SCHLICHTER, BOGARD & DENTON
JEROME J. SCHLICHTER (54513)
MICHAEL A. WOLFF (*pro hac vice pending*)
TROY A. DOLES (*pro hac vice pending*)
HEATHER LEA (*pro hac vice pending*)
100 South Fourth Street
St. Louis, MO 63102
Telephone: (314) 621-6115
Facsimile: (314) 621-5934
jschlichter@uselaws.com
mwolff@uselaws.com
tdoles@uselaws.com
hlea@uselaws.com

Attorneys for Plaintiffs

FUTTERMAN DUPREE DODD
CROLEY MAIER LLP
JAMIE L. DUPREE (158105)
JAIME G. TOUCHSTONE (233187)
180 Sansome Street, 17TH Floor
San Francisco, CA 94104
Telephone: (415) 399-3906
Facsimile: (415) 399-3838
jdupree@fddcm.com
jtouchstone@fddcm.com

Local Attorneys for Plaintiffs

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

CHARLES E. WHITE, JR., JOHN P. JACOBS, VERLAN D. HOOPES, NORA L. PENNINGTON, JAMES A. RAY, AND JEANNETTE A. FINLEY, individually and as representatives of a class of similarly situated persons of the Chevron Employee Savings Investment Plan, *Plaintiffs*, v. CHEVRON CORPORATION, CHEVRON INVESTMENT COMMITTEE, AND JOHN DOES 1–20. *Defendants.*	CIVIL ACTION NO. 16-cv-793 COMPLAINT CLASS ACTION DEMAND FOR JURY TRIAL

1. Plaintiffs Charles E. White, Jr., John P. Jacobs, Verlan D. Hoopes, Nora L. Pennington, James A. Ray, and Jeannette A. Finley, individually and as representatives of a class

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of participants and beneficiaries in the Chevron Employee Savings Investment Plan ("Plan"), bring this action under 29 U.S.C. §§1132(a)(2) and (3) on behalf of the Plan against Defendants Chevron Corporation, the Chevron Investment Committee, and John Does 1–20 for breach of fiduciary duties.

2. Today, 401(k) defined contribution plans, in which the employee's retirement assets are at risk of high fees and underperformance, have become America's primary retirement system, departing from traditional defined benefit (pension) plans where the employer assumes the risk.[1] With over $19 billion in assets, the Plan is one of the largest 401(k) plans in the country, larger than 99.9% of all 401(k) plans offered to participants based on plan assets. The marketplace for 401(k) retirement plan services is established and competitive. Multi-billion dollar defined contribution plans, like the Plan, have tremendous bargaining power to demand low-cost administrative and investment management services. As fiduciaries to the Plan, Defendants are obligated to act for the exclusive benefit of participants and beneficiaries and ensuring that plan expenses are reasonable. These duties are the "highest known to the law" and must be performed with "an eye single to the interests of the participants and beneficiaries." *Donovan v. Bierwirth*, 680 F.2d 263, 271, 272 n.8 (2d Cir. 1982). Instead of using the Plan's bargaining power to benefit participants and beneficiaries, Defendants selected and retained high-cost and poor-performing investments compared to available alternatives and caused the Plan, and hence participants, to pay unreasonable expenses for administration of the Plan.

3. To remedy these fiduciary breaches, Plaintiffs, individually and as representatives of a class of participants and beneficiaries in the Plan, bring this action on behalf of the Plan under 29 U.S.C. §§1132(a)(2) and (3) to enforce Defendants' personal liability under 29 U.S.C. §1109(a) to make good to the Plan all losses resulting from each breach of fiduciary duty and restore to the Plan any profits made through Defendants' use of the Plan's assets. In addition, Plaintiffs seek to reform the Plan to comply with ERISA and to prevent further breaches of ERISA's fiduciary duties and other such equitable or remedial relief for the Plan as the Court may

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[1] Nancy Trejos, *Retirement Wreck,* WASHINGTON POST (Oct. 12, 2008), available at http://www.washingtonpost.com/wp-dyn/content/article/2008/10/11/AR2008101100177.html.

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deem appropriate.

JURISDICTION AND VENUE

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

5. This district is the proper venue for this action under 29 U.S.C. §1132(e)(2) and 28 U.S.C. §1391(b) because it is the district in which the subject Plan is administered, where at least one of the alleged breaches took place, and where at least one defendant may be found. All Defendants are subject to nationwide service of process under 29 U.S.C. §1132(e)(2).

INTRADISTRICT ASSIGNMENT

6. Under Local Rule 3-2(c) and (d), assignment to the San Francisco or Oakland Division is proper because it is the division in which Plan is administered, where at least one of the alleged breaches occurred, and where Defendant Chevron Corporation is located.

PARTIES

The Chevron Employee Savings Investment Plan

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

8. The Plan is established and maintained under a written document in accordance with 29 U.S.C. §1102(a).

9. The Plan provides for retirement income for Chevron employees. That retirement income depends on contributions made on behalf of each employee by his or her employer, deferrals of employee compensation and employer matching contributions, and on the performance of investment options net of fees and expenses exclusively controlled by the fiduciaries of the Plan.

10. Chevron Corporation established a trust to hold participant and employer contributions and such other earnings, income and appreciation from Plan investments less payments made by the Plan's trustee to carry out the purposes of the trust and Plan in accordance with 29 U.S.C. §1103(a).

11. As of December 31, 2014, the Plan had over $19 billion in total assets and over 40,000 participants with account balances.

Plaintiffs

12. Charles E. White, Jr. resides in Los Angeles, California, and is a participant in the Plan under 29 U.S.C. §1002(7) because he and his beneficiaries are eligible to receive benefits under the Plan.

13. John P. Jacobs resides in Benicia, California, and is a participant in the Plan under 29 U.S.C. §1002(7) because he and his beneficiaries are eligible to receive benefits under the Plan.

14. Verlan D. Hoopes resides in Willis, Texas, and is a participant in the Plan under 29 U.S.C. §1002(7) because he and his beneficiaries are eligible to receive benefits under the Plan.

15. Nora L. Pennington resides in Houston, Texas, and is a participant in the Plan under 29 U.S.C. §1002(7) because she and her beneficiaries are eligible to receive benefits under the Plan.

16. James A. Ray resides in Midland, Texas, and is a participant in the Plan under 29 U.S.C. §1002(7) because he and his beneficiaries are eligible to receive benefits under the Plan.

17. Jeannette A. Finley resides in Spring, Texas, and is a participant in the Plan under 29 U.S.C. §1002(7) because she and her beneficiaries are eligible to receive benefits under the Plan.

Defendants

18. Chevron Corporation is a for-profit domestic corporation organized under Delaware law with its principal place of business in San Ramon, California. Chevron Corporation is the Plan Sponsor and Plan Administrator under 29 U.S.C. §1002(16)(A)(i) and (B)(i). Under Sections 14.2 and 14.3 of the Plan and 29 U.S.C. §1102(a), Chevron Corporation is the sole named fiduciary of the Plan with the authority to control and manage the operation of the Plan, with all powers necessary to enable it properly to carry out such responsibilities, including the selection and compensation of the providers of administrative services to the Plan and the selection, monitoring, and removal of the investment options made available to participants for

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the investment of their contributions and provision of their retirement income. In its capacity as fiduciary, Chevron Corporation makes such rules, regulations and computations and takes whatever action is necessary to administer the Plan in accordance with ERISA.

19. Under Section 14.5 of the Plan, by written agreement between the parties, Chevron Corporation may designate one or more actuaries, accountants or consultants as fiduciaries to carry out its responsibilities under the Plan. The duties and responsibilities of Chevron Corporation under the Plan that have not been delegated are carried out by its directors, officers and employees, including the Chevron Investment Committee, acting on behalf of and in the name of Chevron Corporation and not as individual fiduciaries.

20. Upon information and belief, Chevron has appointed the General Manager of Benefit Plan Investments, Manager of Reporting & Control, and Investment Strategist from its Treasury Department to constitute the Chevron Investment Committee ("Investment Committee"). The Investment Committee is responsible for establishing and maintaining the Investment Policy Statement ("IPS") for the Plan, which provides the criteria for selecting, monitoring, and removing Plan investment options. The Investment Committee is responsible for, among other duties: establishing, maintaining, and reviewing the IPS; ensuring compliance with ERISA and other state and federal laws, regulations, and rulings that impact the Plan's investment process; selecting, monitoring, and removing Plan investment options, maintaining a "watch/monitor list" for Plan investment options and taking appropriate action if an option is no longer appropriate to be offered to participants; ensuring the fees and expenses paid to service providers are reasonable; and selecting, monitoring, and removing service providers, including the Plan's trustee, investment consultant, investment adviser, and broker-dealer.

21. Although not named as a fiduciary in the Plan document, the Investment Committee is a fiduciary to the Plan under 29 U.S.C. §1002(21)(A) because it has and exercises discretionary authority and control over the administration of Plan investments, exercises discretionary authority and control over Plan assets, and has discretionary authority and responsibility over the administration of Plan investments and investment-related expenses.

22. Plaintiffs are currently unaware of the identities of the current and former

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individual members of the Investment Committee during the time in suit. Those individuals are collectively named as John Does 1–20. Plaintiffs will substitute the real names of the John Does when Plaintiffs know them.

23. Because the Chevron individual entities and committee members have acted as alleged herein as the agents of Chevron Corporation, and/or co-fiduciaries, all defendants are collectively referred to hereafter as Chevron.

FACTS APPLICABLE TO ALL COUNTS

Plan Investments

24. In a defined-contribution plan, participants' retirement benefits are limited to the value of their own individual accounts, which is determined solely by employee and employer contributions plus the amount gained through investment in the options made available in the plan, less expenses. See 29 U.S.C. §1002(34). Accordingly, poor investment performance and unreasonable fees can significantly impair the value of a participant's account. Over time, even seemingly small differences in fees and performance can result in vast differences in the amount of savings available at retirement. See, e.g., U.S. Dep't of Labor, *A Look at 401(k) Plan Fees* 1–2 (Aug. 2013) (illustrating impact of expenses with example in which 1% difference in fees and expenses over 35 years reduces participant's account balance at retirement by 28%).[2]

25. Chevron controlled the investment options in which the participants could invest their retirement assets.

26. As of December 31, 2014, Chevron offered 13 Vanguard mutual funds, Vanguard collective trust target date funds, three non-Vanguard mutual funds, a Dodge & Cox fixed income separate account, a State Street collective trust, and a Chevron common stock fund.

Plan Investments	Assets
Vanguard Small Cap Index Fund	$ 201,776,000
Vanguard REIT Index Fund	$ 80,556,000
Vanguard Emerging Market Stock Index Fund	$ 66,563,000
Vanguard Institutional Index Fund	$ 1,663,356,000
Vanguard Total Bond Market Index Fund	$ 1,142,242,000

[2] Available at http://www.dol.gov/ebsa/pdf/401kfeesemployee.pdf.

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Plan Investments	Assets
Vanguard Prime Money Market Fund	$ 966,234,000
Vanguard PRIMECAP Fund	$ 949,148,000
Vanguard Developed Markets Index Fund	$ 633,963,000
Vanguard Windsor II Fund	$ 648,507,000
Vanguard Total Stock Market Index Fund	$ 634,123,000
Vanguard Extended Market Index Fund	$ 561,767,000
Vanguard Short-Term Bond Fund Index	$ 254,181,000
Vanguard World Stock Fund	$ 40,623,000
Neuberger Berman Genesis Fund	$ 281,272,000
American Funds EuroPacific Growth Fund	$ 261,643,000
Artisan Mid Cap Fund	$ 213,237,000
Vanguard Target Date Retirement Trust Income	$ 38,925,000
Vanguard Target Date Retirement Trust 2010	$ 37,170,000
Vanguard Target Date Retirement Trust 2015	$ 124,606,000
Vanguard Target Date Retirement Trust 2020	$ 237,874,000
Vanguard Target Date Retirement Trust 2025	$ 161,244,000
Vanguard Target Date Retirement Trust 2030	$ 68,136,000
Vanguard Target Date Retirement Trust 2035	$ 45,105,000
Vanguard Target Date Retirement Trust 2040	$ 37,587,000
Vanguard Target Date Retirement Trust 2045	$ 27,568,000
Vanguard Target Date Retirement Trust 2050	$ 14,956,000
Vanguard Target Date Retirement Trust 2055	$ 4,148,000
Vanguard Target Date Retirement Trust 2060	$ 2,478,000
SSgA Inflation Protected Bond Index	$ 14,805,000
Dodge & Cox Income Fund	$ 296,960,000
Chevron Common Stock Fund	$ 8,870,850,000

I. The imprudent money market mutual fund.

27. Stable value funds are a common investment in large defined contribution plans and in fact are designed specifically for use in such plans as a conservative, capital preservation investment. Stable value funds are conservatively managed to preserve principal and accumulated interest, yet provide a significant interest rate. "Because they hold longer-duration instruments, [stable value funds] generally outperform money market funds, which invest exclusively in short-term securities." *Abbott v. Lockheed Martin Corp.*, 725 F.3d 803, 806 (7th Cir. 2013); see also Paul J. Donahue, *Plan Sponsor Fiduciary Duty for the Selection of Options in Participant-Directed Defined Contribution Plans and the Choice Between Stable Value and Money Market*,

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39 AKRON L. REV. 9, 24 (2006) (in contrast to money market funds, stable value funds "can invest in longer-term financial instruments", and thus, "Stable Value Funds simply outperform Money Market Funds").

28. Stable value funds are limited to retirement plans with longer investment horizons and much less trading activity than retail investors. Money market mutual funds are open to all investors, including predominantly short-term investors with very short investment horizons and high frequency trading activity. Consequently, stable value funds can utilize longer duration investments to provide greater returns than money market mutual funds, yet with the same guaranty of principal and accumulated interest and liquidity. Unlike money market funds, stable value funds also provide an extra layer of guarantee—guaranteed interest rates over fixed periods (usually six months), whereas money market mutual funds provide no guaranteed interest rate. Stable value funds guaranty principal and accumulated interest plus the promised future interest through wrap contracts issued by banks, insurance companies or other financial institutions.

29. Even during the period of market turbulence in 2008, "stable value participants received point-to-point protection of principal, with no sacrifice of return[.]" Paul J. Donahue, *Stable Value Re-examined*, 54 RISKS AND REWARDS 26, 28 (Aug. 2009).[3] The same was not true of many money market mutual funds, which declined in value below $1 and yielded no interest.

30. Over 80% of plan sponsors offer a stable value fund. MetLife, *2015 Stable Value Study: A Survey of Plan Sponsors, Stable Value Fund Providers and Advisors* at 5 (2015).[4] Stable value returns were "*more than double*" the returns of money market funds from 1988 to 2015. *Id.* at 7 (emphasis added). Stable value returns "have outperformed money market returns over the last 25 years." *Id.*

31. The IPS required the Plan fiduciaries to "[u]nderstand[] the risk and return characteristics of each investment option" in the Plan and to offer one investment option that will "provide a high degree of safety and capital preservation." The IPS also required the Plan

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[3] Available at http://www.soa.org/library/newsletters/risks-and-rewards/2009/august/rar-2009-iss54-donahue.pdf.
[4] Available at https://www.metlife.com/assets/cao/institutional-retirement/plan-sponsor/stable-value/Stable-Value-Vs-Money-Market/2015_StableValueStudyWebFinal.pdf.

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fiduciaries to "seek maximum current income ... consistent with preservation of capital and liquidity." These also are the standards applicable to a loyal and prudent fiduciary under ERISA's fiduciary standards (29 U.S.C. §1104(a)(1)). Stable value funds meet these requirements of ERISA's and the IPS's standards of a loyal and prudent fiduciary for this investment option in the Plan. Money market mutual funds do not, because they provide a minimal return and no guaranteed interest rate.

32. Despite these requirements, and unlike the vast majority of large 401(k) plans, Chevron failed to offer a stable value fund that would have provided participants the "maximum current income" while preserving capital and liquidity without any greater increase in risk compared to money market investments.

33. Since at least February 2010, Chevron has provided Plan participants as their sole capital-preservation, conservative investment option the Vanguard Prime Money Market Fund, initially in the higher-cost Investor class, despite the Plan's massive size, and as of April 1, 2012, in the lower-cost Institutional class. During that time, the Vanguard Prime Money Market Fund provided an annual return that was 0.07%—7/100th of a percent—at its highest and as low as 0.04%—4/100th of a percent. See *infra* ¶34. That microscopically small return did not even beat the rate of inflation during that time period.

34. Hueler Analytics is the industry standard for reporting returns of stable value funds which it does in an index called The Hueler Analytics Pooled Fund Comparative Universe ("Hueler Index"). Hueler data represents a benchmark of the return of a typical stable value fund that was available to the Plan. The returns of the funds in the Hueler Index have far exceeded the returns of the Vanguard Prime Money Market Fund in the Plan, as shown below.[5]

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[5] For the Vanguard money market fund from 2010 to 2012, the Investor share class (VMMXX) investment returns were used. For 2013 to September 30, 2015, the Institutional share class (VMRXX) investment returns were used.

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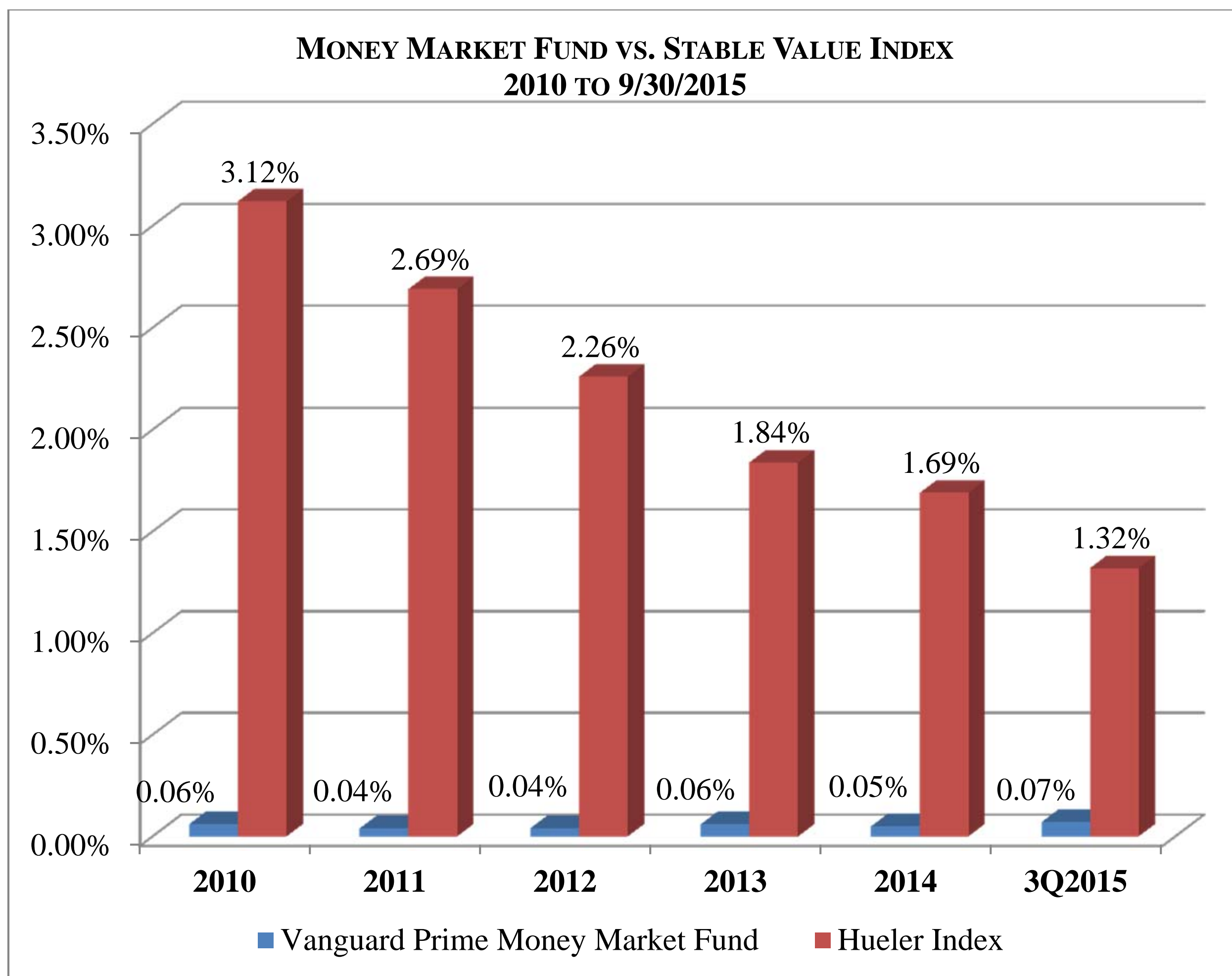

35. As the graph illustrates, stable value funds, as represented by the Hueler Index, dramatically outperformed the Plan's money market fund—up to 67 times the return of the Vanguard Prime Money Market Fund.

36. Hueler Index returns over the preceding 10, 15 and 20 years reflect similar vast disparities between money market mutual funds and stable value investments.

37. Chevron imprudently and disloyally, and in violation of the IPS, failed to provide a stable value fund as the Plan investment option to "provide a high degree of safety and capital preservation." In its monitoring of Plan investments, Chevron failed to weigh the benefits of a stable value fund compared to the Vanguard Prime Money Market Fund or come to a reasoned decision as to why providing the Vanguard Prime Money Market Fund was in compliance with the IPS, in the interest of Plan participants and their beneficiaries, or prudent, and consequently failed to remove the imprudent Vanguard Prime Money Market Fund as a Plan investment option.

38. By providing participants the Vanguard Prime Money Market Fund instead of a stable value fund, as represented by the Hueler Index, from February 2010 to September 30, 2015, Chevron has caused the Plan and Chevron employees and retirees to lose over $130 million in retirement savings, and participants continue to suffer such losses to the present because Chevron continues to provide the Vanguard Prime Money Market Fund instead of a stable value fund.[6]

II. Unreasonable investment management fees from excessively high-priced investment options.

39. Academic and financial industry literature shows the importance of low fees in selecting investments. Numerous scholars have demonstrated that high expenses are not correlated with superior investment management. Indeed, funds with high fees on average perform worse than less expensive funds even on a *pre-fee basis*. Javier Gil-Bazo & Pablo Ruiz-Verdu, *When Cheaper is Better: Fee Determination in the Market for Equity Mutual Funds*, 67 J. ECON. BEHAV. & ORG. 871, 873 (2009); see also Jill E. Fisch, *Rethinking the Regulation of Securities Intermediaries*, 158 U. PA. L. REV. 1961, 1993 (2010) (summarizing numerous studies showing that "the most consistent predictor of a fund's return to investors is the fund's expense ratio").

> [T]he empirical evidence implies that superior management is not priced through higher expense ratios. On the contrary, it appears that the effect of expenses on after-expense performance (even after controlling for funds' observable characteristics) is more than one-to-one, which would imply that low-quality funds charge higher fees. Price and quality thus seem to be inversely related in the market for actively managed funds.

Gil-Bazo & Ruiz-Verdu, *When Cheaper is Better*, at 883.

40. Even if an individual high-cost mutual fund exhibits market-beating performance over a short period of time, studies demonstrate that outperformance during a particular period is not predictive of whether a mutual fund will perform well in the future. Laurent Barras et al., *False Discoveries in Mutual Fund Performance: Measuring Luck in Estimated Alphas*, 65 J. FIN. 179, 181 (2010); Mark M. Carhart, *On Persistence in Mutual Fund Performance*, 52 J. FIN. 57,

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[6] Plan losses have been brought forward to present value using the investment returns of the Hueler Index to compensate participants who have not been reimbursed for their losses.

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57, 59 (1997) (measuring thirty-one years of mutual fund returns and concluding that "persistent differences in mutual fund expenses and transaction costs explain almost all of the predictability in mutual fund returns"). However, the *worst-performing* mutual funds show a strong, persistent tendency to continue their poor performance. Carhart, *On Persistence in Mutual Fund Performance*, at 57.

41. To the extent managers show any sustainable ability to beat the market, the outperformance is nearly always dwarfed by mutual fund expenses. Eugene F. Fama & Kenneth R. French, *Luck Versus Skill in the Cross-Section of Mutual Fund Returns*, 65 J. FIN. 1915, 1931–34 (2010); Russ Wermers, *Mutual Fund Performance: An Empirical Decomposition into Stock-Picking Talent, Style, Transaction Costs, and Expenses*, 55 J. FIN. 1655, 1690 (2000).

42. Accordingly, investment costs are of paramount importance to prudent investment selection, and a prudent investor will not select higher-cost actively managed funds without a documented process to realistically conclude that the fund is likely to be that extremely rare exception, if one even exists, that will outperform its benchmark index over time, net of investment expenses.

43. Chevron selected high-priced share classes of mutual funds, instead of *identical* lower-cost share classes of those same mutual funds which were readily available to the Plan. Chevron also failed to adequately investigate and to offer non-mutual fund alternatives, such as collective trusts and separately managed accounts. Holders of large pools of assets know that these investment vehicles are readily available to them and can be used for the same investment style and with the same portfolio manager, but are much less expensive. Each mutual fund in the Plan charged fees far in excess of the rates Chevron could have obtained for the Plan by using these comparable products.

A. *Excessive fees compared to lower-cost share classes* of *the Plan's identical mutual fund options.*

44. It is a simple principle of investment management that the larger the size of an investor's available assets, the lower the investment management fees as a percentage of assets

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that the investor can obtain in the market. Thus, large retirement plans have substantial bargaining power to negotiate low fees for investment management services.

45. Jumbo retirement plans, such as the Plan, have much more bargaining power to negotiate low fees for investment management services than even large plans.

46. Lower-cost institutional share classes of mutual funds compared to high-priced retail shares are readily available to giant institutional investors, like the Plan, or even smaller asset holders, that meet minimum investment amounts for these share classes.

i. Vanguard mutual funds

47. From February 2010 until on or about April 1, 2012, Chevron imprudently and disloyally provided participants the more expensive share class of the following mutual funds, even though the *identical* investment was available to the Plan at a much lower cost:

Plan Investments	Plan's Fee	Plan's Assets[7]	Identical Lower-Cost Mutual Fund	Identical Lower-Cost Mutual Fund Fee	Plan's Excess Cost
Vanguard Institutional Index (Instl) (VINIX)	5 bps	$932,407,000	Vanguard Institutional Index (InstlPlus) (VIIIX)	2.5 bps	50%
Vanguard Prime Money Market (Inv) (VMMXX)	23 bps	$887,679,000	Vanguard Prime Money Market (Instl) (VMRXX)	9 bps	156%
Vanguard Total Bond Market Index (Instl) (VBTIX)	7 bps	$784,852,000	Vanguard Total Bond Market Index (InstlPlus) (VBMPX)	5 bps	40%
Vanguard PRIMECAP (Inv) (VPMCX)	45 bps	$510,536,000	Vanguard PRIMECAP (Adm) (VPMAX)	36 bps	25%
Vanguard Developed Markets Index (Inv) (VDMIX)[8]	22 bps	$445,309,000	Vanguard Developed Markets Index (Instl) (VIDMX)	7 bps	214%

[7] Plan assets as of January 2010. For the Vanguard Extended Markets Index Fund, Plan assets as of January 2011.

[8] Effective April 4, 2014, the Vanguard Developed Markets Index merged with the Vanguard Tax-Managed International Fund. Following the merger, the ticker symbol for the Investor class was changed from VDMIX to VDVIX, Institutional class from VIDMX to VTMNX, and Institutional Plus from VDMPX to VDIPX.

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Plan Investments	Plan's Fee	Plan's Assets[7]	Identical Lower-Cost Mutual Fund	Identical Lower-Cost Mutual Fund Fee	Plan's Excess Cost
Vanguard Windsor II (Inv) (VWNFX)	35 bps	$404,193,000	Vanguard Windsor II (Adm) (VWNAX)	27 bps	30%
Vanguard Total Stock Market Index (Instl) (VITSX)	5 bps	$234,970,000	Vanguard Institutional Total Stock Market Index (InstlPlus) (VITPX)	2.5 bps	50%
Vanguard Extended Market Index (Instl) (VIEIX)	8 bps	$373,100,000	Vanguard Extended Market Index (InstlPlus) (VEMPX)	6 bps	33%
Vanguard GNMA (Inv) (VFIIX)[9]	23 bps	$216,992,000	Vanguard GNMA (Adm) (VFIJX)	11 bps	109%
Vanguard Balanced Index (Inv) (VBINX)[10]	26 bps	$292,601,000	Vanguard Balanced Index (Instl) (VBAIX)	8 bps	225%

48. The lower-cost shares of these mutual funds were available to the Plan many years before Chevron moved to lower-cost share classes for the Vanguard mutual funds in 2012.

Lower-Cost Identical Mutual Fund	Inception date
Vanguard Institutional Index (Instl Plus)	7/6/1997
Vanguard Prime Money Market (Instl)	10/2/1989
Vanguard Total Bond Market Index (Instl Plus)	9/17/1995
Vanguard PRIMECAP (Adm)	11/11/2001
Vanguard Developed Markets Index (Instl)[11]	1/22/2010
Vanguard Windsor II (Adm)	5/13/2001
Vanguard Balanced Index (Instl)	11/30/2000
Vanguard Extended Market Index (Instl Plus)	1/13/2011
Vanguard Total Stock Market Index (Instl Plus)	5/30/2001
Vanguard GNMA (Adm)	2/11/2001

ii. Artisan Small Cap Value Fund

49. From February 2010 to April 1, 2014 Chevron provided the Artisan Small Cap Value Fund (Investor) (ARTVX) as a Plan investment option. As of February 1, 2012, Artisan provided the *exact same investment* in an Institutional class share (APHVX), which charged 99–

[9] The Vanguard GNMA Fund was removed as of April 1, 2012.
[10] Upon information and belief, the Investor share class was offered until April 1, 2012.
[11] The lower-cost Institutional Plus share class (6 bps) was available as of December 2, 2010.

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100 bps in annual fees, compared to 122–124 bps for the Investor class shares, which were the shares in the Plan. Thus, the identical fund with the same manager, same stocks, and same asset allocation placed in the Plan by Chevron had over 23% higher fees. Chevron removed this mutual fund in April 2014.

iii. Artisan Mid Cap Fund

50. From February 2010 through February 13, 2015 Chevron provided the Artisan Mid Cap Fund (Investor) (ARTMX) as an investment option. Since July 3, 2000, Artisan provided the *exact same investment* in an Institutional class share (APHMX), which charged 95–97 bps in annual fees, compared to 120–123 bps for the Investor class shares, which were the shares in the Plan. Thus, the identical fund with the same manager, same stocks, and same asset allocation placed in the Plan by Chevron had over 26% higher fees. Chevron removed this mutual fund in February 2015.

iv. Neuberger Berman Genesis Fund

51. From February 2010 through February 13, 2015 Chevron provided the Neuberger Berman Genesis Fund (Institutional) (NBGIX) as a Plan investment option. As of March 15, 2013, Neuberger Berman provided the *exact same investment* in an R6 class share (NRGSX), which charged 78 bps in annual fees, compared to 85 bps for the Institutional class shares, which were the shares in the Plan. Thus, the identical fund with the same manager, same stocks, and same asset allocation placed in the Plan by Chevron had over 8% higher fees. Chevron removed this mutual fund in February 2015.

52. Even though Chevron switched to the less expensive but otherwise identical share class of the Plan's Vanguard mutual funds on April 1, 2012, many years after those share classes were available to the Plan, inexplicably, and to the Plan's detriment, Chevron failed to do the same with the above non-Vanguard funds when cheaper share classes continued to be available to the Plan.

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53. Chevron provided the lowest-cost share class of the American Funds EuroPacific Growth Fund since February 2010, yet inexplicably did not do so (and apparently failed to consider doing so) for the Plan's other mutual funds, at a significant cost to the Plan.

54. Plan participants thus paid far higher fees than they should have, which resulted in receiving lower returns on their retirement investments, and fewer retirement assets to build for the future, than they would have obtained had Chevron performed its fiduciary duties.

55. Because Chevron imprudently and disloyally provided participants the much more expensive versions of the Plan's same mutual fund options during these dates, Plan participants lost over $20 million of their retirement savings through unnecessary expenses.[12]

B. *Excessive fees for non-Vanguard funds compared to other mutual funds.*

56. Besides being much higher than the fees of identical institutional share classes of the same mutual funds, the fees charged by certain non-Vanguard mutual funds in the Plan are far higher than fees Vanguard charges for similar investments.

57. The Plan previously offered the Artisan Small Cap Value Fund and the Artisan Mid Cap Fund. Each of these mutual funds held over $100 million in assets.

58. These mutual funds were up to *14 times* more expensive than available Vanguard alternatives in the same investment style.

Plan Mutual Fund Option	Plan's Fee	Lower-Cost Mutual Fund	Lower-Cost Mutual Fund Fee	Plan's Excess Cost
Artisan Small Cap Value Fund (Inv) (ARTVX)	122 bps	Vanguard Explorer Value Fund (VEVFX) (active)	59 bps	107%
		Vanguard Small Cap Value Index Fund (Instl) (VSIIX) (passive)	8 bps	1425%
Artisan Mid Cap Fund (Inv) (ARTMX)	122 bps	Vanguard Mid Cap Growth Fund (VMGRX) (active)	54 bps	126%
		Vanguard Mid Cap Growth Index Fund (Adm) (VMGMX) (passive)	10 bps	1120%

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[12] Plan losses have been brought forward to the present value using the investment returns of the S&P 500 Index to compensate participants who have not been reimbursed for their losses. This is because the excessive fees participants paid would have remained in Plan investments growing with the market.

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59. Had the amounts invested in the Plan's non-Vanguard mutual funds instead been invested in the lower-cost Vanguard mutual funds in the same investment styles, Plan participants would not have lost millions of dollars in their retirement savings through excessive fees.

C. *Excessive fees compared to separate accounts.*

60. Massive retirement plans are not limited to choosing mutual funds as investment options. Such plans, including those with assets over $500 million, can hire investment advisers directly to manage separate accounts tailored for the plan within plan-specific investment parameters and separately negotiated, low fees and can even use the same investment managers as mutual funds with the same investment style in a separate account set up for the plan. Use of such accounts greatly reduces the cost of investing with the same adviser compared to a mutual fund.

61. According to the United States Department of Labor, separate accounts, which require a minimum investment of $15 million to $25 million per account, can "commonly" reduce "[t]otal investment management expenses" to "*one-fourth of the expenses incurred through retail mutual funds*." U.S. Dep't of Labor, *Study of 401(k) Plan Fees and Expenses*, §2.4.1.3 (Apr. 13, 1998)(emphasis added).[13]

62. The Plan had assets of many billions of dollars at all relevant times, and over *$19 billion* as of December 31, 2014. The *smallest* plan investment from 2010 through 2015 had $37 million. Thus, the Plan had ample assets to enable Chevron to look into and provide separate account alternatives to the mutual funds it provided in the Plan.

63. Separate accounts have numerous advantages over mutual funds in a 401(k) plan. These include: the ability to negotiate lower fees; ability to avoid marketing fees built into retail mutual funds; control by the fiduciaries over investment guidelines; tailored investments to fit the demographics of the work force; and ability to avoid holding significant cash for shareholder redemptions that occur much more frequently in retail mutual funds than in retirement accounts.[14] In a mutual fund, all investors are charged the same fee, and investors have no ability to modify

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[13] On the Department of Labor's website at http://www.dol.gov/ebsa/pdf/401krept.pdf.

[14] Unlike mutual fund shareholders, 401(k) participants rarely make trades in their account—less than one trade per year. Olivia Mitchell, Gary Mottola, Stephen Utkus, and Takeski Yamaguchi, *The Inattentive Participant: Portfolio Trading Behaviors in 401(k) Plans*, at 17–18 (June 2006), available at http://www.mrrc.isr.umich.edu/publications/Papers/pdf/wp115.pdf.

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the fund's investment guidelines, which are set by the fund's investment adviser. In a separate account, the plan sponsor can negotiate the best possible fee for the plan, using its bargaining power.

i. Artisan Mid Cap Fund

64. From February 2010 through February 13, 2015 Chevron provided participants the Artisan Mid Cap Fund. That mutual fund charged extremely high annual fees of 120–123 bps. Plan participants invested $62–$214 million of their retirement assets in that fund. Based on published rates alone before negotiation for lower rates readily available for plans of Chevron's size, the Plan could have had the *same* advisers manage the *same* funds in a separate account for the Plan at a cost of 50–60 bps, less than *half the cost*. A prudent and loyal fiduciary could have negotiated an even lower management fee given the Plan's total assets and assets invested in Artisan funds, which could have been as low as 31 bps. Thus, Plan participants paid almost 300% more than readily available fees.

ii. Artisan Small Cap Value Fund

65. From February 2010 through April 1, 2014 Chevron provided participants the Artisan Small Cap Value Fund. That mutual fund charged extremely high annual fees of 122–124 bps. Plan participants invested $154–$188 million of their retirement assets in that fund. Based on published rates alone before negotiation for lower rates readily available for plans of Chevron's size, the Plan could have negotiated below the published 100 bps fee for that management given the Plan's total assets and assets invested in Artisan funds, which could have been as low as 31 bps. Thus, Plan participants paid almost 300% more than readily available fees.

iii. Neuberger Berman Genesis Fund

66. From February 2010 through February 13, 2015 Chevron provided participants the Neuberger Berman Genesis Fund, a small cap growth fund. That mutual fund charged annual fees of 85–87 bps. Plan participants invested $142–$322 million of their retirement assets in that fund. Based on published rates alone before negotiation for lower rates readily available for plans of Chevron's size, the Plan could have had the *same* advisers manage the *same* fund in a separate account for the Plan at a cost of 70–74 bps given the Plan's total assets and assets invested in

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1 Neuberger Berman fund. A prudent and loyal fiduciary could have negotiated an even lower
2 management fee given the Plan's total assets and assets invested in the Neuberger Berman fund,
3 which could have been as low as 26 bps. Thus, Plan participants paid almost 230% more than
4 readily available fees.

5 **iv. American Funds EuroPacific Growth Fund**

6 67. Since February 2010, Chevron has provided participants the American Funds
7 EuroPacific Growth Fund as a Plan investment option. That mutual fund charged annual fees of
8 49–51 bps. Plan participants invested $187–$280 million of their retirement assets in that fund.
9 The Plan could have had the *same* advisers manage the *same* fund in a separate account for the
10 Plan for 21 bps given the Plan's total assets and assets invested in this fund. Thus, Plan
11 participants paid almost 140% more than readily available fees.

12 **v. Blackrock Small Cap Growth Fund**

13 68. From February 2010 until April 1, 2012 Chevron provided participants the
14 Blackrock Small Cap Growth Fund. That mutual fund charged annual fees of 81–85 bps. Plan
15 participants invested $37–56 million of their retirement assets in that fund. The Plan could have
16 had the *same* advisers manage the *same* fund in a separate account, and negotiated an even lower
17 management fee given the Plan's total assets and assets invested in the Blackrock fund, which
18 could have been as low as 30 bps. Thus, Plan participants paid almost 175% more than readily
19 available fees.

20 **vi. Dodge & Cox Income Fund**

21 69. From February 2010 until May 31, 2012 Chevron provided participants the Dodge
22 & Cox Income Fund. That mutual fund charged annual fees of 43 bps. Plan participants invested
23 $125–$230 million of their retirement assets in that fund. As of May 31, 2012, Chevron replaced
24 this mutual fund with an identical separate account, which charged 17 bps, *much less than half*
25 the fee of the mutual fund. There is no legitimate reason why Chevron could not have provided
26 this separate account version of the same investment since February 2010. In fact, Chevron
27 finally converted the Plan's Dodge & Cox Income Fund investment from a mutual fund to a
28 separate account in 2012, at significantly lesser expense savings to participants, yet it failed to do

so and failed to even seriously consider doing so for any of the Plan's other mutual funds, in violation of its fiduciary duty. Thus, Plan participants paid almost 300% more than readily available fees until Chevron provided the separate account version.

70. Had the Plan obtained separate accounts with expenses of one-fourth the costs of the retail shares, the Plan's expenses would have been reduced dramatically.

Retail Share of Plan's Funds	**Retail Fee**	**Separate Account rate as per DOL: 1/4 of the cost of retail**	**Plan's Fee**	**Plan's Excess Cost**
Artisan Small Cap Value Fund (Inv) (ARTVX)	122 bps	31 bps	122 bps	294%
Artisan Mid Cap Fund (Inv) (ARTMX)	122 bps	31 bps	122 bps	294%
American Funds EuroPacific Growth Fund (A) (AEPGX)	84 bps	21 bps	50 bps	138%
Neuberger Berman Genesis Fund (Inv) (NBGNX)	103 bps	26 bps	85 bps	227%
Dodge & Cox Income Fund (DODIX)	43 bps	11 bps	43 bps	291%
Blackrock Small Cap Growth Fund (A) (CSGEX)	119 bps	30 bps	82 bps	173%

71. The above-referenced separate accounts offered by the Plan's mutual fund advisers only represent a fraction of separate accounts that were available to the Plan in similar investment styles. Other investment management firms offered separate accounts in the same investment styles at a much lower cost than the Plan's mutual funds.

72. Chevron's failure to select separate accounts for the Plan's investments instead of retail and institutional share class mutual funds caused Plan participants to lose millions of dollars of their retirement savings due to unreasonable expenses throughout the relevant time period.

D. *Excessive fees compared to collective trusts.*

73. Collective trusts also provide much lower investment management fees than the Plan's mutual funds, and in some instances, separate accounts. Collective trusts are a common investment vehicle in large 401(k) plans, and are accessible even to midsize plans with $100 million or more in total plan assets, an amount which is a tiny fraction of the size of the Chevron plan.

74. Vanguard offers low-cost collective trust funds to qualified retirement plans in

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several asset styles, including large cap domestic equities, small cap equities, international equities, and target date funds.

i. S&P 500 Index Fund

75. For an investment in the S&P 500® index, for example, Vanguard offers the collective trust Vanguard Employee Benefit Index, which is comparable to the Plan's Vanguard Institutional Index mutual fund, in that both are S&P 500® index funds. The collective trust version has much lower fees and hence better performance than the mutual fund equivalent. This collective trust alternative has been available since September 30, 1985.

ii. Target Date Funds

76. On April 1, 2013, Chevron placed Vanguard's target date funds known as the Target Retirement Trust I Funds in the Plan. Although those funds were collective trusts, Chevron could have provided participants lower-cost versions of these same collectives trusts in the Retirement Trust Plus series. The Target Date Retirement Trust I Funds charged 25% more in annual fees than the Retirement Trust Plus Funds (6 bps vs. 8 bps). However, Chevron did not begin providing participants the Trust Plus Funds until 2015.

77. By providing participants more expensive versions of the otherwise identical Vanguard target date investments and the S&P 500® index fund, Chevron caused participants to lose significant amounts in their retirement savings due to unreasonable expenses.

III. Excessive administrative fees.

78. The Vanguard Group, Inc. is the Plan's recordkeeper under an agreement entered into with Chevron Corporation. Vanguard Fiduciary Trust Company is the Plan trustee under an agreement entered into with Chevron Corporation. The Vanguard entities are hereafter collectively referred to as "Vanguard". Vanguard has served in these roles throughout the time in suit.

79. Recordkeeping is a service necessary for every defined contribution plan. The market for recordkeeping services is highly competitive. There are numerous recordkeepers in the marketplace who are capable of providing a high level of service to a jumbo defined contribution plan, like the Plan, and will readily respond to a request for proposal. These recordkeepers

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primarily differentiate themselves based on price, and vigorously compete for business by offering the best price. The cost of recordkeeping services depends on the number of participants, not on the amount of assets in the participant's account. Thus, the cost of providing recordkeeping services to a participant with a $100,000 account balance is the same for a participant with $1,000 in her retirement account. Plans with large numbers of participants can take advantage of economies of scale: a plan with 50,000 participants can negotiate a much lower per participant fee for recordkeeping services than a plan with 1,000 participants.

80. Because recordkeeping costs are not affected by account size, prudent fiduciaries of defined contribution plans negotiate recordkeeping fees on the basis of a fixed dollar amount per participant in the plan rather than as a percentage of plan assets. Otherwise, as plan assets increase, such as through participant contributions or investment gains, the recordkeeping compensation increases without any change in the recordkeeping and administrative services, leading to excessive fees.

81. Mutual funds have thousands of shareholders and the expense ratio for those funds includes within it a portion for recordkeeping those thousands of shareholders' accounts. However, since a 401(k) plan invests in a mutual fund as a single investor, the mutual fund has only one account to recordkeep. The plan recordkeeper tracks the account of each plan participant. In these circumstances, some mutual funds engage in a practice known as revenue sharing.

82. In a revenue sharing arrangement, a mutual fund or other investment vehicle directs a portion of the annual expense ratio—the asset-based fees it charges to investors—to the 401(k) plan's recordkeeper, putatively for providing recordkeeping and administrative services for the mutual fund. Because revenue sharing arrangements, if used to pay recordkeeping costs, provide asset-based fees instead of flat per participant rates unrelated to asset size, prudent fiduciaries must monitor the total amount of revenue sharing a recordkeeper receives to ensure that the recordkeeper is not receiving unreasonable compensation. A prudent fiduciary who allows asset-based revenue sharing to be used to pay recordkeeping costs ensures that the recordkeeper rebates to the plan all revenue sharing payments that exceed a reasonable, flat, per-

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participant recordkeeping fee that can be obtained from the recordkeeping market through competitive bids. Because revenue sharing payments are asset based, they can provide excessive compensation as investment assets increase (such as through participant contributions or investment gains) without any change in recordkeeping services.

83. To ensure that plan administrative and recordkeeping expenses are and remain reasonable for the services provided, prudent fiduciaries of large defined contribution plans put the plan's recordkeeping and administrative services out for competitive bidding at regular intervals of approximately three years, and monitor recordkeeping costs regularly within that period.

84. In order to make an informed assessment as to whether a recordkeeper is receiving no more than reasonable compensation for the services provided to a plan, the responsible fiduciary must identify *all* fees, including recordkeeping fees and other sources of compensation, paid to the service provider.

85. The Plan's recordkeeping fees were excessive in part because Chevron failed to monitor and control the amount of asset-based revenue sharing fees Vanguard received.

86. From February 2010 through March 31, 2012, Chevron caused the Plan to compensate Vanguard for its recordkeeping services with assed-based revenue sharing of the annual expenses of the Plan's investment options instead of a fixed recordkeeping fee. These asset-based fees increased each year as Plan assets grew from $13 billion to $16 billion, a $3 billion, 22% increase even though recordkeeping services did not significantly change in that time.

87. Chevron could have and should have capped the amount of revenue sharing to ensure that excessive amounts were returned to the Plan but failed to do so. As a result, the Plan therefore paid millions of dollars in excessive recordkeeping fees from February 2010 through March 31, 2012.

88. Upon information and belief, Chevron also failed to conduct a competitive bidding process for the Plan's recordkeeping services within the past six years. A competitive bidding process for the Plan's recordkeeping services would have produced a reasonable recordkeeping

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1 fee for the Plan. By failing to engage in a competitive bidding process for Plan recordkeeping
2 fees, Chevron caused the Plan to pay excessive recordkeeping fees. If a defined contribution plan
3 overpays for recordkeeping services due to the fiduciaries' "failure to solicit bids" from other
4 recordkeepers, the fiduciaries have breached their duty of prudence. See *George v. Kraft Foods*
5 *Global, Inc.*, 641 F.3d 786, 798–99 (7th Cir. 2011). Similarly, "us[ing] revenue sharing to benefit
6 [the plan sponsor and recordkeeper] at the Plan's expense" while "failing to monitor and control
7 recordkeeping fees" and "paying excessive revenue sharing" is a breach of fiduciary duties.
8 *Tussey v. ABB, Inc.*, 746 F.3d 327, 336 (8th Cir. 2014).
9 89. Chevron failed to prudently monitor and control Vanguard's recordkeeping
10 compensation to ensure that only reasonable fees were paid for recordkeeping and administrative
11 services.
12 90. Had Chevron ensured that participants were only charged reasonable fees for
13 administrative and recordkeeping services, Plan participants would not have lost millions of
14 dollars in their retirement savings through unreasonable recordkeeping fees.
15 **IV. Imprudent retention of the Artisan Small Cap Value Fund.**
16 91. From February 2010 to April 1, 2014, Chevron provided the Artisan Small Cap
17 Value Fund as a Plan investment option.
18 92. The IPS requires careful monitoring of the performance of each Plan investment
19 option, including the Artisan Small Cap Value Fund. The recent decision from the Supreme Court
20 in *Tibble v. Edison, Int'l*, 135 S. Ct. 1823, 1829 (2015) confirmed that this is an ongoing duty that
21 continues. This must be done over one-, three-, five-, seven-, and ten-year periods, and includes
22 comparing each fund's performance with benchmarks for its investment style and its peer group.
23 The IPS also requires maintaining a watch list of Plan investments, which requires removing an
24 investment if it fails to meet an investment strategy objective or the investment strategy employed
25 by the fund is no longer appropriate for the Plan. Despite these fund performance monitoring
26 requirements of both ERISA and the IPS, Chevron retained the Artisan Small Cap Value Fund as
27 a Plan investment until April 1, 2014 despite the fund underperforming its benchmark, other
28 style-specific investments, and consistently ranking at the bottom of its peer group.

1 93. The Artisan Small Cap Value Fund significantly underperformed its benchmark,
2 the Russell 2000, four out of the most recent five years. During this period, the Artisan Small Cap
3 Value Fund ranked in the bottom decile of its Morningstar category ranking. Specifically, in the
4 years 2010 to 2014, the fund ranked in the 94th worst percentile or worse in four of the five years
5 (96th, 98th, 94th, and 97th percentiles).

6 94. The chart below demonstrates the loss in retirement savings from Chevron's
7 failure to remove the Artisan Small Cap Value Fund with $130 million in it as of January 2010.
8 The chart shows the investment returns of the Artisan Small Cap Value Fund (ARTVX), the
9 fund's benchmark (Russell 2000 Index), and similar small cap value alternatives, the Vanguard
10 Small Cap Value Index Fund (VSIIX) and the Vanguard Small Cap Index Fund (VSCPX), see,
11 e.g., *supra* ¶58. The Vanguard Small Cap Value Index Fund later replaced the Artisan Mid Cap
12 Value Fund in 2014. From January 2010 to March 31, 2014, if the amounts invested in the
13 Artisan fund had been invested in one of the two identified Vanguard alternatives, Plan
14 participants would have avoided over $70 million in losses.

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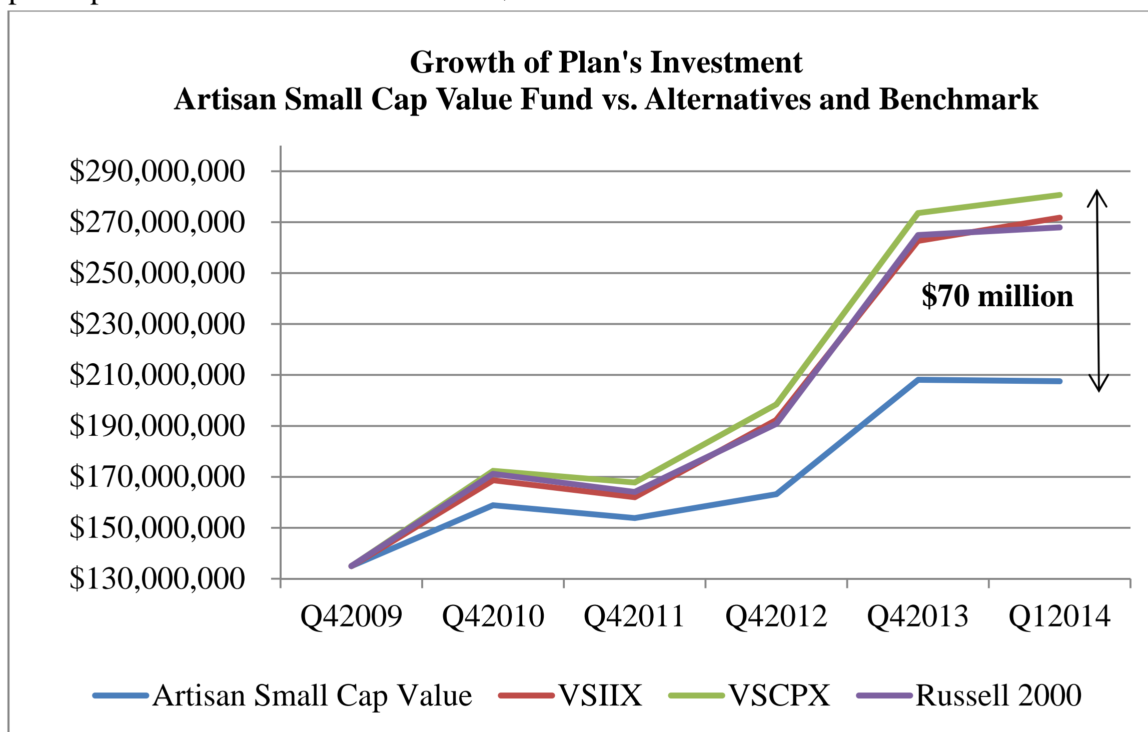

27 95. The above graph clearly indicates that the Artisan Small Cap Value Fund
28 significantly underperformed its benchmark *and* readily available alternatives for years before it

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1 was removed from the Plan in April 2014.

2 96. In addition, the Vanguard Small Cap Value Index Fund (VSIIX) with an expense
3 ratio of 8 bps, and the Vanguard Small Cap Index Fund (VSCPX) with an expense ratio of 6 bps,
4 charged dramatically lower fees than the Artisan Small Cap Value Fund, which charged
5 participants 122–124 bps, or *up to 1967% more* than the better-performing lower-cost
6 alternatives.

7 97. The consistent underperformance of the Artisan Small Cap Value Fund during the
8 relevant time period is further demonstrated based on the fund's investment performance
9 compared to its benchmark over the one-, three-, and five-year periods ending September 30,
10 2014. Notably, for the five-year period, the fund underperformed its benchmark by over *600 basis*
11 *points*.

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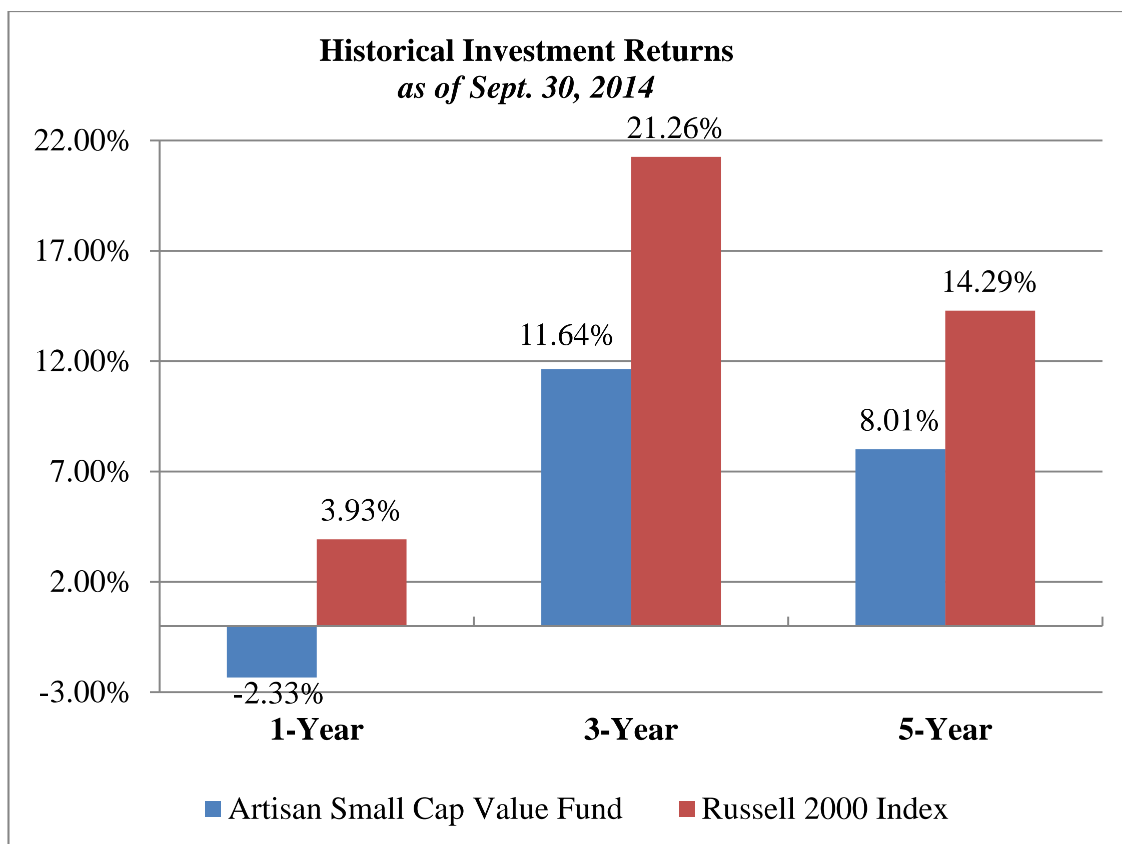
13–26 

27 98. Prudent fiduciaries of defined contribution plans continuously monitor plan
28 investment options and replace imprudent investments, and would have removed the Artisan

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Small Cap Value Fund from the Plan well before 2014. Despite the fund monitoring criteria set forth in the IPS, and prudent conduct of other fiduciaries, Chevron failed to conduct a prudent process to monitor and remove the fund until it was actually removed as of April 1, 2014, after years of underperformance compared to its benchmark, peer group, and lower-cost alternatives.

99. Had the amounts invested in the Artisan Small Cap Value Fund instead been invested in a reasonable lower-cost and better-performing prudent alternative prior to the fund's removal in April 1, 2014, such as the Vanguard Small Cap Value Index Fund, Plan participants would not have lost tens of millions of dollars in their retirement savings from the fund being retained in the Plan.

ERISA'S FIDUCIARY STANDARDS

100. ERISA imposes strict fiduciary duties of loyalty and prudence upon the Defendants as fiduciaries of the Plan. 29 U.S.C. §1104(a), states, in relevant part, that:

> [A] fiduciary shall discharge his duties with respect to a plan solely in the interest of the participants and beneficiaries and—
> (A) for the exclusive purpose of (i) providing benefits to participants and their beneficiaries; and (ii) defraying reasonable expenses of administering the plan; [and]
> (B) 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 like character and with like aims.

101. Under 29 U.S.C. 1103(c)(1), with certain exceptions not relevant here,

> the assets of a plan shall never inure to the benefit of any employer and shall be held for the exclusive purposes of providing benefits to participants in the plan and their beneficiaries and defraying reasonable expenses of administering the plan.

102. Under ERISA, fiduciaries that exercise any authority or control over plan assets, including the selection of plan investments and service providers, must act prudently and solely in the interest of participants in the plan.

103. ERISA's fiduciary duties are "the highest known to the law" and must be performed "with an eye single" to the interests of participants. *Bierwirth*, 680 F.2d at 271, 272 n.8.

104. As the Supreme Court recently confirmed, ERISA's "duty of prudence involves a continuing duty to monitor investments and remove imprudent ones[.]" *Tibble*, 135 S. Ct. at

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1829.

105. An investment policy statement or IPS is a governing plan document within the meaning of 29 U.S.C. §1104(a)(1)(D). See 29 C.F.R. § 2509.94-2 (1994), replaced by 29 C.F.R. §2509.08-2(2) (2008) ("Statements of investment policy issued by a named fiduciary authorized to appoint investment managers would be part of the 'documents and instruments governing the plan' within the meaning of ERISA Sec. 404(a)(1)(D)."). "Fiduciaries who are responsible for plan investments governed by ERISA must comply with the plan's written statements of investment policy, insofar as those written statements are consistent with the provisions of ERISA." *Cal. Ironworkers Field Pension Trust v. Loomis Sayles & Co*., 259 F.3d 1036, 1042 (9th Cir. 2001). "[F]ailure to follow written statements of investment policy constitutes a breach of fiduciary duty." *Id.* (*citing Dardaganis v. Grace Capital, Inc*., 889 F.2d 1237, 1241–42 (2d Cir. 1989)). A violation of investment guidelines is an independent breach of fiduciary duty, regardless of whether the action was otherwise prudent. See 29 U.S.C. §1104(a)(1)(D).

106. ERISA also imposes explicit co-fiduciary liability on plan fiduciaries. 29 U.S.C. §1105(a) provides for fiduciary liability for a co-fiduciary's breach:

> In addition to any liability which he may have under any other provision of this part, a fiduciary with respect to a plan shall be liable for a breach of fiduciary responsibility of another fiduciary with respect to the same plan in the following circumstances:
> (1) if he participates knowingly in, or knowingly undertakes to conceal, an act or omission of such other fiduciary, knowing such act or omission is a breach; or
> (2) if, by his failure to comply with section 404(a)(1) in the administration of his specific responsibilities which give risk to his status as a fiduciary, he has enabled such other fiduciary to commit a breach; or
> (3) if he has knowledge of a breach by such other fiduciary, unless he makes reasonable efforts under the circumstances to remedy the breach.

107. 29 U.S.C. §1132(a)(2) authorizes a plan participant to bring a civil action to enforce a breaching fiduciary's liability to the plan under 29 U.S.C. §1109. Section 1109(a) provides in relevant part:

> 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 subchapter 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.

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CLASS ACTION ALLEGATIONS

108. 29 U.S.C. §1132(a)(2) authorizes any participant or beneficiary of the Plan to bring an action individually on behalf of the Plan to enforce a breaching fiduciary's liability to the Plan under 29 U.S.C. §1109(a).

109. In acting in this representative capacity and to enhance the due process protections of unnamed participants and beneficiaries of the Plan, as an alternative to direct individual actions on behalf of the Plan under 29 U.S.C. §§1132(a)(2) and (3), Plaintiffs seek to certify this action as a class action on behalf of all participants and beneficiaries of the Plan. Plaintiffs seek to certify, and to be appointed as representatives of, the following class:

> All participants and beneficiaries of the Chevron Employee Savings Investment Plan from February 17, 2010 through the date of judgment, excluding the Defendants.

110. This action meets the requirements of Federal Rule of Civil Procedure 23 and is certifiable as a class action for the following reasons:

a. The Class includes over 40,000 members and is so large that joinder of all its members is impracticable.

b. There are questions of law and fact common to this Class because the Defendants owed fiduciary duties to the Plan and to all participants and beneficiaries and took the actions and omissions alleged herein as to the Plan and not as to any individual participant. Thus, common questions of law and fact include the following, without limitation: who are the fiduciaries liable for the remedies provided by 29 U.S.C. §1109(a); whether the fiduciaries of the Plan breached their fiduciary duties to the Plan; what are the losses to the Plan resulting from each breach of fiduciary duty; and what Plan-wide equitable and other relief the court should impose in light of Defendants' breach of duty.

c. Plaintiffs' claims are typical of the claims of the Class because each Plaintiff was a participant during the time period at issue in this action and all participants in the Plan were harmed by Defendants' misconduct.

d. Plaintiffs are adequate representatives of the Class because they were participants in the Plan during the Class period, have no interest that is in conflict with the

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Class, are committed to the vigorous representation of the Class, and have engaged experienced and competent attorneys to represent the Class.

e. Prosecution of separate actions for these breaches of fiduciary duties by individual participants and beneficiaries would create the risk of (A) inconsistent or varying adjudications that would establish incompatible standards of conduct for Defendants in respect to the discharge of their fiduciary duties to the Plan and personal liability to the Plan under 29 U.S.C. §1109(a), and (B) adjudications by individual participants and beneficiaries regarding these breaches of fiduciary duties and remedies for the Plan would, as a practical matter, be dispositive of the interests of the participants and beneficiaries not parties to the adjudication or would substantially impair or impede those participants' and beneficiaries' ability to protect their interests. Therefore, this action should be certified as a class action under Rule 23(b)(1)(A) or (B).

111. A class action is the superior method for the fair and efficient adjudication of this controversy because joinder of all participants and beneficiaries is impracticable, the losses suffered by individual participants and beneficiaries may be small and impracticable for individual members to enforce their rights through individual actions, and the common questions of law and fact predominate over individual questions. Given the nature of the allegations, no class member has an interest in individually controlling the prosecution of this matter, and Plaintiffs are aware of no difficulties likely to be encountered in the management of this matter as a class action. Alternatively, then, this action may be certified as a class under Rule 23(b)(3) if it is not certified under Rule 23(b)(1)(A) or (B).

112. Plaintiffs' counsel, Schlichter, Bogard & Denton LLP, will fairly and adequately represent the interests of the Class and is best able to represent the interests of the Class under Rule 23(g).

a. Schlichter, Bogard & Denton has been appointed as class counsel in 15 other ERISA class actions regarding excessive fees in large defined contribution plans. As a district court in one of those cases recently observed: "the firm of Schlichter, Bogard & Denton ha[s] demonstrated its well-earned reputation as a pioneer and the leader in the

field" of 401(k) plan excessive fee litigation. *Abbott v. Lockheed Martin Corp.*, No. 06-701, 2015 U.S.Dist.LEXIS 93206 at 4–5 (S.D. Ill. July 17, 2015). Other courts have made similar findings: "It is clear to the Court that the firm of Schlichter, Bogard & Denton is preeminent in the field" of 401(k) fee litigation "and is the only firm which has invested such massive resources in this area." *George v. Kraft Foods Global, Inc.*, No. 08-3799, 2012 U.S.Dist.LEXIS 166816 at 8 (N.D. Ill. June 26, 2012). "As the preeminent firm in 401(k) fee litigation, Schlichter, Bogard & Denton has achieved unparalleled results on behalf of its clients." *Nolte v. Cigna Corp.*, No. 07-2046, 2013 U.S.Dist.LEXIS 184622 at 8 (C.D. Ill. Oct. 15, 2013). In another 401(k) fee case, the District Court stated: "Litigating this case against formidable defendants and their sophisticated attorneys required Class Counsel to demonstrate extraordinary skill and determination." *Beesley v. Int'l Paper Co.*, No. 06-703, 2014 U.S.Dist.LEXIS 12037 at 8 (S.D.Ill. Jan. 31, 2014).

b. The U.S. District Court Judge G. Patrick Murphy recognized the work of Schlichter Bogard & Denton as exceptional:

> Schlichter, Bogard & Denton's work throughout this litigation illustrates an exceptional example of a private attorney general risking large sums of money and investing many thousands of hours for the benefit of employees and retirees. No case had previously been brought by either the Department of Labor or private attorneys against large employers for excessive fees in a 401(k) plan. Class Counsel performed substantial work…, investigating the facts, examining documents, and consulting and paying experts to determine whether it was viable. This case has been pending since September 11, 2006. Litigating the case required Class Counsel to be of the highest caliber and committed to the interests of the participants and beneficiaries of the General Dynamics 401(k) Plans.

Will v. General Dynamics, No. 06-698, 2010 U.S.Dist.LEXIS 123349 at 8–9 (S.D.Ill. Nov. 22, 2010).

c. Schlichter, Bogard & Denton handled the only full trial of an ERISA excessive fee case, resulting in a $36.9 million judgment for the plaintiffs that was affirmed in part by the Eighth Circuit. *Tussey v. ABB, Inc.*, 746 F.3d 327 (8th Cir. 2014). In awarding attorney's fees after trial, the district court concluded that "Plaintiffs' attorneys are clearly experts in ERISA litigation." *Tussey v. ABB, Inc.*, No. 06-4305, 2012 U.S.Dist.LEXIS 157428 at 10 (W.D.Mo. Nov. 2, 2012). Following remand, the district

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court again awarded Plaintiffs' attorney's fees emphasizing the significant contribution Plaintiffs' attorneys have made to ERISA litigation, including educating the Department of Labor and courts about the importance of monitoring fees in 401(k) plans.

> Of special importance is the significant, national contribution made by the Plaintiffs whose litigation clarified ERISA standards in the context of investment fees. The litigation educated plan administrators, the Department of Labor, the courts and retirement plan participants about the importance of monitoring recordkeeping fees and separating a fiduciary's corporate interest from its fiduciary obligations.

Tussey v. ABB, Inc., 2015 U.S.Dist.LEXIS 164818 at 7–8 (W.D.Mo. Dec. 9, 2015).

d. Schlichter, Bogard & Denton is also class counsel in *Tibble v. Edison Int'l*, 135 S. Ct. 1823, 1829 (2015), in which the Supreme Court held in a unanimous 9–0 decision that ERISA fiduciaries have "a continuing duty to monitor investments and remove imprudent ones[.]" Schlichter, Bogard & Denton successfully petitioned for a writ of certiorari, and obtained amicus support from the United States Solicitor General and AARP, among others. Given the Court's broad recognition of an ongoing fiduciary duty, the *Tibble* decision will have a broad effect on defined contribution plans.

e. The firm's work in ERISA excessive fee class actions has been covered by the New York Times and Wall Street Journal, among other media outlets. See, e.g., Gretchen Morgenson, *A Lone Ranger of the 401(k)'s*, N.Y. TIMES (Mar. 29, 2014);[15] Liz Moyer, *High Court Spotlight Put on 401(k) Plans*, WALL ST. J. (Feb. 23, 2015);[16] Floyd Norris, *What a 401(k) Plan Really Owes Employees*, N.Y. TIMES (Oct. 16, 2014);[17] Jess Bravin and Liz Moyer, *High Court Ruling Adds Protections for Investors in 401(k) Plans*, WALL ST. J. (May 18, 2015);[18] Jim Zarroli, *Lockheed Martin Case Puts 401(k) Plans on*

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[15] Available at http://www.nytimes.com/2014/03/30/business/a-lone-ranger-of-the-401-k-s.html?_r=0.

[16] Available at http://www.wsj.com/articles/high-court-spotlight-put-on-401-k-plans-1424716527.

[17] Available at http://www.nytimes.com/2014/10/17/business/what-a-401-k-plan-really-owes-employees.html?_r=0.

[18] Available at http://www.wsj.com/articles/high-court-ruling-adds-protections-for-investors-in-401-k-plans-1431974139.

Trial, NPR (Dec. 15, 2014);[19] Darla Mercado, *Public Enemy No. 1 to 401(k) Profiteers*, INVESTMENTNEWS (Jan. 26, 2014).[20]

COUNT I

**Breach of Duties of Loyalty and Prudence, and Violation of IPS—
Vanguard Prime Money Market Mutual Fund**

113. Plaintiffs restate and incorporate the allegations of the preceding paragraphs.

114. Chevron breached its duties of loyalty and prudence under 29 U.S.C. §§1104(a)(1)(A) & (B) and the provisions of the IPS in violation of 29 U.S.C. §1104(a)(1)(D) by providing participants the Vanguard Prime Money Market Fund instead of a stable value fund, which would have provided participants a low-risk investment with guaranty of principal and accumulated interest and a predictable, higher and more stable rate of interest based on decades of historical performance. Chevron failed to consider a stable value fund as a replacement for the Vanguard Prime Money Market Fund or in addition thereto, failed to come to a reasoned decision for providing the Vanguard Prime Money Market Fund instead of a stable value fund, and failed to remove that imprudent fund from the Plan.

115. Chevron is personally liable under 29 U.S.C. §1109(a) to make good to the Plan any losses to the Plan resulting from the breaches of fiduciary duties alleged in this Count and is subject to other equitable or remedial relief as appropriate. Total Plan losses will be determined at trial after complete discovery in this case and are illustrated herein based upon the limited information that has been made available to Plan participants to date.

116. Each Defendant also knowingly participated in the breach of the other Defendants, knowing that such acts were a breach, enabled the other Defendants to commit a breach by failing to lawfully discharge its own fiduciary duties, knew of the breach by the other Defendants and failed to make any reasonable effort under the circumstances to remedy the breach. Thus, each Defendant is liable for the losses caused by the breach of its co-fiduciary under 29 U.S.C.

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[19] Available at http://www.npr.org/2014/12/15/370794942/lockheed-martin-case-puts-401-k-plans-on-trial.

[20] Available at http://www.investmentnews.com/article/20140126/REG/301269992/public-enemy-no-1-for-401-k-profiteers.

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§1105(a).

COUNT II

Breach of Duties of Loyalty and Prudence—
Unreasonable Investment Management Fees

117. Plaintiffs restate and incorporate the allegations of the preceding paragraphs.

118. Chevron breached its duties of loyalty and prudence under 29 U.S.C. §§1104(a)(1)(A) & (B) by providing Plan investment options that charged unreasonable annual expenses in light of the far lower-cost versions of the same investments and alternative funds that were available to the Plan.

119. Chevron is personally liable under 29 U.S.C. §1109(a) to make good to the Plan any losses to the Plan resulting from the breaches of fiduciary duties alleged in this Count and is subject to other equitable or remedial relief as appropriate. Total Plan losses will be determined at trial after complete discovery in this case and are illustrated herein based upon the limited information that has been made available to Plan participants to date.

120. Each Defendant knowingly participated in the breach of the other Defendants, knowing that such acts were a breach, enabled the other Defendants to commit a breach by failing to lawfully discharge its own fiduciary duties, knew of the breach by the other Defendants and failed to make any reasonable effort under the circumstances to remedy the breach. Thus, each Defendant is liable for the losses caused by the breach of its co-fiduciary under 29 U.S.C. §1105(a).

COUNT III

Breach of Duties of Loyalty and Prudence—
Excessive Administrative Fees

121. Plaintiffs restate and incorporate herein the allegations of the preceding paragraphs.

122. Chevron caused the Plan to pay excess administrative fees to Vanguard as recordkeeper through uncapped and unmonitored revenue sharing from Plan investment options and by failing to put Plan administrative services out for competitive bidding on a regular basis, at least every three years. Chevron therefore breached it duties of loyalty and prudence under 29

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U.S.C. §1104(a)(1)(A) and (B).

123. Chevron is personally liable under 29 U.S.C. §1109(a) to make good to the Plan any losses to the Plan resulting from the breaches of fiduciary duties alleged in this Count and is subject to other equitable or remedial relief as appropriate. Total Plan losses will be determined at trial after complete discovery in this case and are illustrated herein based upon the limited information that has been made available to Plan participants to date.

124. Each Defendant knowingly participated in the breach of the other Defendants, knowing that such acts were a breach, enabled the other Defendants to commit a breach by failing to lawfully discharge its own fiduciary duties, knew of the breach by the other Defendants and failed to make any reasonable effort under the circumstances to remedy the breach. Thus, each defendant is liable for the losses caused by the breach of its co-fiduciary under 29 U.S.C. §1105(a).

COUNT IV

Breach of Duties of Loyalty and Prudence, and Violation of IPS—Artisan Small Cap Value Fund

125. Plaintiffs restate and incorporate the allegations of the preceding paragraphs.

126. Chevron breached its duties of loyalty and prudence under 29 U.S.C. §§1104(a)(1)(A) & (B) and the terms of the IPS in violation of 29 U.S.C. §1104(a)(1)(D) by providing and failing to remove as a Plan investment option the Artisan Small Cap Value Fund. Rather than employing a prudent process for monitoring and retaining the Artisan Small Cap Value Fund, Chevron retained this fund in the Plan despite consistent and dramatic underperformance compared to its benchmark, peer group, and similar lower-cost investment alternatives that were readily available to the Plan.

127. A prudent and loyal fiduciary who engaged in a prudent process for monitoring plan investments and removing imprudent funds would have concluded that the Artisan Small Cap Value Fund was imprudent, not in the interest of the Plan and its participants, and should have been removed long before Chevron ultimately removed it.

128. Chevron is personally liable under 29 U.S.C. §1109(a) to make good to the Plan any losses to the Plan resulting from the breaches of fiduciary duties alleged in this Count and is

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subject to other equitable or remedial relief as appropriate. Total Plan losses will be determined at trial after complete discovery in this case and are illustrated herein based upon the limited information that has been made available to Plan participants to date.

129. Each Defendant knowingly participated in the breach of the other Defendants, knowing that such acts were a breach, enabled the other Defendants to commit a breach by failing to lawfully discharge its own fiduciary duties, knew of the breach by the other Defendants and failed to make any reasonable effort under the circumstances to remedy the breach. Thus, each Defendant is liable for the losses caused by the breach of its co-fiduciary under 29 U.S.C. §1105(a).

COUNT V

Failure to Monitor Fiduciaries

130. Plaintiffs restate and incorporate the allegations contained in the preceding paragraphs as though fully set forth here.

131. A monitoring fiduciary must ensure that the monitored fiduciaries are performing their fiduciary obligations, including those with respect to the investment and holding of plan assets, and must take prompt and effective action to protect the plan and participants when they are not doing so.

132. To the extent any of the Chevron Corporation's fiduciary responsibilities were delegated to another fiduciary, Chevron's monitoring duty included an obligation to ensure that any delegated tasks were being performed prudently and loyally.

133. Chevron breached its fiduciary monitoring duties by, among other things:

a. failing to monitor its appointees, to evaluate their performance, or to have a system in place for doing so, and standing idly by as the Plan suffered enormous losses as a result of their appointees' imprudent actions and omissions with respect to the Plan;

b. failing to monitor its appointees' fiduciary process, which would have alerted any prudent fiduciary to the potential breach because of the excessive administrative and investment management fees and consistent underperforming Plan investments in violation of ERISA;

c. failing to ensure that the monitored fiduciaries had a prudent process in place for evaluating the Plan's administrative fees and ensuring that the fees were competitive, including a process to identify and determine the amount of all sources of compensation to the Plan's recordkeeper and the amount of any revenue sharing payments, a process to prevent the recordkeeper from receiving revenue sharing that would increase the recordkeeper's compensation to unreasonable levels even though the services provided remained the same, and a process to periodically obtain competitive bids to determine the market rate for the services provided to the Plan;

d. failing to ensure that the monitored fiduciaries considered the ready availability of comparable investment options to such a jumbo plan, including lower-cost share classes of the identical mutual funds, still lower cost separate accounts, and lower cost collective trusts, that charged far lower fees than the Plan's mutual fund options; and

e. failing to remove appointees whose performance was inadequate in that they continued to maintain imprudent, excessive-cost investments, and an option that did not even keep up with inflation, all to the detriment of Plan participants' retirement savings.

134. As a consequence of these breaches of the fiduciary duty to monitor, the Plan suffered very substantial losses. Had Chevron Corporation discharged its fiduciary monitoring duties prudently as described above, the losses suffered by the Plan would have been avoided. Therefore, as a direct result of the breaches of fiduciary duty alleged herein, the Plan, and the Plaintiffs and the other Class members, lost tens of millions of dollars in their retirement savings.

135. Chevron Corporation is personally liable under 29 U.S.C. §1109(a) to make good to the Plan any losses to the Plan resulting from the breaches of fiduciary duties alleged in this Count and is subject to other equitable or remedial relief as appropriate.

DEMAND FOR JURY TRIAL

136. Plaintiffs demand a trial by jury under Fed.R.Civ.P. 38 and the Constitution of the United States.

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PRAYER FOR RELIEF

Plaintiffs, on behalf of the Plan and all similarly situated Plan participants and beneficiaries, respectfully request that the Court:

- find and declare that the Defendants breached their fiduciary duties as described above;
- find and adjudge that Defendants are personally liable to make good to the Plan all losses to the Plan resulting from each breach of fiduciary duties, and to otherwise restore the Plan to the position it would have occupied but for the breaches of fiduciary duty;
- determine the method by which Plan losses under 29 U.S.C. §1109(a) should be calculated;
- order Defendants to provide all accountings necessary to determine the amounts Defendants must make good the Plan under §1109(a);
- remove the fiduciaries who have breached their fiduciary duties and enjoin them from future ERISA violations;
- reform the Plan to render it compliant with ERISA;
- surcharge against Defendants and in favor of the Plan all amounts involved in any transactions which such accounting reveals were improper, excessive and/or in violation of ERISA;
- certify the Class, appoint each of the Plaintiffs as a class representative, and appoint Schlichter, Bogard & Denton LLP as Class Counsel;
- award to the Plaintiffs and the Class their attorney's fees and costs under 29 U.S.C. §1132(g)(1) and the common fund doctrine;
- order the payment of interest to the extent it is allowed by law; and

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- grant other equitable or remedial relief as the Court deems appropriate.

February 17, 2016

Respectfully submitted,

SCHLICHTER BOGARD & DENTON, LLP

/s/ Jerome J. Schlichter
JEROME J. SCHLICHTER (54513)
jschlichter@uselaws.com

Attorneys for Plaintiffs

SCHLICHTER BOGARD & DENTON, LLP
ATTORNEYS AT LAW
100 S. 4TH STREET, ST. LOUIS, MO 63102