc.msn.com/id/12976549/>; Bridgitte C. Mandrian and Dennis F. Shea, *The Power of Suggestion: Inertia in 401(k) Participation and Savings Behavior*, 116 Q. J. Econ. 4, 1149 (2001), available at:

http://mitpress.mit.edu/journals/pdf/qjec_116_04_1149_0.pdf; Nellie Liang & Scott Weisbenner, 2002, *Investor behavior and the purchase of company stock in 401(k) plan - the importance of plan design*, Finance and Economics Discussion Series 2002-36, Board of Governors of the Federal Reserve System (U.S.), available at: <http://www.federalreserve.gov/pubs/feds/2002/200236/200236pap.pdf>.

- (a) Employees tend to interpret a match in company stock as an endorsement of the company and its stock;
- (b) Out of loyalty, employees tend to invest in company stock;
- (c) Employees tend to over-extrapolate from recent returns, expecting high returns to continue or increase going forward;
- (d) Employees tend not to change their investment option allocations in the plan once made;
- (e) No qualified retirement professional would advise rank and file employees to invest more than a modest amount of retirement savings in company stock, and many retirement professionals would advise employees to avoid investment in company stock entirely;
- (f) Lower income employees tend to invest more heavily in company stock than more affluent workers, though they are at greater risk; and
- (g) Even for risk-tolerant investors, the risks inherent to company stock are not commensurate with its rewards.

118. Even though Defendants knew or should have known these facts, and even though Defendants knew of the substantial investment of the Plans' funds in Company Stock, they still took no action to protect the Plan's assets from their imprudent investment in Company Stock.

FACTS BEARING UPON DEFENDANTS' FIDUCIARY BREACHES

A. Overview

119. RadioShack "entered the 1980s poised to be the center of the computer revolution." Steven Davidoff Solomon, "A History of Misses for RadioShack," *The New York Times*, Sept. 16, 2014. Indeed, "in 1977, the company had introduced one of the first mass-produced computers, the TRS-80, and initially outsold Apple using the power of its retail

channel and its thousands of locations.” *Id.* “But from that perch... RadioShack went nowhere.” *Id.*

120. RadioShack now “finds itself tethered to a bygone era, with its 4,000 company-owned stores as much a burden as a benefit, its website delivering only modest returns in this cyber age and competitors – from behemoths like Amazon.com and Wal-Mart to wireless providers – attacking on all fronts.” Barry Shlachter, “At RadioShack, a history of hits and missed chances,” *Star-Telegram*, Sept. 20, 2014. “Sales have dropped 33 percent since 2005, when it recorded net profits of \$267 million, compared with [a loss in 2013] of \$400 million.” *Id.*

121. “Observers cite numerous reasons for the steady decline, including missed and squandered opportunities.” *Id.* As noted by some commentators, “RadioShack suffered from poor, often overpaid leadership, which could not focus on a single plan and then was left grasping for a rescue strategy.” *See* Solomon, “A History of Misses for RadioShack.”

122. Others have noted that “the market for hobbyists and do-it-yourselfers has evaporated.” *See* Shlachter, “At RadioShack, a history of hits and missed chances.” Indeed, the very concept of RadioShack – a company founded in 1921 to supply radio parts - is anachronistic. “Apps have replaced a calculator, a computer, a camcorder, a CB, speed dial, a portable CD player, a scanner, an answering machine and a tape recorder.” *Id.*

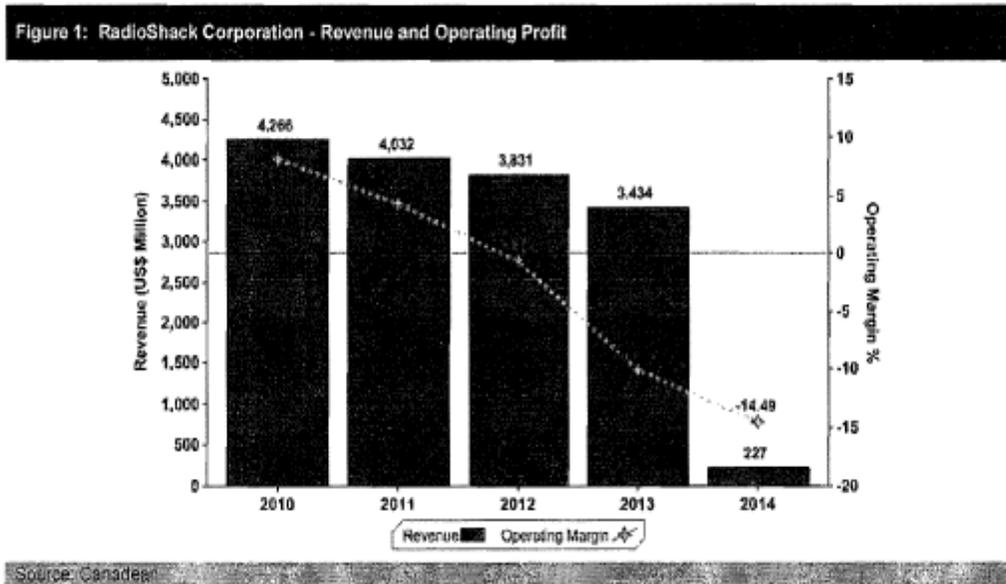
123. “It seems impossible [for RadioShack] to return to its bread-and-butter business selling extremely high-margin house-brand parts, accessories and batteries.” *Id.* For those, “a consumer no longer needs to go to RadioShack. You can go on the Internet – Amazon – or to Apple stores for Apple cords. If you are not a price leader, and RadioShack is not, you are going to be in trouble in the long run.” *Id.*

124. A fitting analogy, as stated by one commentator, is that RadioShack is the equivalent of “a network of Shell gas stations when everyone is driving an electric car.” *Id.*

125. RadioShack’s descent into irrelevance and certain oblivion was gradual but sure. By the start of the Class Period, it had become clear that RadioShack’s traditional business model had lost step with the changing times to the Company’s severe detriment.

126. As an Economist article noted “[u]nfortunately for the storied consumer-electronics retailer, it is way past time.” Economist’s Schumpeter Blog, “Dead brand walking,” Mar. 4, 2012, available at: <http://www.economist.com/blogs/schumpeter/2014/03/radioshacks-woes>. “Ask Americans under the age of 30 what they buy at ‘The Shack,’ and you will be greeted with a blank look.” *Id.*

127. The Company’s financial condition, when viewed through the lens of objective financial metrics, plainly indicates the company’s deterioration over the last several years. For instance, RadioShack’s revenue for 2014 currently stands at \$227 million, which corresponds to a decline of 93.39% from 2013. The operating margin of the Company was -14.49% in 2014, a decrease of 448.00 basis points from 2013. In fact, since 2010, there has been a steady and drastic decline of RadioShack’s revenue and operating margin:



Source: Canadean.

128. Knowing the Company had diminished financial prospects during the past few years, resulting in a dramatic shift in the Company's risk profile, the Plans' fiduciaries knew or should have known Company Stock was not a prudent Plan investment option and should have taken steps to protect the Plans and the Participants.

B. RadioShack's Financial Prospects Steadily and Significantly Declined Leading up to the Start of the Class Period

129. As 2011 began, the news regarding RadioShack was consistently negative. For example, in January 2011, RadioShack reported that Sam's Club was ending a contract that let the Company sell wireless phones at kiosks inside the Wal-Mart owned warehouse stores. *See* Mitchell Schnurman, "RadioShack's Plan B for kiosks is a smart move," *Fort Worth Star-Telegram*, Jan. 19, 2011. "As a result," the article continued, "RadioShack's operating profit from that segment is *projected to decline by \$10 million to \$15 million this year.*" *Id.*

(emphasis added). The disclosure prompted three analysts to downgrade the stock, and on January 18, 2011 RadioShack Stock was priced at \$15.68, a drop of more than 25 percent in three months. *Id.*

130. The following week, the Company warned investors that its fourth quarter 2010 earnings were going to fall short of expectations, an announcement one article characterized as “dropp[ing] a hammer on its own foot.” Jim Jelter, “RadioShack encounters serious static; Commentary: CEO’s exit raises questions about direction,” *MarketWatch*, Jan. 24, 2011.

131. Moreover, RadioShack also announced that Chairman and Chief Executive Officer Julian Day would be stepping down in May of 2011 after four years on the job. *Id.*

132. With this news, the share price further tumbled. Ultimately, RadioShack Stock closed at \$14.31, which according to the article was a 15-month low. *Id.*

133. “These problems didn’t pop up suddenly,” the article continued. “RadioShack’s name often was batted around last year as a possible takeover candidate. ***The fact that no offers emerged says a lot about its shrinking value.*** So does the share price, down about 30% since the last good takeover rumor in October.” *Id.* (emphasis added). “While the company is still profitable, ***today’s news certainly doesn’t instill confidence,***” the article continued. *Id.* (emphasis added).

134. “***The next four months will likely be critical for the company,***” the article warned. *Id.* (emphasis added). Unfortunately for the Plans and the Plans’ Participants, this warning fell on deaf ears.

135. On April 25, 2011, RadioShack announced its first quarter 2011 results. The Company reported that net income decreased \$15 million, or 29.9% when compared with the first quarter of 2010. *See* RadioShack Form 10-Q, filed Apr. 25, 2011. Operating income

decreased \$19.7 million, or 21.7% compared to the prior year. *Id.* RadioShack Stock closed at \$14.40 on this day.

136. On July 26, 2011, RadioShack announced its results for the second quarter of 2011. The Company disclosed that net sales and operating revenue decreased \$20.4 million, or 2.1%, when compared with the same period in 2010. *See* RadioShack Form 10-Q, filed July 26, 2011. Moreover, net income decreased by more than 50% – specifically \$26 million, or 52.5% – from the second quarter of 2010. *Id.* The Company announced that the decrease in total net sales and operating revenues for the 2011 second quarter was driven by a \$76.1 million decrease in sales generated by U.S. company-operated stores. *See* RadioShack New Release dated July 26, 2011. On July 26, 2011, RadioShack Stock closed at \$14.37.

137. On October 25, 2011, the Company reported its third quarter 2011 results, reporting a comprehensive loss of \$9.9 million for the quarter. *See* RadioShack Form 10-Q, filed Oct. 25, 2011. Moreover, RadioShack disclosed that store sales for the third quarter decreased \$48 million, or 5.4%, and decreased 128.6 million, or 4.8% for the first nine months of 2011 compared to the same period in 2010. *Id.*

138. While the Company had a net income of \$0.3 million for third quarter of 2011, the difference between the income from the third quarters of 2011 and 2010 was staggering – almost \$46 million less than in the third quarter of 2010. *See* RadioShack News Release dated October 25, 2011.

139. The day after the Company's third quarter 2011 results, shares of RadioShack fell 15%, due to “the consumer electronics chain report[ing] a much weaker than expected quarterly profit hurt by lower gross margins.” *See* “Canadian, U.S. companies report earnings Wednesday,” Reuters, Oct. 26, 2011. RadioShack Stock closed this day at \$10.72.

140. Certainly by the time the Company's third quarter 2011 results were reported, Defendants could no longer deny that RadioShack Stock was an imprudent Plan investment. The Company's heyday was in the rear-view mirror and there was no objective reason to believe things would get better going forward given the dismal news seemingly coming on a daily basis. The Company Stock Price, which hit its apex years earlier, had been steadily declining since January 2010. Yet the Plans' fiduciaries took no action whatsoever to protect the Plans from this foreseeable decline.

141. According to the 2012 401(k) Plan Document: To implement transactions regarding investments in Company Stock, including purchases, redemptions and exchanges, the Trustee shall purchase or sell Company Stock on the open market, as the case may be, as soon as practicable following the date and time of receipt by the Trustee of all funds, documents and/or information necessary from RadioShack, a third party, Alternate Payee, Participant or Beneficiary, as applicable to effect such purchase or sale. *Id.* at § 7.9(d).

142. The Class Period begins on November 30, 2011, a month after the Company's third quarter 2011 results were reported because within that reasonable timeframe the Plans' fiduciaries could have instructed the Trustee to cease purchases of and/or liquidate Company Stock and the Trustee could have implemented the request. On November 30, 2011, RadioShack Stock closed at \$10.99.

143. At year-end 2011, RadioShack Stock closed at \$9.29.

C. The Company Continues to Freefall Throughout 2012

144. On January 30, 2012 RadioShack announced preliminary fourth quarter 2011 results. The Company announced diluted earnings per share for the 2011 fourth quarter were expected to be in the range of \$0.11 to \$0.13, compared to \$0.51 per diluted share reported for

the fourth quarter of 2010, a decline of \$0.38 to \$0.40 per diluted share. “*We are disappointed,*” Defendant Gooch admitted, noting “positives were overshadowed by *significant decline* in our Sprint business.” RadioShack News Release dated Jan. 30, 2012 (emphasis added). On January 30, 2012, RadioShack Stock closed at \$9.79.

145. Despite the outlook for a decrease in 2012 net income, on February 16, 2012, the Board of Directors declared a first-quarter cash dividend of \$0.125 per share on Company Stock, payable on March 30, 2012. *See* RadioShack News Release dated Feb. 16, 2012. On this day, RadioShack Stock closed at \$7.20.

146. On February 21, 2012 RadioShack reported its fourth quarter 2011 results. *See* RadioShack Form 10-K, filed Feb. 21, 2011. Despite characterizing 2011 as “a year of progress and transitions for our business,” *id.* at 19, 2011 was a difficult year for the Company. Net income for the fourth quarter of 2011 declined \$45.1 million compared to the fourth quarter of 2010. Indeed, Q4 2011 was the *third straight quarter of decreased net income*, compared to the same quarters in 2010.

147. Additionally, fourth quarter 2011 operating income was three times less than it was for the fourth quarter in 2010: \$30.5 million operating income in 2011, compared with fourth quarter operating income of \$96.9 million in 2010. *See* RadioShack News Release, dated Feb, 21, 2012.

148. Despite all this, Defendant Gooch stated, “[w]e have a strong balance sheet, are making progress in our mobility business, and expect to advance our business improvement initiatives in 2012.” *Id.*

149. Articles about the fourth quarter results were not as positive. As an Associated Press article from the same day candidly titled “Retailer RadioShack’s 4Q profit falls 79

percent” noted, the results caused RadioShack Stock to fall as low as \$7.26, coming within 11 cents of its 52-week low. *See* “Retailer RadioShack’s 4Q profit falls 79 percent,” *Associated Press*, Feb. 21, 2012. Sales were “dragged down by weakening sales of digital cameras and music players,” the article noted. *Id.*

150. The article also reported that Defendant Gooch was forced to admit during a conference call with investors that the first quarter of 2012 would be “*extremely challenging*” and “*even more difficult*” than the fourth quarter of 2011.” *Id.* (emphasis added).

151. Another article in response to the disclosure summed up the situation aptly: “Once the very definition of technology in America, RadioShack is now seen by many as a relic of a bygone age.” Brett Callwood, “RadioShack Continues to Decline,” *Benzinga.com*, Feb. 21, 2012. “The gross margin took a dive to 34.8 percent from 41 percent,” the article noted.

152. On February 21, 2012, RadioShack Stock closed at \$6.95.

153. Grasping at straws in an attempt to right the ship, on March 22, 2012, RadioShack announced that the Company had signed a master development agreement with Berjaya Retail Berhad. *See* RadioShack News Release, dated Mar. 22, 2012. The development agreement purportedly would expand the Company’s global footprint across ten Southeast Asian countries. This would be the first of many failed attempts at stabilization through expansion. On March 22, 2012, RadioShack Stock closed at \$6.30.

154. On April 24, 2012 RadioShack reported its first quarter 2012 results. The Company reported a *net loss for the first quarter of 2012 of \$8.0 million*. *See* RadioShack Form 10-Q, dated Apr. 24, 2012. The decrease in total net sales and operating revenues for the first quarter 2012 was driven by a \$61.6 million decrease in sales from U.S. RadioShack company-operated stores. *Id.*

155. “As we anticipated, *the first quarter was extremely challenging*” Defendant Gooch admitted. See RadioShack News Release, dated Apr. 24, 2012 (emphasis added). On April 24, 2012, RadioShack Stock closed at \$5.21.

156. Despite the negative results reported for the first quarter 2012, on May 17, 2012, the Board of Directors announced a second quarter cash dividend of \$0.125 per share of Company Stock, payable on June 22, 2012. See RadioShack News Release, dated May 17, 2012. On this day, RadioShack Stock closed at \$4.40.

157. Regardless of the declared dividend, industry analysts were wary. Jonathan Heller, a seventeen year veteran at Bloomberg Financial Markets cautioned: “The market is not always right, but in my experience, if the dividend appears too good to be true, and that’s the only reason you’re buying a particular name, it’s time to take a step back and review the situation. That’s what the market is saying about retailer RadioShack, which is currently paying a \$0.125 quarterly dividend that equates to a 11.5% yield, well above its seven-year average (1.7%). *Revenue has been stagnant and earnings have declined for several years. ... RadioShack management recently said it intends to keep the dividend intact, but the market isn’t buying it.*” Jonathan Heller, “When Dividend Stocks Appear Too Good To Be True,” *TheStreet.com*, June 12, 2012 (emphasis added).

158. As 2012 continued, the news grew ever more disconcerting and dire.

159. On July 25, 2012, the Company reported its results for the second quarter of 2012, reporting a *net loss of \$21 million*. See RadioShack form 10-Q, filed July 25, 2012.

160. In response to the results, Defendant Gooch said “[o]verall, *our business performed below expectations* during the second quarter,” and again admitted “[w]e are *disappointed.*” See RadioShack News Release, dated July 25, 2012 (emphasis added).

161. Defendant Gooch also announced that RadioShack was suspending the dividend program just a few months after touting its benefits. *Id.*

162. The news was not taken favorably. “The enduring mystery that is RadioShack turned even more dour and depressing this morning,” one article noted. *See* Steven Russolillo, “RadioShack’s Troubles Mount: Stock is ‘Dead Money,’” *Dow Jones News Service*, July 25, 2012. In response to the Company’s second quarter loss and cessation of the dividend, the article noted “shares have lost a third of their value this morning and are trading at levels last seen in 1980 on a split-adjusted basis.” *Id.*

163. “RadioShack’s financial performance went from bad to worse,” an analyst at BB&T Capital Markets was quoted in the article as saying. “***We think the stock will be ‘dead money’ at best*** until current trends begin to show some signs of stabilizing.” *Id.* (emphasis added). The article noted that shares recently fell 33% and were down 74% for the year. *Id.*

164. “The broad takeaway isn’t a pretty one for RadioShack” the article continued, quoting another analyst who declared “we have ***little confidence*** in RadioShack’s ability to earn a profit stream given their (and our) inability to see this coming.” *Id.* (emphasis added).

165. On July 25, 2012, RadioShack Stock closed at \$4.23.

166. On September 26, 2012, RadioShack announced that the Board of Directors and Defendant Gooch agreed that he would step down from his position as chief executive officer and director of the Company effective immediately. *See* RadioShack News Release, dated Sept. 26, 2012.

167. This news came as no surprise to industry experts. As Nightly Business Correspondent Ruben Ramirez reported, “[i]f a company’s share price is a barometer of the CEO’s performance, then it should come as no surprise that RadioShack gave its CEO the boot

today. After just a little more than year on the job, CEO James Gooch is out.” See Nightly Business Report, Community Television Foundation of South Florida, Inc. Finance Wire, Sept. 26, 2012. Ramirez continued, noting that one of the mistakes Defendant Gooch made “which may have hurt his credibility with Wall Street [was] when the company doubled its quarterly dividend just to suspend it a few months later.” *Id.* “Since Gooch took over the CEO spot, shares of RadioShack have taken a big hit, down about 80 percent,” the article continued.

168. Other industry insiders also saw the writing on the wall for Defendant Gooch. For example, one analyst with Raymond James equity Research was quoted as saying “[t]his news does not come as much of a surprise given the company’s ongoing operational woes and dismal stock price performance.” Barry Schlachter, “RadioShack ousts its CEO,” *Fort Worth Star-Telegram*, Sept. 27, 2012. “Clearly RadioShack is struggling to address the competitive and product cycle challenge facing its mobile, signature, and consumer electronics businesses,” the analyst continued. *Id.*

169. On this day, RadioShack Stock closed at \$2.60.

170. As one article noted, the Company’s “troubles are partly due to *wider problems* in the brick-and-mortar electronics industry and add fuel to the notion that *selling consumer electronics in brick-and-mortar stores is becoming less and less viable.*” See “RadioShack CEO James Gooch falls on sword; Beleaguered electronics retailer seeks new exec at helm,” *Canwest News Service*, Sept. 26, 2012 (emphasis added).

171. This sentiment was echoed by an October 15, 2012 Dow Jones article that said “RadioShack Corp., which once drew in customers looking to buy electronics gadgets and supplies close to home, is struggling to figure out its purpose in an age in which the competition is craned up and its balance sheet is battered.” Rachel Feintzeig, “DJ RadioShack Needs to Cut

Through the Static, Analysts Say,” *Dow Jones Institutional News*, Oct. 15, 2012. “Larger questions loom about the company’s diminished status in the consumer-electronics market, its strategy--a shift to cellphones hasn’t yet paid off--and its relevance in a market crowded by big-box stores and Internet retailers with alluring price cuts and larger inventories.” *Id.*

172. “RadioShack doesn’t stand for anything” ISI Group analyst Oliver Wintermantel was quoted in the article as saying. *Id.* Indeed, the article noted that Fitch Ratings downgraded the Company’s senior unsecured notes further into *junk territory* on October 8, 2012, citing “disappointing results,” profitability drops that have “become more pronounced over the last four quarters,” and a “marked deterioration in the company’s credit profile.” *Id.* Fitch further warned that the Company’s earnings “will likely *erode further.*” *Id.* (emphasis added). “There is a lack of stability in the business and no apparent catalyst to stabilize or improve operations,” Fitch further said. *Id.*

173. In an interview, Fitch analyst Augustinus Wong said he believed a lot of consumers were not fully aware of what RadioShack was offering, and associated the Company with its old inventory of traditional electronics such as remote controls and speaker wires. *Id.* “They’ve got to figure out how to find their niche,” Wong continued, “I’m not clear as to what that is right now.” *Id.* “*I don’t think anyone believes it has a real business model to it,*” he said of RadioShack. *Id.* (emphasis added).

174. ISI Group analyst Oliver Wintermantel went so far as to say an eventual restructuring or bankruptcy would not be surprising, noting “the writing is certainly on the walls.” *Id.* “*It’s one of the weakest retailers we cover,*” he concluded. *Id.* (emphasis added). Fitch analyst Augustinus Wong agreed, stressing the Company was “in need of a major shift in strategy.” *Id.*

175. Shares of RadioShack Stock closed at \$2.29 on this day. Clearly, RadioShack's traditional business model was obsolete and the Company was in peril.

176. Less than a month after the change in the Company's management, the Company's news was no different. On October 23, 2012, RadioShack reported results for the third quarter of 2012, reporting a staggering *\$47 million net loss for the quarter*. See RadioShack Form 10-Q, dated Oct. 23, 2012.

177. RadioShack Stock fell 14% following the miss on earnings, representing a third quarter loss of \$0.33 per share. *Id.*

D. The Company's Struggles Continued and the Losses Mounted Throughout 2013

178. On February 7, 2013, RadioShack announced the appointment of Defendant Magnacca as chief executive officer, who was also named as a member of the Board of Directors. See RadioShack New Release, dated Feb. 7, 2013. A few days later RadioShack reported its fourth quarter 2012 and full year 2012 results. See RadioShack Form 10-K, filed Feb. 26, 2013. The Company reported *a net loss of \$63 million*, and a net loss of \$0.63 per share. See *id.* For the full year 2012, RadioShack reported a *net loss of \$139 million*, compared to a net income of \$72 million in 2011. *Id.*

179. The results were "far below Wall Street expectations." See Clay Wyatt, "RadioShack Posts Weak Earnings, Still Up on Tuesday; Financial report," *Bezinga.com*, Feb. 26, 2013. Wyatt further reported that RadioShack was contemplating selling assets or closing stores if its performance did not improve in 2014, noting, "[i]f the company does close stores, it wouldn't be the first time it resorted to doing so. In 2006, RadioShack had closed nearly 500 locations." *Id.*

180. “RadioShack is playing in [a] fiercely-competitive league these days. With tough brick-and-mortar competition from the likes of Best Buy and Wal-Mart, along with an ever-growing online threat from Amazon, *RadioShack faces a growing likelihood of becoming another Circuit City*,” Wyatt warned. *Id.* (emphasis added). Thus, in 2013, RadioShack’s outdated business model was still plaguing the Company’s bottom line.

181. On March 12, 2013, Goldman Sachs’s Matthew Fassler wrote that RadioShack was “over-levered, has limited opportunity to cut costs, and has few of the strategic dynamics (M&A, founder interest) that have held drive a rally among other challenged franchises of late.” *See* Tiernan Ray, “Barron’s Blog: This Morning: Weighing AAPL, BBRY, Pondering ‘Tizen,’ RadioShack,” *Dow Jones Global Equities News*, Mar. 12, 2013. In other words, it was clear to those paying attention that RadioShack was in trouble.

182. Consumer sentiment regarding RadioShack floundered right along with the Stock price. As a March 19, 2013 article detailed, based on a study of 10,000 U.S. consumers, “*RadioShack was the lowest-rated retailer for the third consecutive year.*” *See* “Sam’s Club and Amazon Earn Top Honors in Retail Industry for Customer Experience, According to new Temkin Group Research,” *PR Newswire*, Mar. 19, 2013 (emphasis added). As the article explains, the Temkin Experience Ratings evaluate three areas of customer experience: (1) functional (can customers do what they want to do); (2) accessible (how easy it is to work with the company), and emotional (how consumers feel about their interactions). *See id.*

183. As another article about the ratings noted not only was RadioShack the lowest-rated retailer for the third consecutive year, “earning a poor rating of 58%,” the Company “also *earned the lowest score* across all three underlying components, functional, accessible, and emotional.” “Temkin Group: Sam’s Club and Amazon Earn Top Honors in Retail Industry for

Customer Experience According to New Temkin Group Research,” *Indian Banking News*, Mar. 19, 2013 (emphasis added).

184. On April 23, 2013, RadioShack reported results for the first quarter 2013. *See* RadioShack Form 10-Q, dated Apr. 23, 2012. Therein, the Company reported a ***net loss of \$43 million, or \$0.43 per share***. *Id.* This was RadioShack’s fifth consecutive quarter of red ink. Moreover, revenue fell 7%. *Id.*

185. Defendant Magnacca recognized the Company’s troubles stating “I know we have some gaps and improvements that need to take place.” *See* RadioShack News Release dated April 23, 2013. Citing no concrete plan or objective reason to be hopeful, Defendant Magnacca continued, “I am confident we can renew [RadioShack’s] relevancy.” *Id.*

186. In the face of the “steeper-than-expected loss on sliding sales in the first quarter,” that were “much worse than expected,” industry analysts did not share Defendant Magnacca’s empty bravado. *See* Ann Zimmerman and Drew FitzGerald, “Latest Loss Raises Hurdles for RadioShack,” *The Wall Street Journal Online*, Apr. 23, 2013. Janney Montgomery Scott analyst David Strasser called the first quarter 2013 results “***a disaster by any stretch of the imagination***.” *Id.* (emphasis added).

187. On July 11, 2013, in response to a report by Reuters that the Company was considering hiring a financial advisor to help repair its balance sheets, shares of RadioShack dropped 21% to \$2.24. *See* “Market Chatter: RadioShack Sheds 21% on reports of Balance Sheet Struggles,” *MidnightTrader Live Briefs*, July 11, 2013.

188. On July 23, 2013 RadioShack reported results for the second quarter 2013. *See* RadioShack Form 10-Q, filed July 23, 2012. The Company reported a ***net loss of \$53.1***

million, or 53 cents per share. Id. Q2 2013 marked the sixth consecutive quarter of loss posted by RadioShack.

189. On the same day, RadioShack announced that Holly F. Etlin, a managing partner of AlixPartners would be the acting CFO. *See* RadioShack News Release, dated July 23, 2013 (emphasis added).

190. Third quarter 2013 was more of the same bad news. On October 22, 2013, RadioShack reported results for the third quarter 2013. *See* RadioShack Form 10-Q, filed Oct. 22, 2013. The Company reported a *net loss of \$112.4 million, or \$1.11 per share, its seventh consecutive quarter of net losses. See id.*

191. In a November 6, 2013 article titled “29 stocks traders are shorting like crazy,” Steve Kovach, reminded the market “RadioShack’s CEO recently warned that investors should expect an uneven performance over the next few quarters as the company implemented overhauling its stores.” “29 stocks traders are shorting like crazy,” *Postmedia Breaking News*, Nov. 6, 2013. RadioShack Stock closed at \$2.67 on this day.

E. In 2014 RadioShack is Faring No Better Than In Previous Years as the Company Stock Price Continues to Decline and Losses Continue to Mount

192. For RadioShack, 2014 began in similar fashion as recent years with the Company facing mounting distress.

193. One analyst recommended RadioShack as a Sell with a ratings score of D. *See* “Why RadioShack (RSH) Is Jumping on Monday,” *TheStreet.com*, Feb. 3, 2014. “The team has this to say about their recommendation: We rate RadioShack Corp (RSH) a SELL. This is driven by a number of negative factors, which we believe should have a greater impact than any strengths, and could make it more difficult for investors to achieve positive results compared to most of the stocks we cover. The company’s weaknesses can be seen in multiple areas, such as

its feeble growth in its earnings per share, deteriorating net income, disappointing return on equity, poor profit margins and generally high debt management risk.” *Id.*

194. On February 3, 2014, RadioShack Stock closed at \$2.48.

195. Soonafter, RadioShack announced plans to close about 500 stores in the coming months. *See* “RadioShack Plans to Unplug 500 Stores in Months,” Denver Post, Feb. 5, 2014. On February 5, 2014, RadioShack Stock closed at \$2.22.

196. The overwhelming opinion on RadioShack was that “It’s a store that has been passed by, with a format, merchandise mix and physical presence that no longer registers with the American consuming public.” *See* “RadioShack Takes on Its Dated Image,” The Peoria Journal Star, Feb. 16, 2014.

197. On March 4, 2014, RadioShack reported results for the fourth quarter 2013. It reported ***a net loss of \$191.4 million, compared with a net loss of \$63.3 million in the fourth quarter 2013.*** In response to the fourth quarter losses, defendant Magnacca said, “Our fourth quarter financial results were driven by a holiday season characterized by lower store traffic, intense promotional activity particularly in consumer electronics, a very soft mobility marketplace and a few operational issues.” *See* RadioShack News Release dated Mar. 4, 2014.

198. On this day, RadioShack also announced an operating loss for the fiscal year 2013 of \$344.0 million and ***a net loss of \$400.0 million.*** It also announced that it was expecting to close up to 1,100 stores, which have been selected based on location, area demographics, lease life and financial performance. *Id.*

199. Based on the dismal news from the Company, its stock price plunged more than 20%. *See* “Sector Update: Consumer Shares Higher; RadioShack Sheds 20% on Disappointing,” MT Newswires, Mar. 4, 2014. It closed on March 4, 2014, at \$2.25.

200. Just a day later, an analyst at Griffen Securities, Inc., was pessimistic about RadioShack's future. "RadioShack's time has passed.... It is a dinosaur . . . Ultimately, I think it will go out of business." See "RadioShack Might Close 1,100 Stores," Los Angeles Times, March 5, 2014.

201. On March 5, 2014, RadioShack Stock closed at \$2.16.

202. At RadioShack's annual investor meeting, Defendant Magnacca told shareholders, "I don't know if we can overcome this impasse, but we'll continue to work at it." See "Has Even RadioShack's CEO Given Up On A Turnaround?" The Motley Fool, Jun. 4, 2014.

203. On June 10, 2014, RadioShack announced results for the 13 week period ending May 3, 2014. The Company reported that total net sales and operating revenues were \$736.7 million, compared to \$848.4 million for the same period in 2013. Comparable store sales were down 14%, driven by traffic declines and soft performance in the mobility business. ***Loss from continuing operations was \$98.3 million, compared to \$23.3 million for 2013.*** The Company had closed 22 stores and expected to close up to 200 stores. See RadioShack News Release dated June 10, 2014.

204. On June 10, 2014 RadioShack Stock closed at \$1.38.

205. The news only got worse. One analyst at research firm B. Riley & Co. cut his price target on the once-proud retailer from \$1 a share – to \$0. Apparently, the Company was burning through cash at a disturbingly quick rate while the Company's turnaround hopes were based on "crossed fingers rather than hard data." The analyst predicted that there is more than a 50% chance that RadioShack will have to file for bankruptcy. See "RadioShack Price Target cut to ... \$0," CNN Money.com, June 11, 2014.

206. And this was not just an isolated view of RadioShack. On the whole, most analysts said that a bankruptcy proceeding was likely for the Company. “There’s no chance that this stays outside of a restructuring,” said David Tawil, co-founder and portfolio manager of Maglan Capital, which follows distressed companies. He believed a formal liquidation is more likely. He added, “I don’t think anybody will miss RadioShack if it goes out of business.” *See* “RadioShack Stock Closes Below \$1 Per Share,” Associated Press Online, June 20, 2014.

207. Underscoring just how much RadioShack’s risk profile had changed for the worse was the action taken by Credit Salus Capital, a specialty lender. In 2013, it made its biggest loan ever to RadioShack and stood “to be paid handsomely whether RadioShack succeeds or fails.” Salus “is one of a group of rough-and-tumble finance companies willing to make big loans against risky non-traditional assets. . . *These shops specialize in risky deals to faltering companies.* Such is the case with RadioShack, which would be delisted from the New York Stock Exchange if the stock price doesn’t pull above \$1 share before August 1. RadioShack needed financing for a turnaround, and a typical loan wasn’t going to cut it.” *See* “How Needham’s Salus Capital Landed \$250M RadioShack Deal,” Boston Business Journal, July 21, 2014. (emphasis added).

208. On July 21, 2014, RadioShack Stock closed at \$0.83.

209. On July 25, 2014, RadioShack announced that on July 24, 2014 it received a continued listing standards notice from the New York Stock Exchange because the average closing price of the Company’s common stock had fallen below \$1.00 per share over a period of 30 consecutive trading days. *See* RadioShack News Release dated July 25, 2014.

210. On July 25, 2014 RadioShack Stock closed at \$0.80.

211. There was significant erosion in RadioShack's liquidity during the second quarter of 2014, with total liquidity of \$183 million as of Aug. 2, 2014 down from \$424 million at the end of the first quarter in 2014. *See* "Fitch: RadioShack's New Financing Plan A Short-Term Respite." *Dow Jones Industrial News*, Oct. 6, 2014.

212. On August 12, 2014, UBS analyst Michael Lasser said he was doubtful RadioShack would successfully complete its turnaround. In particular, he expressed skepticism efforts to remodel some stores would be enough to produce a positive halo effect for the chain, later noting the Company is in a perilous operation position with shrinking financial flexibility. The Company Stock was down 52% over the past 52 weeks. *See* "Analyst Actions: RadioShack PT Cut at UBS, Shares Fall 4%," *MT Newswires*, Aug. 12, 2014.

213. On August 12, 2014, RadioShack Stock closed at \$0.57.

214. By September 2014 the bleakness at the Company continued. On September 11, 2014 RadioShack reported results for the second quarter 2014. RadioShack reported total net sales and operating revenues were \$673.8 million, compared to \$861.4 million for the same time period in 2013. Comparable store sales were down 20% driven by traffic declines and soft performance in the mobility business. ***Operating loss reported for the second quarter was \$119.4 million, compared to \$51.1 million in 2013.*** Year to date, comparable store sales were down 16.9% and the operating loss was ***\$200.4 million.*** *See* RadioShack News Release dated Sept. 11, 2014.

215. Cracks began to appear in the Company's wall of stubborn bravado as it warned that it may file for Chapter 11 bankruptcy. "We may not have enough cash and working capital to fund our operations beyond the very near term, which raises substantial doubt about our ability to continue as a going concern." *See* RadioShack Form 10-Q, filed Sept. 11, 2014 at 6.

216. Observers translated this as “We surrender!” See “For RadioShack, The End Is Near,” *The Washington Post*, Sept. 12, 2014. The analysts piled on. One analyst remarked “Don’t get caught with the ticker symbol ‘RSH’ in your 401(k).” *Id.* Yet another said, “We believe the company will default or restructure in some form that is tantamount to a default within the next six months.” *Id.*

217. On September 12, 2014, RadioShack Stock closed at \$0.91.

218. On September 15, 2014, RadioShack announced the appointment of Holly F. Etlin as interim chief financial officer. The Company also announced that former chief financial officer John Feray resigned on September 12, 2014, citing personal reasons. See RadioShack News Release dated September 15, 2014.

219. On September 15, 2014 RadioShack Stock closed at \$1.06.

220. In recent months, RadioShack has attempted to staunch the bleeding by seeking cash infusions from third parties to help alleviate its liquidity shortage. Most analysts, however, have dismissed such moves as a short-term solution to a longer-term issue. One analyst rated RadioShack poorly. It found the Company to have “multiple weaknesses,” including in areas such as “its deteriorating net income, weak operating cash flow, generally disappointing historical performance in the stock itself and feeble growth in its earnings per share.” See “Why RadioShack Stock Is Soaring Today.” *TheStreet.com*, Sept. 26, 2014.

221. Another observer put it this way: “RadioShack gives every appearance of being on life support. RadioShack has steadily ceded market share to lower-cost competitors and online retailers for years, and efforts to overhaul its stores and upgrade its product line have so far failed to yield results. The company, which reported a loss from continuing operations of \$137 million in its latest quarter, has said it may soon run out of cash and be forced to liquidate

or seek bankruptcy protection. Analysts who track the company are striking an increasingly gloomy tone on its prospects. The average rating of nine brokers that continue to track the stock is underweight, according to FactSet, with three analysts ranking it a sell. The average price target is 75 cents, or 17% below where the stock is currently trading. RadioShack shares have fallen a staggering 40% in the year to date, while the S&P has gained 8.8%.” See “Is RadioShack in Critical Condition?”, *Dow Jones Marketwatch*, Sept. 22, 2014.

222. Yet another analyst wrote “We do not see a light at the end of this tunnel.” See “RadioShack stock falls short following refinancing deal”, *Ft. Worth Star-Telegram*, Oct. 6, 2014.

223. Indeed, Wedbush reiterated its Underperform rating on RadioShack and \$0 price target on the stock. See “RSH: Recommendations”, *Comtex News Network, Inc.*, Oct. 6, 2014.

224. On October 24, 2014, RadioShack reported its quarterly earnings for the third quarter, reporting a \$137.4 million loss for the quarter. As News Bites noted in the “unfavourable change” category, total revue was down 8.5% in the quarter, and fell 21.8% from the year-earlier period. See “Quarterly Report: RadioShack (NYSE: RSH) \$US137.4m loss,” *News Bites*, Oct. 24, 2014.

225. On the same day, News Bites reported RadioShack shares “tumbled 6.5c (or 6.3%) to close at 96.50c,” further noting that “trading volume was 54% lighter than average.” See “RadioShack tumbles 6.3% on weak volume,” *News Bites*, Oct. 24, 2014. The article continued, noting “in the last three months the stock has hit a new 52-week low *seven times*, pointing to a significant downtrend.” *Id.* (emphasis added).

226. As of the third Quarter of 2014, RadioShack had posted 10 straight losing quarters.

227. The losses continued for RadioShack throughout November. On November 7, 2014, RadioShack Stock fell 2.03% to close at \$0.97. See “Technical Commentary on Computer, Electronics Retail Stocks – Best Buy, GameStop, RadioShack, Rent-A-Center, Conn’s,” *India Retail News*, Nov. 7, 2014. The article noted RadioShack shares “has plummeted **62.70%** since the beginning of 2014.” *Id.* (emphasis added).

228. On November 11, 2014, News Bites noted Company “shares have tumbled 8.0% in the biggest trailing week fall since October 13.” See “RadioShack in its biggest trailing week loss for 1 month,” News Bites, Nov. 11, 2014.

229. Since the beginning of the Class Period through the filing of the instant Complaint, the Plans’ imprudent investments in RadioShack Stock have been decimated, as indicated below:



Source: <http://www.bigcharts.com>

F. Defendants Knew or Should Have Known That RadioShack Stock Was An Imprudent Investment For The Plans, Yet Failed To Protect the Plans' Participants

230. During the Class Period, although they knew or should have known that Company Stock was an imprudent investment for the Plans, Defendants did nothing to protect the significant investment of Plans' Participants' retirement savings in RadioShack Stock.

231. As a result of the enormous erosion of the value of RadioShack Stock, the Plans' Participants, the retirement savings of whom were heavily invested in RadioShack Stock, suffered unnecessary and unacceptable losses.

232. Because of their high ranking positions within the Company and/or their status as fiduciaries of the Plans, Defendants knew or should have known of the existence of the above-mentioned problems.

233. Defendants knew or should have known that, due to the Company's exposure to losses stemming from the problems described above, the Company Stock was imprudent no matter what its price. Regardless, the Company Stock price inevitably dropped drastically and steadily beginning in 2010, the year before the start of the Class Period, and continued throughout the Class Period due to the pervasive problems facing the Company. There was absolutely no objective evidence that the Company Stock price would or could recover. Yet, Defendants failed to protect the Plans and the Plans' participants from these foreseeable losses.

234. As a result of Defendants' knowledge of and, at times, implication in creating and maintaining public misconceptions concerning the true financial health of the Company, or at least its future financial prospects, any generalized warnings of market and diversification risks that Defendants made to the Plans' Participants regarding the Plans' investment in RadioShack Stock did not effectively inform the Plans' Participants of the past, immediate, and future dangers of investing in Company Stock.

235. In addition, upon information and belief, Defendants failed to adequately review the performance of the other fiduciaries of the Plans to ensure that they were fulfilling their fiduciary duties under the Plans and ERISA. Defendants also failed to conduct an appropriate investigation into whether RadioShack Stock was a prudent investment for the Plans and, in connection therewith, failed to provide the Plans' Participants with information regarding RadioShack's problems so that Plans' Participants – to the extent that they were permitted – could make informed decisions regarding whether to include RadioShack Stock in their accounts in the Plans.

236. An adequate (or even cursory) investigation by Defendants would have revealed to a reasonable fiduciary that investment by the Plans in RadioShack Stock was clearly imprudent. A prudent fiduciary acting under similar circumstances would have acted to protect the Plans' Participants against unnecessary losses, and would have made different investment decisions.

237. Because Defendants knew or should have known that RadioShack Stock was not a prudent investment option for the Plans, they had an obligation to protect the Plans and their Participants from unreasonable and entirely predictable losses incurred as a result of the Plans' investment in RadioShack Stock.

238. Defendants had available to them several different options for satisfying this duty, including, among other things: divesting the Plans of RadioShack Stock; discontinuing further contributions to and/or investment in RadioShack Stock under the Plans; resigning as fiduciaries of the Plans if, as a result of their employment by RadioShack, they could not loyally serve the Plans and the Plans' Participants in connection with the Plans' acquisition and holding of RadioShack Stock; making appropriate public disclosures as necessary; and/or consulting

independent fiduciaries regarding appropriate measures to take in order to prudently and loyally serve the Participants of the Plans.

239. Despite the availability of these and other options, Defendants failed to take any adequate action to protect Participants from losses resulting from the Plans' investment in RadioShack Stock.

G. At Least Certain of the Defendants Suffered From Conflicts Of Interest

240. Pursuant to the duty of loyalty, an ERISA fiduciary must discharge his duties...solely in the interest of the participants and beneficiaries. 29 U.S.C. § 1104(a)(1)).

241. RadioShack's SEC filings during the Class Period, including Form DEF 14A Proxy Statements, make clear that a portion of certain officers' compensation, including Defendants Magnacca and Gooch, was in the form of stock awards and option awards. In 2013, for example, Defendant Magnacca received \$1,560,000 in stock awards and \$4,763,619 in option awards. *See* RadioShack Proxy Statement, filed with the SEC on April 25, 2014, at 51. And in 2012, Defendant Gooch received \$1,264,403 in stock awards and \$680,866 in option awards. *See* RadioShack Proxy Statement, filed with the SEC on April 11, 2013, at 59.⁹

242. Additionally, in March 2014, RadioShack agreed to pay its top executives retention bonuses. CEO, Defendant Magnacca "will get a \$500,000 payment, while other executives will receive \$187,500 to \$275,000. Magnacca also will be eligible for a bonus of as much as \$600,000 next year if he meets performance targets." *See* "RadioShack CEO receives

⁹ Indeed, Defendants were required to own shares of RadioShack Stock. *See, e.g.*, Apr. 11, 2013 Form DEF 14A at 20 ("Directors are expected to own, directly or indirectly, by the fourth anniversary of their appointment or election to the board, shares of RadioShack common stock with a minimum value equal to 500% of the annual retainer fee paid to non-employee directors").

\$500,000 Retention Bonus In Wake Of Slumping Sales and 1,100 Imminent Store Closures,” *Financial Post*, Mar. 5, 2014.

243. Because the compensation of at least some of the Defendants was based on the RadioShack Stock price remaining “above water,” these Defendants abandoned their duties to the Plan and its Participants while trying to keep RadioShack afloat. Defendants, while pursuing various unsuccessful means to save RadioShack failed to consider at any time during the process what was in the best interest of the Plans and its Participants as they should have as Plan fiduciaries.

244. Some Defendants may have had no choice in tying their compensation to RadioShack Stock (because compensation decisions were out of their hands), but Defendants did have the choice of whether to keep the Plan’s Participants’ retirement savings tied up to a large extent in RadioShack Stock or take steps to protect the Plan and its Participants.

245. These conflicts of interest put certain of the Defendants in the position of having to choose between their own interests as executives and stockholders, and the interests of the Plans’ Participants, whose interests Defendants were obligated to loyally serve with an “eye single” to the Plan. *See generally Mertens v. Hewitt Assoc.*, 508 U.S. 248, 251-52 (1993); 29 U.S.C. § 1104(a)(1)(B).

CLAIMS FOR RELIEF UNDER ERISA

246. At all relevant times, Defendants are/were and acted as fiduciaries within the meaning of ERISA § 3(21)(A), 29 U.S.C. § 1002(21)(A).

247. ERISA § 502(a)(2), 29 U.S.C. § 1132(a)(2), provides, in pertinent part, that a civil action may be brought by a participant for relief under ERISA § 409, 29 U.S.C. § 1109.

248. ERISA § 409(a), 29 U.S.C. § 1109(a), “Liability for Breach of Fiduciary Duty,” provides, in pertinent part, that any person who is a fiduciary with respect to a plan who

breaches any of the responsibilities, obligations, or duties imposed upon fiduciaries by this title shall be personally liable to make good to such plan any losses to the plan resulting from each such breach, and to restore to such plan any profits of such fiduciary which have been made through use of assets of the plan by the fiduciary, and shall be subject to such other equitable or remedial relief as the court may deem appropriate, including removal of such fiduciary.

249. ERISA §§ 404(a)(1)(A) and (B), 29 U.S.C. §§ 1104(a)(1)(A) and (B), provide, in pertinent part, that a fiduciary shall discharge his duties with respect to a plan solely in the interest of the participants and beneficiaries, for the exclusive purpose of providing benefits to participants and their beneficiaries, and 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. These fiduciary duties under ERISA §§ 404(a)(1)(A) and (B) are referred to as the duties of loyalty, exclusive purpose and prudence and, as courts within this Circuit have noted, “the duties of prudence and loyalty embodied in [ERISA § 404(a)(2)] have been characterized as the ‘highest known to law.’” *See, e.g., Shannahan v. Dynege, Inc.*, No. 06-cv-0160, 2006 WL 3227319, at *4 (S.D. Tex. Nov. 6, 2006) (quoting *Sommers Drug Stores Co. Employee Profit Sharing Trust v. Corrigan*, 793 F.2d (5th Cir. 1986)).

251. These duties entail, among other things:

(a) the duty to conduct an independent and thorough investigation into, and continually to monitor, the merits of all the investment alternatives of a plan;

(b) the duty to avoid conflicts of interest and to resolve them promptly when they occur. A fiduciary must always administer a plan with an “eye single” to the interests of the

participants and beneficiaries, regardless of the interests of the fiduciaries themselves or the plan sponsor;

(c) the duty to disclose and inform, which encompasses: (1) a negative duty not to misinform; (2) an affirmative duty to inform when the fiduciary knows or should know that silence might be harmful; and (3) a duty to convey complete and accurate information material to the circumstances of participants and beneficiaries.

252. ERISA § 405(a), 29 U.S.C. § 1105 (a), “Liability for breach by co-fiduciary,” provides, in pertinent part, that:

[I]n addition to any liability which he may have under any other provision of this part, a fiduciary with respect to a plan shall be liable for a breach of fiduciary responsibility of another fiduciary with respect to the same plan in the following circumstances: (A) if he participates knowingly in, or knowingly undertakes to conceal, an act or omission of such other fiduciary, knowing such act or omission is a breach; (B) if, by his failure to comply with section 404(a)(1), 29 U.S.C. § 1104(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 (C) if he has knowledge of a breach by such other fiduciary, unless he makes reasonable efforts under the circumstances to remedy the breach.

253. Plaintiff therefore brings this action under the authority of ERISA § 502(a) for Plan-wide relief under ERISA § 409(a) to recover losses sustained by the Plan arising out of the breaches of fiduciary duties by Defendants for violations under ERISA § 404(a)(1) and ERISA §405(a).

COUNT I

FAILURE TO PRUDENTLY AND LOYALLY MANAGE THE PLAN'S ASSETS (BREACHES OF FIDUCIARY DUTIES IN VIOLATION OF ERISA §§ 404 AND 405 BY THE ADMINISTRATIVE COMMITTEE AND EMPLOYEE BENEFITS COMMITTEE DEFENDANTS)

254. Plaintiff incorporates the allegations contained in the previous paragraphs of this Complaint as if fully set forth herein.

255. This Count alleges fiduciary breaches against the Administrative Committee and Benefits Committee Defendants (the "Prudence Defendants").

256. At all relevant times, as alleged above, the Prudence Defendants were fiduciaries of the Plans within the meaning of ERISA § 3(21)(A), 29 U.S.C. § 1002(21)(A) in that they exercised discretionary authority or control over the administration and/or management of the Plan or disposition of the Plan's assets.

257. Under ERISA, fiduciaries who exercise discretionary authority or control over management of a plan or disposition of a plan's assets are responsible for ensuring that all investment options made available to participants under a plan are prudent. Furthermore, such fiduciaries are responsible for ensuring that assets within the plan are prudently invested. The Prudence Defendants were responsible for ensuring that all investments in the Company's stock in the Plans were prudent. The Prudence Defendants are liable for losses incurred as a result of such investments being imprudent.

258. A fiduciary's duty of loyalty and prudence requires it to disregard plan documents or directives that it knows or reasonably should know would lead to an imprudent result or would otherwise harm plan participants or beneficiaries. ERISA § 404(a)(1)(D), 29 U.S.C. § 1104(a)(1)(D). Thus, a fiduciary may not blindly follow plan documents or directives that would lead to an imprudent result or that would harm plan participants or beneficiaries, nor may it

allow others, including those whom they direct, or who are directed by the plan, including plan trustees, to do so.

259. The Prudence Defendants' duty of loyalty and prudence also obligates them to speak truthfully to Participants, not to mislead them regarding the Plans or its assets, and to disclose information that Participants need in order to exercise their rights and interests under the Plans. This duty to inform Participants includes an obligation to provide Participants with complete and accurate information, and to refrain from providing inaccurate or misleading information, or concealing material information, regarding Plan investments/investment options such that Participants can make informed decisions with regard to the prudence of investing in such options made available under the Plans.

260. The Prudence Defendants breached their duties to prudently and loyally manage the Plans' assets. During the Class Period, the Prudence Defendants knew or should have known that, as described herein, Company Stock was not a suitable and appropriate investment for the Plans. Yet, during the Class Period, despite their knowledge of the imprudence of the investment, the Prudence Defendants failed to take any meaningful steps to protect Plans' Participants from the inevitable losses that they knew would ensue as the already-weakened RadioShack faced quarter after quarter of loss as their business model became increasingly obsolete and their ultimate demise became more of a certainty.

261. The Prudence Defendants further breached their duties of loyalty and prudence by failing to divest the Plans of Company Stock when they knew or should have known that it was not a suitable and appropriate investment for the Plans.

262. The Prudence Defendants also breached their duties of loyalty and prudence by failing to provide complete and accurate information regarding the Company's true financial

condition and, generally, by conveying inaccurate information regarding the Company's future outlook. During the Class Period, upon information and belief, the Company fostered a positive attitude toward Company Stock, and/or allowed Participants in the Plans to follow their natural bias towards investment in the equities of their employer by not disclosing negative material information concerning the prudence of investment in Company Stock. As such, Participants in the Plans could not appreciate the true risks presented by investments in Company Stock and therefore could not make informed decisions regarding their investments in the Plan.

263. The Prudence Defendants also breached their co-fiduciary obligations by, among their other failures, knowingly participating in each other's failure to protect the Plans from inevitable losses. The Prudence Defendants had or should have had knowledge of such breaches by other fiduciaries of the Plans, yet made no effort to remedy them.

264. As a direct and proximate result of the breaches of fiduciary duties alleged herein, the Plans, and indirectly the Plans' participants and beneficiaries, lost a significant portion of their retirement investment. Had the Prudence Defendants taken appropriate steps to comply with their fiduciary obligations, participants could have liquidated some or all of their holdings in Company Stock and thereby eliminated, or at least reduced, losses to the Plans.

265. Pursuant to ERISA § 502(a), 29 U.S.C. § 1132(a) and ERISA § 409, 29 U.S.C. § 1109(a), Defendants in this Count are liable to restore the losses to the Plans caused by their breaches of fiduciary duties alleged in this Count.

COUNT II

BREACH OF DUTY TO AVOID CONFLICTS OF INTEREST (BREACHES OF FIDUCIARY DUTIES IN VIOLATION OF ERISA §§ 404 AND 405 BY THE DIRECTOR DEFENDANTS)

266. Plaintiff incorporates the allegations contained in the previous paragraphs of this Complaint as if fully set forth herein.

267. This Court alleges fiduciary breaches against the Director Defendants (the “Conflicts of Interest Defendants”).

268. At all relevant times, as alleged above, the Conflicts of Interest Defendants were fiduciaries of the Plans within meaning of ERISA § 3(21)(A), 29 U.S.C. § 1002(21)(A). Consequently, they were bound by the duties of loyalty, exclusive purpose and prudence.

269. ERISA § 404(a)(1)(A), 29 U.S.C. § 1104(a)(1)(A), imposes on plan fiduciaries a duty of loyalty, that is, a duty to discharge his duties with respect to a plan solely in the interest of the participants and beneficiaries and for the exclusive purpose of providing benefits to participants and beneficiaries.

270. The Conflicts of Interest Defendants breached their duty to avoid conflicts of interest and to promptly resolve them by, *inter alia*: failing to timely engage independent fiduciaries who could make independent judgments concerning the Plans’ investments in the Company’s own securities; and by otherwise placing their own and/or the Company’s interests above the interests of the Participants with respect to the Plans’ investment in the Company’s securities.

271. As a consequence of the Conflicts of Interest Defendants’ breaches of fiduciary duty, the Plans suffered tens of millions of dollars in losses, as their holdings of Company Stock were devastated. If the Conflicts of Interest Defendants had discharged their fiduciary duties to prudently manage and invest the Plans’ assets, the losses suffered by the Plans would have been minimized or avoided. Therefore, as a direct and proximate result of the breaches of fiduciary duties alleged herein, the Plans, and indirectly Plaintiff and the Plans’ other Participants, lost a significant portion of their retirement investments.

272. Pursuant to ERISA § 502(a), 29 U.S.C. § 1132(a), and ERISA § 409, 29 U.S.C. § 1109(a), Defendants in this Count are liable to restore the losses to the Plans caused by their breaches of fiduciary duties alleged in this Count.

COUNT III

**FAILURE TO ADEQUATELY MONITOR OTHER FIDUCIARIES AND
PROVIDE THEM WITH ACCURATE INFORMATION
(BREACHES OF FIDUCIARY DUTIES IN VIOLATION OF ERISA § 404
BY RADIOSHACK, DIRECTOR DEFENDANTS AND ADMINISTRATIVE
COMMITTEE DEFENDANTS)**

273. Plaintiff incorporates the allegations contained in the previous paragraphs of this Complaint as if fully set forth herein.

274. This Count alleges fiduciary breaches against RadioShack, Director Defendants and the Administrative Committee Defendants to the extent they appointed members of the Employee Benefits Committee (the “Monitoring Defendants”).

275. At all relevant times, as alleged above, the Monitoring Defendants were fiduciaries of the Plans, within the meaning of ERISA § 3(21)(A), 29 U.S.C. § 1002(21)(A). Thus, they were bound by the duties of loyalty, exclusive purpose, and prudence.

276. As alleged above, the scope of the fiduciary responsibilities of the Monitoring Defendants included the responsibility to appoint, remove, and, thus, monitor the performance of other Plan fiduciaries.

277. Under ERISA, a monitoring fiduciary must ensure that monitored fiduciaries are performing their fiduciary obligations, including those with respect to the investment and holding of a plan’s assets, and must take prompt and effective action to protect the plan and participants when they are not.

278. The monitoring duty further requires that appointing fiduciaries have procedures in place so that on an ongoing basis they may review and evaluate whether the “hands-on”

fiduciaries are doing an adequate job (for example, by requiring periodic reports on their work and the plan's performance, and by ensuring that they have a prudent process for obtaining the information and resources they need). In the absence of a sensible process for monitoring their appointees, the appointing fiduciaries would have no basis for prudently concluding that their appointees were faithfully and effectively performing their obligations to the plan's participants or for deciding whether to retain or remove them.

279. Furthermore, a monitoring fiduciary must provide the monitored fiduciaries with complete and accurate information in their possession that they know or reasonably should know that the monitored fiduciaries must have in order to prudently manage the plan and the plan's assets, or that may have an extreme impact on the plan and the fiduciaries' investment decisions regarding the plan.

280. The Monitoring Defendants breached their fiduciary monitoring duties by, among other things:

(a) failing, at least with respect to the Plans' investment in Company Stock, to properly monitor their appointee(s), to properly evaluate their performance, or to have any proper system in place for doing so, and standing idly by as the Plans suffered enormous losses as a result of the appointees' imprudent actions and inaction with respect to Company Stock;

(b) failing to ensure that the monitored fiduciaries appreciated the true extent of Company's precarious financial situation, and the likely impact that financial failure would have on the value of the Plans' investment in Company Stock;

(c) to the extent any appointee lacked such information, failing to provide complete and accurate information to all of their appointees such that they could make

sufficiently informed fiduciary decisions with respect to the Plans' assets and, in particular, the Plans' investment in Company Stock; and

(d) failing to remove appointees whose performance was inadequate in that they continued to permit the Plans to make and maintain investments in the Company Stock despite the practices that rendered Company Stock an imprudent investment during the Class Period.

281. As a consequence of the Monitoring Defendants' breaches of fiduciary duty, the Plans suffered tremendous losses. If the Monitoring Defendants had discharged their fiduciary monitoring duties as described above, the losses suffered by the Plans would have been minimized or avoided.

282. The Monitoring Defendants are liable as co-fiduciaries because they knowingly participated in each other's fiduciary breaches as well as those by the monitored fiduciaries, they enabled the breaches by these Defendants, and they failed to make any effort to remedy these breaches despite having knowledge of them.

283. Therefore, as a direct and proximate result of the breaches of fiduciary duty alleged herein, the Plans and indirectly the Plans' Participants and beneficiaries, lost tens of millions of dollars of retirement savings.

284. Pursuant to ERISA §§ 409, 502(a)(2) and (a)(3), 29 U.S.C. §§ 1109, 1132(a)(2) and (a)(3), the Monitoring Defendants are liable to restore the losses to the Plans caused by their breaches of fiduciary duties alleged in this Count and to provide other equitable relief as appropriate.

CAUSATION

285. The total RadioShack Stock price collapse of close to 100% devastated the Plans' assets and could and would have been avoided in whole or in part by Defendants complying with their ERISA fiduciary duties. Defendants could have taken certain actions based on the publicly known information alone such as, and not limited to: investigating whether RadioShack was a prudent retirement investment; retaining outside advisors to consult them or to act as fiduciaries; seeking guidance from governmental agencies (such as the DOL or SEC); resigning as fiduciaries of the Plans; stopping or limiting additional purchases of RadioShack Stock by the Plans; and/or divesting the RadioShack Stock held by the Plans.

286. Despite these and other options, Defendants – who knew or should have known that RadioShack was an imprudent retirement investment – chose to, as fiduciaries, continue allowing the Plans to acquire further RadioShack Stock, while taking no action to protect their wards as RadioShack's condition worsened and the Plans Participants' retirement savings were decimated. Prudent fiduciaries would have acted otherwise and taken appropriate actions to protect the Plans and their Participants.

287. To the extent Defendants wanted to take action based on non-publicly disclosed information that they were privy to, the following alternative options – which are pled as alternative statements under FED. R. CIV. P. 8(d)(2) to the extent they are inconsistent – were available to Defendants and (a) could have been done without violating securities laws or any other laws, (b) should have been done to fulfill Defendants' fiduciary obligations under ERISA, and (c) would not have been more likely to harm the Plans than to help it.

288. First, Defendants could have and should have directed that all Company and Participant contributions to the Company Stock fund be held in cash rather than be used to

purchase RadioShack Stock. The refusal to purchase Company Stock for the Company Stock fund is not a “transaction” within the meaning of insider trading prohibitions. This action would not have required any independent disclosures that could have had a material adverse effect on RadioShack’s stock price.

289. Alternatively, Defendants should have closed the Company Stock fund itself to further contributions and directed that contributions be diverted from the Company Stock Fund into other (prudent) investment options based upon Participants’ instructions or, if there were no such instructions, the Plans’ default investment option.

290. Defendants also could have:

- sought guidance from the DOL or SEC as to what they should have done;
- resigned as Plan fiduciaries to the extent they could not act loyally and prudently; and/or
- retained outside experts to serve either as advisors or as independent fiduciaries specifically for the Plans and not the Company in general.

291. The Plans suffered millions of dollars in losses because substantial assets of the Plans were imprudently invested, or allowed to be invested by Defendants, in Company Stock during the Class Period, in breach of Defendants’ fiduciary duties, as reflected in the diminished account balances of the Plans’ Participants.

292. Had Defendants properly discharged their fiduciary and/or co-fiduciary duties, the Plans and the Plans’ Participants would have avoided a substantial portion of the losses that they suffered through the Plans’ continued investment in Company Stock.

293. Given the totality of circumstances prevailing during the Class Period no prudent fiduciary would have made the same decision to retain the clearly imprudent RadioShack Stock as a Plan investment.

REMEDY FOR BREACHES OF FIDUCIARY DUTY

294. As noted above, as a consequence of Defendants' breaches, the Plans suffered significant losses.

295. ERISA § 502(a), 29 U.S.C. § 1132(a) authorizes a plan participant to bring a civil action for appropriate relief under ERISA § 409, 29 U.S.C. § 1109. Section 409 requires "any person who is a fiduciary . . . who breaches any of the . . . duties imposed upon fiduciaries . . . to make good to such plan any losses to the plan...." Section 409 also authorizes "such other equitable or remedial relief as the court may deem appropriate...."

296. With respect to calculation of the losses to a plan, breaches of fiduciary duty result in a presumption that, but for the breaches of fiduciary duty, the Participants in the Plans would not have made or maintained its investments in the challenged investment and, where alternative investments were available, that the investments made or maintained in the challenged investment would have instead been made in the most profitable alternative investment available. In this way, the remedy restores the values of the Plans' assets to what they would have been if the Plans had been properly administered.

297. Plaintiff, the Plans, and the Class are therefore entitled to relief from Defendants in the form of: (1) a monetary payment to the Plans to make good to the Plans the losses to the Plans resulting from the breaches of fiduciary duties alleged above in an amount to be proven at trial based on the principles described above, as provided by ERISA § 409(a), 29 U.S.C. § 1109(a); (2) injunctive and other appropriate equitable relief to remedy the breaches alleged above, as provided by ERISA §§ 409(a) and 502(a), 29 U.S.C. §§ 1109(a) and 1132(a); (3)

reasonable attorney fees and expenses, as provided by ERISA § 502(g), 29 U.S.C. § 1132(g), the common fund doctrine, and other applicable law; (4) taxable costs; (5) interests on these amounts, as provided by law; and (6) such other legal or equitable relief as may be just and proper.

298. Each Defendant is jointly liable for the acts of the other Defendants as a co-fiduciary.

JURY DEMAND

Plaintiff demands a jury.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays for:

A. A Declaration that the Defendants, and each of them, have breached their ERISA fiduciary duties to the participants;

B. An Order compelling the Defendants to make good to the Plans all losses to the Plans resulting from Defendants' breaches of their fiduciary duties, including losses to the Plans resulting from imprudent investment of the Plans' assets, and to restore to the Plans all profits the Defendants made through use of the Plans' assets, and to restore to the Plans all profits which the participants would have made if the Defendants had fulfilled their fiduciary obligations;

C. Imposition of a Constructive Trust on any amounts by which any Defendant was unjustly enriched at the expense of the Plans as the result of breaches of fiduciary duty;

D. Actual damages in the amount of any losses the Plans suffered, to be allocated among the participants' individual accounts in proportion to the accounts' losses;

E. An Order that Defendants allocate the Plans' recoveries to the accounts of all participants who had any portion of their account balances invested in the common stock of

RadioShack maintained by the Plans in proportion to the accounts' losses attributable to the decline in RadioShack's stock price;

F. An Order awarding costs pursuant to 29 U.S.C. § 1132(g);

G. An Order awarding attorneys' fees pursuant to 29 U.S.C. § 1132(g) and the common fund doctrine; and

H. An Order for equitable restitution and other appropriate equitable monetary relief against the Defendants.

Dated: November 26, 2014

Respectfully submitted,

/s/ Roger L. Mandel

LACKEY HERSHMAN, LLP

Roger L. Mandel

State Bar No. 12891750

3102 Oak Lawn Avenue, Suite 777

Dallas, Texas 75219

Telephone: (214) 560-2201

Facsimile: (214) 560-2203

Email: rlm@lhlaw.net

- and -

**KESSLER TOPAZ MELTZER & CHECK
LLP**

Edward W. Ciolko

Donna Siegel Moffa

Mark K. Gyandoh

Julie Siebert-Johnson

(Pro Hac Vice admission to be requested)

280 King Of Prussia Rd

Radnor, PA 19087

Telephone: (610) 667-7706

Facsimile: (610) 667-7056

Email: eciolko@ktmc.com

Email: dmoffa@ktmc.com

Email: mgyandoh@ktmc.com

Email: jsjohnson@ktmc.com

Attorneys for Plaintiff and the Proposed Class