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10 **UNITED STATES DISTRICT COURT**
11 **NORTHERN DISTRICT OF CALIFORNIA**

13 CHRISTOPHER M. SULYMA,
and all others similarly situated,

14 Plaintiff,

15 v.

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

23 Defendants,

24 and

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

27 Nominal Defendants.

Case No:

COMPLAINT

CLASS ACTION

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I. NATURE OF THE ACTION

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2 1. This is an action brought under Sections 502(a)(2) and 502(a)(3) of the Employee
3 Retirement Income Security Act of 1974, as amended (“ERISA”), 29 U.S.C. §§ 1132(a)(2) and
4 1132(a)(3), by Plaintiff Christopher M. Sulyma on behalf of the Intel 401(k) Savings Plan (“401(k)
5 Plan”) and the Intel Retirement Contribution Plan (“Retirement Plan”) (collectively, “the Plans”),
6 and on behalf of certain participants in the Plans, for breaches of fiduciary duty by the fiduciaries of
7 those Plans, to obtain the relief provided under ERISA § 409, 29 U.S.C. § 1109, or other appropriate
8 equitable relief pursuant to ERISA § 502(a)(3). Plaintiff claims that Defendants breached their
9 fiduciary duties by (a) investing a significant portion of the Plans’ assets in risky and high-cost
10 hedge fund and private equity investments, and (b) adopting asset allocation models for participant
11 accounts that departed dramatically from prevailing standards employed by professional investment
12 managers and plan fiduciaries. As a result of these misguided and imprudent investment decisions,
13 the fiduciaries of the Plans caused the Plans and many of their respective participants to suffer
14 massive losses and enormous excess fees.

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

21 3. The Intel Retirement Plans Investment Policy Committee (“Investment Committee”)
22 was the fiduciary for both Plans responsible for choosing, managing, and monitoring the Plans’
23 investments. At least until earlier this year when it hired an investment manager, the Investment
24 Committee was responsible for and did: (1) create the Intel TDPs and Diversified Fund; (2) choose
25 and manage the asset allocation models for the Intel TDPs and Diversified Fund; and (3) choose and
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1 manage the pooled investment funds (the “Investment Funds”)¹ representing various asset classes
2 and investment strategies to which the Intel TDPs and Diversified Fund allocated their respective
3 investments.

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

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

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

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

23 8. Through at least the first quarter of 2015, the Investment Committee was responsible
24 for choosing the asset allocation models and Investment Funds for the Intel TDPs and the
25 Diversified Fund. Beginning in 2011, the Investment Committee dramatically altered the asset
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27
28 ¹The Plans and the Intel Minimum Pension Plan own a percentage of the assets in each Investment Fund.

1 allocation model for the Intel TDPs by increasing Intel TDP investments in hedge funds from about
2 \$50 million to \$680 million, an increase of 1,300%.

3 9. Similarly, the Investment Committee increased the Diversified Fund's exposure to
4 hedge funds and private equity investments during 2009 through 2014. During this period the
5 Diversified Fund's investment in hedge funds increased from about \$582 million to \$1.665 billion,
6 an increase of approximately 286%; the fund's investment in private equity increased from about
7 \$83 million to \$810 million, an increase of 968%.

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

12 11. The Investment Committee's decisions were imprudent because: (1) the allocations
13 and investments of the Intel TDPs and the Diversified Fund were unprecedented departures from
14 prevailing standards for the design and allocation of, respectively, target date funds ("TDFs") and
15 balanced funds; (2) the Investment Committee knew or should have known that the asset allocation
16 models and heavy investments in hedge funds and private equity would expose the Plans to the risk
17 of substantial losses; and (3) the asset allocation models and heavy investments in hedge funds and
18 private equity caused the Plans to incur significant fees and expenses as compared to professionally
19 managed asset allocation funds and exposed the Plans to significant risks without commensurate
20 reward.

21 12. As a result of the Investment Committee's decisions, the Plans and their participants
22 suffered hundreds of millions of dollars in losses during the six years preceding the filing of this
23 Complaint as compared to what they would have earned if invested in asset allocation models
24 consistent with prevailing standards for investment experts and prudent fiduciaries.

25 13. The Intel TDPs have underperformed peer TDFs by approximately 400 basis points
26 annually. Although Defendants failed to provide documents to Plaintiff disclosing the amount
27 invested by the 401(k) Plan via Intel TDPs, the amount was estimated in June 2015 to be
28

1 approximately \$3.63 billion.² Given the underperformance compared to peer TDFs, and the billions
 2 of dollars allocated to Intel TDPs, the Plans have lost hundreds of millions of dollars that they would
 3 have otherwise earned had the Intel TDPs been prudently allocated since 2011, when the Investment
 4 Committee implemented the current Intel TDP asset allocation model and contemporaneously
 5 increased the Intel TDPs' allocations to hedge funds.

6 14. Similarly, the Diversified Fund has underperformed peer balanced funds.³ From May
 7 2007, when the Diversified Fund began investing in hedge funds and private equity, through May
 8 2014, the fund underperformed a Vanguard balanced fund, the LifeStrategy Moderate Growth Fund
 9 (Ticker: VSMGX), by approximately 50 basis points (.50%) annually.⁴ As of June 2015, the
 10 Retirement Plan invested the vast majority of its assets in the Diversified Fund – \$5.82 billion out of
 11 \$6.66 billion.⁵ Thus, fifty basis points of underperformance annually between May 2007 and May
 12 2014 translates into a loss of over \$100 million. This underperformance is largely due to the massive
 13 allocations to hedge funds and private equity, almost \$2.5 billion as of the end of 2014.

14 15. Additionally, the Administrative Committee, which is responsible for making
 15 disclosures to the participants in the Plans, failed to adequately disclose to participants the risks, fees
 16 and expenses associated with investment in hedge funds and private equity. In fact, participants were
 17

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

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

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

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

1 given virtually no information about these investments other than that there were some hedge fund
2 and private equity investments. Even the information disclosed in filings with the Department of
3 Labor discloses merely the name of the hedge fund or private equity investment, the costs and last
4 year's value. Virtually nothing about the strategy, the risks, the fees or anything about underlying
5 investments was disclosed in anything that Defendants provided to or made available to participants.

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

15 **II. JURISDICTION AND VENUE**

16 17. This Court has exclusive jurisdiction over the subject matter of this action under 29
17 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
18 1132(a)(3).

19 18. This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C.
20 § 1331 and ERISA § 502(e)(1), 29 U.S.C. § 1132(e)(1).

21 19. Venue is proper in this District pursuant to ERISA § 502(e)(2), 29 U.S.C.
22 § 1132(e)(2), because, upon information and belief, most, if not all, of the individual defendants can
23 be found in this District.

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

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III. PARTIES

A. Plaintiff

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

B. Defendants

1. Intel Finance Committee Defendants

22. The Intel Finance Committee is responsible for appointing, monitoring, and removing the members of the Investment Committee and the Administrative Committee pursuant to Section 13(b) of the Plan Document for each of the Plans. Pursuant to Section 13(b), the Finance Committee has the power to remove any member of the Administrative Committee or the Investment Committee at will or “with or without cause” and the power to appoint any successor member. The Intel Finance Committee is comprised of members of the Intel Board of Directors. The Finance Committee is a named fiduciary to the Plans and is responsible for monitoring the Investment Committee and the Administrative Committee. Each member of the Finance Committee is also a fiduciary with respect to the Plans. The members of the Finance Committee during the relevant period are referred to as the “Finance Committee Defendants.”

23. **Charlene Barshefsky** has been a member of Intel’s Board of Directors since 2004, has been a member of the Finance Committee continuously since 2007, and has served as the Chair of the Finance Committee since 2009. Ms. Barshefsky is currently a Partner of the law firm Wilmer Hale where she is the Chair of the International Trade, Investment and Market Access Practice

1 Group. She serves on the Boards of Directors of American Express Company, The Estee Lauder
2 Companies Inc., and Starwood Hotels & Resorts Worldwide, Inc.

3 24. **Susan L. Decker** has served on Intel's Board of Directors since 2004, and on the
4 Finance Committee between 2009 and 2011. Ms. Decker was Intel's Chief Financial Officer from
5 2000 to 2007, and then President of Yahoo! Inc. from June 2007 to April 2009. Susan L. Decker
6 lives in San Francisco, California.

7 25. **John J. Donahoe** has served on Intel's Board of Directors since 2009, and on the
8 Finance Committee in 2009. He worked as managing director of Bain & Company since 1982,
9 becoming the firm's president and Chief Executive Officer ("CEO") in 1999. He became the
10 president of eBay in March 2005, and has been CEO of eBay since March 31, 2008. He is a Member
11 of the Advisory Board and Director of eVolution Global Partners, LLC, a global venture capital firm
12 that specializes in early stage investments within the information technology and media sectors.
13 Since 2009, he has been a Director of Skype Global S.a.r.l. and an Independent Director of Nike,
14 Inc. since 2014. John J. Donahoe lives in Portola Valley, California and is the CEO and President of
15 eBay in San Jose, California.

16 26. **Reed E. Hundt** has been a member of Intel's Board of Directors since 2001, and a
17 member of the Finance Committee since 2010. Mr. Hundt practiced law at Latham & Watkins from
18 1975 to 1993. He has been an advisor to the private equity firm Blackstone Group since 2010. He is
19 also a Principal at REH Advisors, a business advisory firm.

20 27. **James D. Plummer** has been a member of Intel's Board of Directors since 2005, and
21 a member of the Finance Committee since 2006. James Plummer lives in Portola Valley, California.
22 He is also a professor and the Dean of the School of Engineering at Stanford in Stanford, California.

23 28. **Frank D. Yeary** has been a member of Intel's Board of Directors since 2009, and a
24 member of the Finance Committee since 2009. Mr. Yeary is an international investment banker.
25 Prior to 2004, he served as the global head of the Technology, Media and Telecom investment
26 banking practice at Salomon Smith Barney. He served at Citigroup as the Global Head of Mergers
27 and Acquisitions from 2004 to July 2008. Mr. Yeary serves as an Executive Chairman of
28 CamberView Partners which describes itself as a "boutique advisory firm that provides public

1 companies with the advice and expertise they need to succeed with their institutional investors.” He
2 serves as a member of Executive Council at Cohesive Capital Partners, a co-investment firm that
3 makes “direct investments alongside high quality private equity sponsors that are leading the
4 transactions.” *Why CamberView*, Camberview Partners, [http://www.camberview.com/why-](http://www.camberview.com/why-camberview/)
5 [camberview/](http://www.camberview.com/why-camberview/) (last visited October 15, 2015). According to his Linked-in Profile, Frank D. Yeary
6 lives in the San Francisco Bay Area and is co-founder and the Executive Chairman of an advisory
7 firm, CamberView Partners, which is located in San Francisco.

8 **2. Investment Committee Defendants**

9 **29. Intel Retirement Plans Investment Policy Committee.** The Investment Committee
10 is a named fiduciary for the Plans pursuant to ERISA § 402(a), 29 U.S.C. § 1102(a), with respect to
11 the management and control of the Plans’ assets, pursuant to Section 13(a) of the Plans. Pursuant to
12 Section 13(a) of the Plans, the Investment Committee and its members have responsibility for asset
13 management; designating and evaluating the designated investment alternatives offered to
14 participants in the Plans; and managing and controlling the Plans’ assets. The Investment Committee
15 also has the authority to appoint and remove the Trustees for the Plans, as well as to appoint and
16 remove one or more investment managers for the Plans. Each member of the Investment Committee
17 is also a de facto fiduciary with respect to the Plans within the meaning of ERISA § 3(21), 29 U.S.C.
18 § 1002(21), because each exercised discretionary authority or discretionary control with respect to
19 management of the Plans and exercised authority or control with respect to management or
20 disposition of the Plans’ assets. The members of the Investment Committee during the relevant
21 period are referred to as the “Investment Committee Defendants.”

22 **30. Ravi Jacob** has been a member of the Investment Committee since at least January of
23 2010. Jacob is also a corporate vice president and the treasurer of Intel Corporation. As treasurer,
24 Mr. Jacob manages Intel’s cash and investments, capital markets activity, currency and other
25 financial risks, credit and collections, retirement assets and risk and insurance. Ravi Jacob lives in
26 the San Francisco Bay Area.

27 **31. David S. Pottruck** has been a member of Intel’s Board of Directors since 1998. Mr.
28 Pottruck has served as the Chairman of the Investment Committee since at least 2009. Mr. Pottruck

1 served in various senior executive positions at Charles Schwab Corp. from 1984 to 2004: President
2 (6/1992-7/20/2004), COO (1994-09/1998), Co-CEO (1/1998) and CEO (5/9/2003-7/20/2004). He is
3 the CEO and Chairman of Red Eagle Ventures, a Director of Joyent, Inc., a Director of Serve Virtual
4 Enterprises, Inc., Chairman of the wealth management firm HighTower Advisors, LLC – which
5 Pottruck helped launch in 2008 – and Chairman of CorpU. Pottruck is also a Senior Fellow and
6 adjunct faculty at the Wharton Center for Leadership & Change Management. According to his
7 Linked-In Profile, David S. Pottruck lives in the San Francisco Bay Area and is the Co-Chairman of
8 HighTower Advisors, a wealth management firm and Chairman of Red-Eagle Adventures, both of
9 which are located in San Francisco.

10 32. **Does 1-20** are persons serving on the Investment Committee during the relevant
11 period whose identities are unknown to Plaintiff. None of the disclosures provided to Plaintiff name
12 all of the members of the Investment Committee, as such they are named as Does 1-20. Once their
13 identities are ascertained, Plaintiff will seek leave to join them under their true names.

14 **3. Administrative Committee Defendants**

15 33. **Administrative Committee.** The Administrative Committee is a named fiduciary
16 with respect to the operation and administration of the Plans (except with respect to management or
17 control of the Plans' assets) pursuant to Section 13(a) of the Plan Document of each of the Plans.
18 The Committee and its individual members (collectively “Administrative Committee”) were and are
19 named fiduciaries for the 401(k) Plan and the Retirement Plan with respect to the operation and
20 administration of the Plans. Pursuant to Section 13(e), the Administrative Committee was and is
21 responsible for preparing and furnishing to participants a general explanation of the Plans and all
22 other information required to be furnished to participants under federal law or the Plans, including
23 disclosures regarding designated investment alternatives.

24 34. **Does 21-40** are persons serving on the Administrative Committee during the relevant
25 period whose identities are unknown to Plaintiff. None of the disclosures provided to Plaintiff name
26 any of the members of the Administrative Committee, as such they are named as Does 21-40. Once
27 their identities are ascertained, Plaintiff will seek leave to join them under their true names.

28

1 **4. Nominal Defendants**

2 35. The Intel Corporation 401(k) Savings Plan (the “401(k) Plan”) is a defined
3 contribution plan or individual account plan within the meaning of ERISA § 3(34), 29 U.S.C. §
4 1002(34). The written instrument of the 401(k) Plan within the meaning of ERISA § 402 was titled
5 Intel 401(k) Savings Plan (As Amended and Restated Effective January 1, 2014). The Plan Sponsor
6 of the 401(k) Plan within the meaning of ERISA § 3(16)(B) is Intel Corporation. The Plan
7 Administrator of the 401(k) Plan within the meaning of ERISA § 3(16)(A) is the Intel Retirement
8 Plans Administrative Committee.

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

17 37. The Plans are “employee pension benefit plans” within the meaning of ERISA
18 § 3(2)(A), 29 U.S.C. § 1002(2)(A).

19 **C. Relevant Non-Parties**

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

27 39. **The Intel Minimum Pension Plan.** The Intel Minimum Pension Plan, formerly
28 known as the Intel Defined Benefit Pension Plan (the “DB Plan”), is a defined benefit plan or

1 individual account plan within the meaning of ERISA § 3(35), 29 U.S.C. § 1002(35). The DB Plan
2 and the Retirement Plan operate as what is known as a “floor offset” arrangement, whereby the DB
3 Plan provides the floor and benefits to be paid are offset to the extent that benefits under the
4 Retirement Plan are greater than those provided by the DB Plan. The Plan Sponsor of the DB Plan
5 within the meaning of ERISA § 3(16)(B) is Intel Corporation.

6 40. **State Street Bank and Trust Company, Trustee (“State Street”).** State Street is a
7 trust company organized under the laws of the Commonwealth of Massachusetts. Effective January
8 1, 2010, State Street became the trustee for the Plans and the Master Trust, and thereafter held all of
9 the assets of the Master Trust directly. State Street holds and invests the assets of the Plans, and thus
10 is a fiduciary with respect to the Plans.

11 **IV. CLASS ALLEGATIONS**

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

- 14 • All participants in the Intel Retirement Contribution Plan and the Intel 401(k) Savings
15 Plan whose accounts were invested pursuant to an Intel Target Date Portfolio from
16 2011 to the present (the “Target Date Class”).
- 17 • All participants in the Intel Retirement Contribution Plan and the Intel 401(k) Savings
18 Plan whose accounts were invested in, respectively, the Intel Global Diversified Fund
19 and the Intel 401(k) Global Diversified Fund from 2009 to the present (the
20 “Diversified Fund Class”).

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

24 **A. Numerosity and Impracticability of Joinder**

25 43. Joinder of all members of the Classes would be impracticable based on the size and
26 geographic diversity of the members of the Classes. Based on the most recent Form 5500 filed with
27 the Department of Labor for 2014, the 401(k) Plan had 63,518 participants and/or beneficiaries.
28 Most of these participants had their Plan investments in or were defaulted to an Intel TDP, which

1 necessarily included hedge funds and private equity. Based on the most recent Form 5500 filed with
2 the Department of Labor for 2014, the Retirement Plan had 50,718 participants and/or beneficiaries.
3 The Diversified Fund was the only available investment for the vast majority of Retirement Plan
4 participants during the Diversified Fund Period. According to Intel's website, it has locations in at
5 least the following states: Arizona, California, Colorado, the District of Columbia, Idaho, Illinois,
6 Kentucky, Massachusetts, Minnesota, New Hampshire, New Jersey, New Mexico, North Carolina,
7 Oregon, Pennsylvania, South Carolina, Texas, Virginia, Washington and Wisconsin. As such, the
8 members of the Class are also geographically dispersed.

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

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

24 **B. Commonality**

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

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

- 1 B. Whether the Investment Committee’s fiduciary duties included selecting and
- 2 managing the Plans’ assets;
- 3 C. Whether the Investment Committee selected and managed the underlying
- 4 funds to which the Intel TDPs and the Diversified Fund allocated the Plans’
- 5 assets.

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

- 7 A. Whether the Investment Committee breached its fiduciary duties to the Plans
- 8 and their participants in constructing and managing the Intel TDPs;
- 9 B. Whether the Intel TDP asset allocation models chosen by the Investment
- 10 Committee for the Plans deviate and deviated from prevailing standards for
- 11 target date funds;
- 12 C. Whether the Investment Committee prudently selected and managed the
- 13 underlying funds to which the Intel TDPs allocated the Plans’ assets;
- 14 D. Whether the Plans and their participants suffered losses as a result of the
- 15 Investment Committee’s fiduciary breaches; and
- 16 E. Whether the Administrative Committee breached its fiduciary duties to the
- 17 Plans and their participants by failing to make adequate disclosures about the
- 18 Intel TDPs and the Investment Funds.

19 48. Common questions of law and fact with respect to the Diversified Fund Class

20 include:

- 21 A. Whether the Investment Committee breached its fiduciary duties to the Plans
- 22 and their participants in constructing and managing the Diversified Fund;
- 23 B. Whether the asset allocation model chosen by the Investment Committee for
- 24 the Diversified Fund deviates and deviated from prevailing standards for
- 25 balanced funds;
- 26 C. Whether the Investment Committee Defendants prudently selected and
- 27 managed the underlying funds to which the Diversified Fund allocated the
- 28 Plans’ assets;

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

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

6 **C. Typicality**

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

13 **1. Target Date Class**

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

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

21 **2. Diversified Fund Class**

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

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

1 **D. Adequacy**

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

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

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

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

10 **E. Rule 23(b)(1)**

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

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

23 **F. Rule 23(b)(2)**

24 60. The requirements of Rule 23(b)(2) are met in this action. Defendants have applied the
25 same or substantially similar investment policies and investment options in the Plans that cover all
26 members of the Classes. The breaches alleged against Defendants with respect to the Target Date
27 Class and the Diversified Fund Class relate to policies that applied to, respectively, all members of
28

1 the Target Date Class and the Diversified Fund Class. As such, Defendants have acted or refused to
2 act on grounds generally applicable to the Class as a whole.

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

9 **G. Rule 23(b)(3)**

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

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

24 64. Plaintiff and his counsel are not aware of any other lawsuit filed by any member of
25 the Classes concerning this controversy pending in any other court.

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

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

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

6 V. FACTUAL ALLEGATIONS

7 A. The Plans

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

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

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

1 **1. Intel Retirement Plan**

2 *Participation*

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

9 *Contributions*

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

14 *Vesting*

15 72. Section 8 of the Retirement Plan Document sets forth the Vesting and Forfeiture
16 under the terms of the Plan. Pursuant to Section 8(a) and (b), Participants' interests become 100%
17 vested and nonforfeitable upon the occurrence of any of the following: (a) attainment of age 60 (if
18 they became participants after January 1, 1987) or age 55 (if they became Participants on or before
19 January 1, 1987); (b) death; (c) total and permanent disability; (d) job elimination; (e) termination of
20 employment as a result of a divestiture or formation of the Care Innovations Joint Venture. Section
21 8(c) of the Retirement Plan Document provide the following vesting schedule for a Participant who
22 was an Employee on or after December 31, 2007:

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

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6 or more 100 (Percent)

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

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

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

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

2. Intel 401(k) Plan
Participation

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

1 *Contributions*

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

8 78. Starting in 2007, Intel began to automatically enroll employees who were eligible to
9 participate in the 401(k) Plan but who had not yet enrolled, unless they opted out by affirmatively
10 electing otherwise during a forty-five day opt-out period. According to Section 3 of the 401(k) Plan
11 Document, such participants were deemed to have elected to contribute 3% of their regular earnings
12 to their 401(k) Plan account, absent an affirmative election otherwise. This contribution then
13 automatically increased by one percentage point each successive year, up to a maximum deferral of
14 10% of the participant's pre-tax earnings.

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

22 *Vesting*

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

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

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

<u>Completed Years of Service</u>	<u>Nonforfeitable Percentage</u>
3 Less than 2	0 (Percent)
4 2 but less than 3	20 (Percent)
5 3 but less than 4	40 (Percent)
6 4 but less than 5	60 (Percent)
7 5 but less than 6	80 (Percent)
8 6 or more	100 (Percent)

9
10 *Investment of Plan Assets*

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

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

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

23 **B. Fiduciary Responsibility For Investment Of Assets**

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

- 1 (i) To appoint and remove, as it deems advisable, the Trustee;
- 2 (ii) To appoint and remove, as it deems advisable, one or more investment
3 managers pursuant to the provisions of the Trust Agreement, each of which (A) shall be (1)
4 an investment adviser registered under the Investment Advisers Act of 1940; (2) a bank, as
5 defined in the Investment Advisers Act of 1940; or (3) an insurance company qualified to
6 manage, acquire, or dispose of qualified plan assets under the laws of more than one state;
7 and (B) shall acknowledge in writing to the Investment Committee that such investment
8 manager is a fiduciary with respect to the Plan;
- 9 (iii) To conduct periodic reviews of the performance, costs, and expenses of the
10 Funds, the Trustee, investment managers, and outside service providers;
- 11 (iv) To establish and communicate to the Trustee and the investment managers
12 from time to time its determination of the Plan's short- and long-term financial needs, so that
13 the Trustee's and investment managers' investment decisions with regard to Trust Fund
14 assets can be coordinated therewith; provided that such determination of the Plan's financial
15 needs shall be consistent with the funding policies and methods adopted by the Company and
16 in effect at the time of such determination;
- 17 (vii) To directly enter into and confirm any investment transaction or to direct the
18 Trustee pursuant to the Trust to enter into or confirm any investment transaction, in each case
19 the term "investment transaction" shall include any investment permitted under the Trust,
20 including, but not limited to, any investment in a partnership, limited liability company, unit
21 investment trust, business development company, private equity fund, investment company
22 (registered or otherwise) or other similar arrangement (whether publicly traded or otherwise)
23 and, for all purposes under this Section 13, to exercise all other fiduciary powers relating to
24 the management of Plan assets.

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

1 **C. The Plans' Assets**

2 **1. Master Trust Investment Funds**

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

6 (1) Alternative Investments (aka Private Equity Fund): invests in over fifty private equity
7 investment partnerships.⁶

8 (2) Commodities Fund: invests in two commodities funds and a commodities hedge
9 fund.⁷

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

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

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

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

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

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

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

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

22 89. Each fund within an Investment Fund buys, holds, and sells securities (or other
23 assets) under the direction of an investment manager or investment advisor. At least until Alliance
24

25 ⁶Early in the relevant period, the Alternative Investments Fund included hedge funds and
26 commodities in addition to private equity. The hedge funds were subsequently broken out into two
27 hedge funds of funds, an Absolute Return Fund and a Long Short Fund in 2010. Then, in 2011, the
28 Investment Committee merged these two funds of funds into the Hedge Fund while at the same time
increasing the number of hedge fund managers and increasing the Plans' investments in hedge funds
from approximately \$750 million to approximately \$1.86 billion.

⁷The Commodities Fund was added in 2010.

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

3 90. The Investment Funds represent the various asset Classes to which the asset
4 allocation portfolios in the Plans, namely the Intel TDPs and the Diversified Fund, allocated the
5 Plans' and participants' assets.

6 91. An asset allocation fund is a portfolio consisting of a diverse set of asset classes such
7 as equities, bonds, and international securities. Asset allocation funds are generally structured as
8 "funds-of-funds," meaning that the portfolio invests in underlying funds representing various asset
9 classes rather than investing directly in securities representative of the asset classes.

10 92. Table 1 below lists, on December 31, 2011, respectively, the name of each
11 Investment Fund, the total assets in the given Investment Fund, the 401(k) Plan's percentage
12 ownership of the given Investment Fund, the dollar value of the 401(k) Plan's ownership of the
13 given Investment Fund, the Retirement Plan's percentage ownership of the given Investment Fund,
14 and the dollar value of the Retirement Plan's ownership of the given Investment Account.⁸

15 **TABLE 1**

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

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24 ⁸Table 1 represents the Plans' holdings in the Investment Funds, not the Diversified Fund's and Intel
25 TDPs' dollar and percentage allocations to the Investment Funds, except as to the Private Equity,
26 Commodities, and Hedge Funds, because the specific dollar and percentage allocations of the
27 Diversified Fund and Intel TDPs are not available to participants. In other words, Table 1 does not
28 represent the asset allocations of the Diversified Fund and Intel TDPs as such. Using Table 1 for that
purpose would understate the percentage allocations to Private Equity, Commodities, and Hedge
Funds because the remaining funds were held in part in participant accounts outside of the
Diversified Fund and Intel TDP portfolios.

1 93. The Plans' financial statements filed with the Forms 5500 with the Department of
2 Labor reflect similar allocations in 2012-2014.

3 **2. The Retirement Plan and the Diversified Fund**

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

9 95. The Intel Diversified "Fund" is a portfolio invested in the Investment Funds,
10 representing various asset classes. It is not a fund as such, but rather an asset allocation model that
11 directs the assets of the Retirement Plan and the 401(k) Plan into the various Investment Funds. The
12 Retirement Plan and 401(k) Plan own a percentage of each Investment Fund, as shown in Table 1,
13 above.

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

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

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

24 99. At the end of 2008, the Diversified Fund held approximately 6.17% of its assets, or
25 \$214 million, in private equity, hedge funds, and commodities. By the end of 2009, the Diversified
26 Fund held approximately 15.33%, or \$667 million, of its assets in such investments.

27 100. In 2010, the Diversified Fund's investment in private equity tripled, from about \$83
28 million to \$245 million. In 2010, the Diversified Fund added an investment in commodities, about

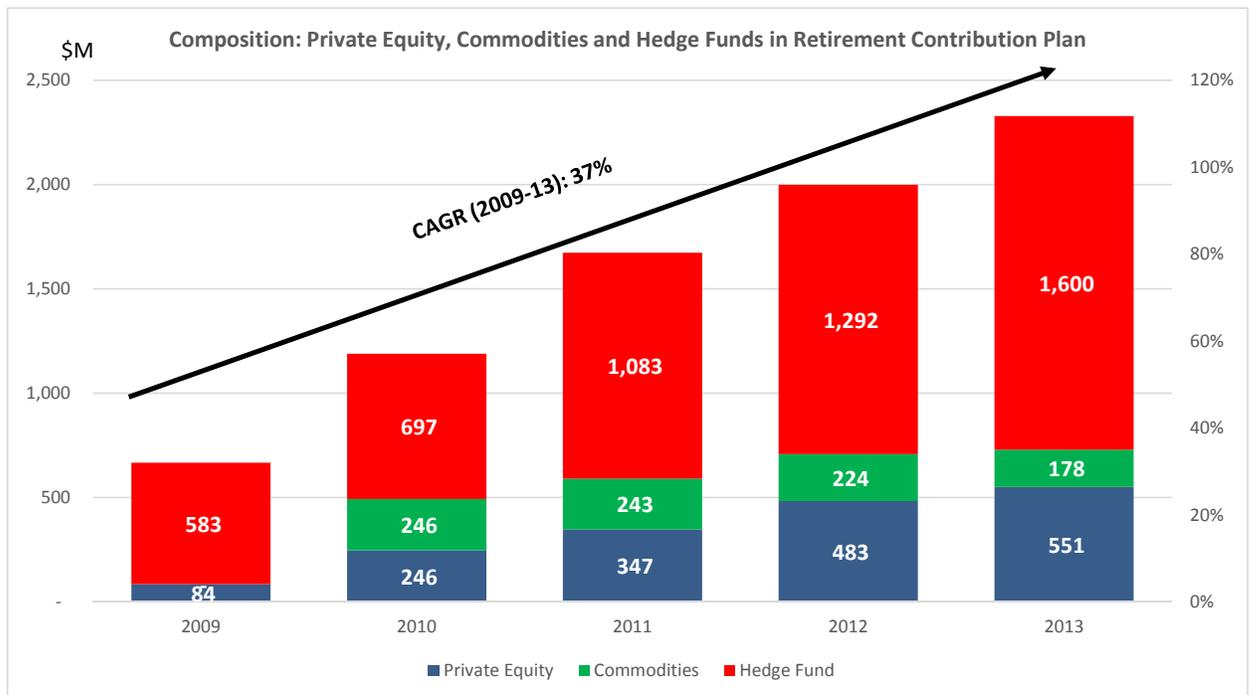
1 \$245 million, and its investment in hedge funds increased from approximately \$583 million in 2009
 2 to approximately \$697 million in 2010. By the end of the year, the Diversified Fund held about
 3 22.23% of its assets in commodities, private equity, and hedge funds, or about \$1.2 billion.

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

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

9 103. Between 2009 and 2013, the Investment Committee caused the Diversified Fund to
 10 increase its allocation to private equity, hedge funds, and commodities by 595% and increase the
 11 dollar value of the Fund's investment in such investments from an estimated \$214 million to almost
 12 \$2.33 billion, an increase of 1,088%. These changes in investment allocations in the Diversified
 13 Fund are detailed in Figure 1 below.

14 **FIGURE 1**



25
 26 **3. The Intel TDPs**

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

1 105. A target date fund is a one-stop fund which holds a mix of asset classes and follows
2 what is known as a “glide path.” A glide path describes a fund’s asset reallocation strategy, which
3 (generally) becomes more conservative as the fund approaches its target date, that is, the retirement
4 date of the plan participant. A target date fund’s number represents the approximate year when a
5 participant expects to withdraw benefits. The target date generally is a projected retirement date at
6 age 65. Thus, a participant who anticipates retiring at 65 in or near 2045 would generally select a
7 2045 fund.

8 106. The Intel TDPs offered in the Plans are not actual funds as such in the sense that the
9 Plans’ participants hold units or shares of the fund.

10 107. Instead, the Intel TDPs are an asset allocation service. The Investment Committee
11 determined the allocations and selected the underlying Investment Funds to which the Intel TDPs
12 allocate the Plans’ and participants’ assets, but there is no actual target date fund as a distinct entity.
13 Rather, each participant is placed in an asset allocation model chosen and managed by the
14 Investment Committee, which provides each such participant with a proportionate interest in the
15 underlying Investment Funds, based on the allocation dictates of the Intel TDP set by the Investment
16 Committee. Thus, Intel TDPs are effectively an investment management service.

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

22 109. All the Intel TDPs offered in the Plans are invested in the same nine Investment
23 Funds, and share the same glide path. A “glide path” is the formula by which monies in the target
24 date fund are reallocated across asset classes as the fund “glides” toward the target date. The amount
25 allocated to the Investment Funds vary however. As the target date approaches, the particular Intel
26 TDP generally adopts a purportedly more conservative allocation. Stated differently, each Intel TDP
27 has adopted the same allocation and reallocation model (*i.e.*, glide path) and invests in the same
28 underlying Investment Funds, but the TDPs are simply on staggered start dates and end dates such

1 that each TDP is five years ahead of the TDP behind it, and five years behind the TDP ahead of it on
2 the glide path.

3 110. Prior to 2011, Defendants called the customized target date portfolios LifeStage
4 Funds. In or around 2011, the Investment Committee created a new suite of customized target date
5 portfolios and called them Target Date Funds.

6 111. The Investment Committee also created additional Intel TDPs representing additional
7 target dates.

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

11 113. As Bill Parish, an independent registered investment advisor, observed in Intel Q4
12 2013 Earnings – Time to Fix Pension Plan (January 16, 2014), Intel’s 401(k) and Retirement Plans
13 “have been infiltrated by hedge funds,” commenting that Intel’s decision to invest heavily in hedge
14 funds amounted to “institutional gambling with employees[?] assets.” Bill Parish, *Intel Q4 2013*
15 *Earnings- Time to Fix Pension Plan*, Bill Parish- Parish & Company Registered Investment Advisor
16 Blog (January 16, 2014), [http://blog.billparish.com/2014/01/16/intel-q4-2013-earnings-time-to-fix-](http://blog.billparish.com/2014/01/16/intel-q4-2013-earnings-time-to-fix-pension-plan/)
17 [pension-plan/](http://blog.billparish.com/2014/01/16/intel-q4-2013-earnings-time-to-fix-pension-plan/).

18 114. As The Oregonian newspaper reported on August 30, 2014 in *What’s Inside Intel’s*
19 *retirement plans? Hedge funds. Lots of ‘em*: “Intel’s 401k-type plans are unusual in a couple of
20 ways that aren’t comforting to some investors and financial advisers. It’s embarked, essentially, on
21 an experiment with nearly \$14 billion in worker retirement money for more than 63,000
22 participants.” As this article observed, Intel decided to use “expensive, opaque and potentially risky
23 hedge funds in its main 401k investment options[.]” and to “forc[e] company contributions into
24 [hedge funds].” Hunsberger, *supra* note 4.

25 a. *The Investment Committee Implemented an Imprudent Allocation Model.*

26 115. Instead of implementing an asset allocation model consistent with prevailing
27 standards adopted by investment professionals, the Investment Committee implemented an asset
28 allocation strategy for the Intel TDPs that grossly over-weighted allocations to hedge funds,

1 commodities, and international equities as compared to target date funds available in the
2 marketplace.

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

5 **TABLE 2**

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

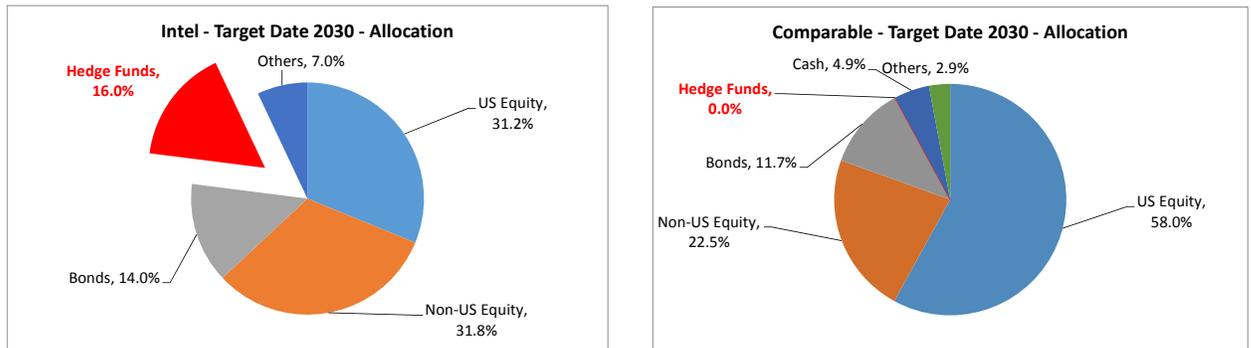
13
14 117. By comparison, the Intel 2030 TDP had approximately 21% of assets allocated to
15 hedge funds and 5% to commodities by 2014.⁹ Peer group TDFs – or funds with a “target date” of
16 2030 – do not allocate any assets to hedge funds and very few peer TDFs have even small
17 commodity stakes. Further, peer TDFs allocate 70% of equity assets to U.S. stocks and 30% to
18 foreign, whereas the Intel 2030 TDP allocates over 50% of equity investments to foreign stocks.

19 118. Figure 2 below compares the asset allocation of the 2030 Intel TDP to the average
20 asset allocations of the eight professional investment management firms represented in Table 2.¹⁰

21
22
23 ⁹*Target Date 2030 Fund*, Oregonian Live at 2 (March 31, 2014), <http://media.oregonlive.com/finance/other/Target%20Date%202030%20Fund-1.pdf>.

24 ¹⁰The categories represented in the pie chart for the 2030 Intel TDP correlate to the Investment
25 Funds as follows: the Hedge Funds category represents the Hedge Fund; the Other category
26 represents the Stable Value Fund, the Private Equity Fund, and the Commodities Fund; the US
27 Equity category represents the U.S. Large Cap Fund and U.S. Small Cap Fund; the Non U.S. Equity
28 category represents the International Stock Fund and the Emerging Markets Fund; the Bonds
category represents the Global Bond Fund. The allocations to these respective categories are based
on the allocations represented in a Target Date Funds fact sheet published by Intel effective April 30,
2015.

FIGURE 2



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

120. As of 2015, approximately \$3.63 billion of the 401(k) Plan's assets are in the Intel TDPs.¹¹

b. *The Intel TDPs Have Underperformed.*

121. As a result of the asset allocation and investment decisions, the Intel 2030 TDP underperformed peers by approximately 400 basis points (4%) in 2013.¹²

122. Because all twelve of the Intel TDPs share the same underlying investments and asset allocation model,¹³ the Investment Committee's asset allocation and investment decisions have impacted the entire family of Intel TDPs in more or less the same fashion. Morningstar commented that the entire family of Intel TDPs has underperformed peers because of these allocation and investment decisions.¹⁴

123. Table 3¹⁵ below shows how an index-based (the underlying funds are index funds) suite of target date funds offered by Fidelity Investments yielded, on average, over 4.5 times the returns of the suite of Intel TDPs.¹⁶

¹¹Robert Steyer, *supra* note 2.

¹²*Target Date 2030 Fund*, *supra* note 9.

¹³Intel Target Date Funds (Apr. 30, 2015).

¹⁴*Target Date 2030 Fund*, *supra* note 9.

¹⁵Incomplete data prevented comparison of all Intel TDPs to corresponding Fidelity TDFs.

Nevertheless, the results are sufficiently uniform to conclude that similar excess fees and underperformance would have been found for the Intel Income, 2030, 2040, 2050 and 2055 TDPs.

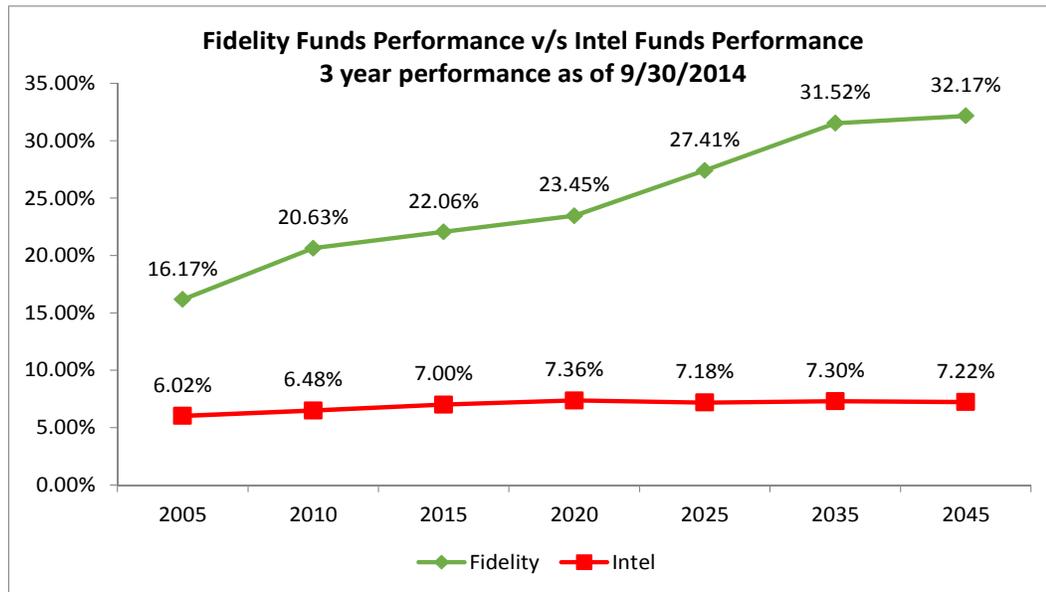
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TABLE 3

TD Year	Tckr	3 Yr Perform as of 6/30/2014		Fidelity Out Performance
		Fidelity	Intel	
2005	FJIFX	16.17%	6.02%	269%
2010	FKIFX	20.63%	6.48%	318%
2015	FLIFX	22.06%	7.00%	315%
2020	FPIFX	23.45%	7.36%	319%
2025	FQIFX	27.41%	7.18%	382%
2035	FIHFX	31.52%	7.30%	432%
2045	FIOFX	32.17%	7.22%	446%
			Avg:	354%

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

FIGURE 3



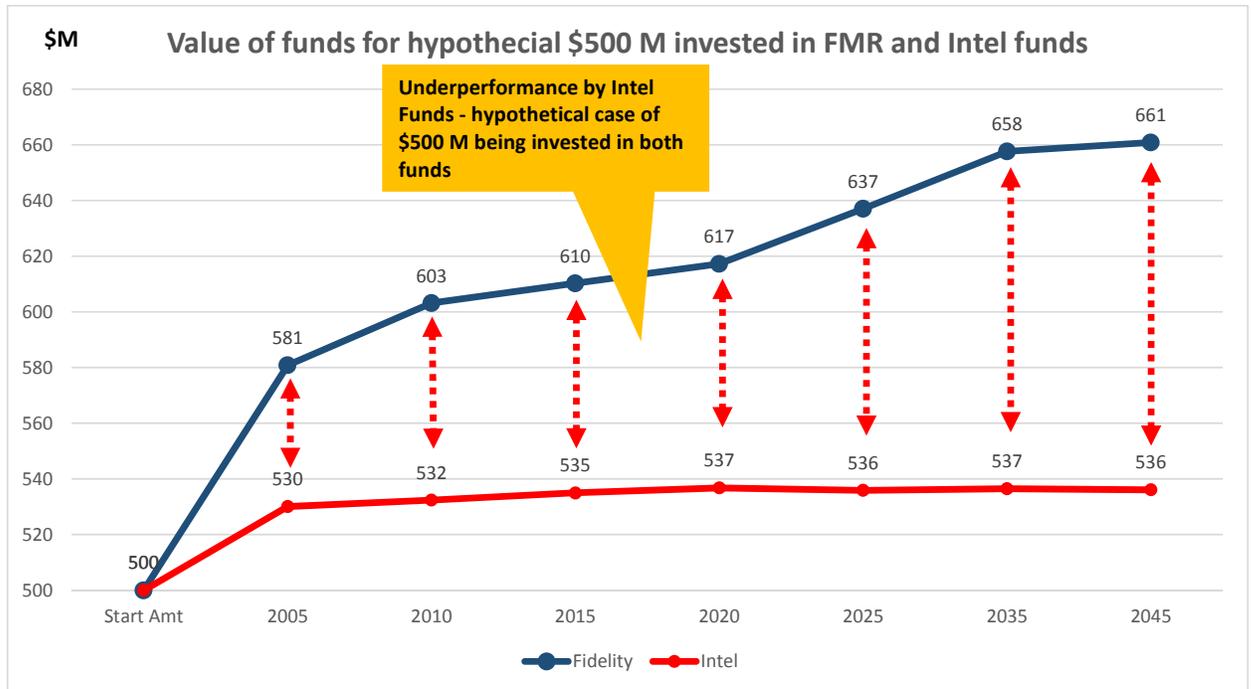
125. If the Investment Committee had simply selected index funds for the Intel TDPs, the 401(k) Plan and its participants would be far better off today. Consider Figure 3 which represents the growth of a hypothetical \$500,000,000¹⁷ investment in each Intel TDP as compared to the same

¹⁶The sources for Table 4 are, respectively: an Intel 401(k) Plan Investment Options Performance Update as of June 30, 2014 for the investment performance of the Intel TDPs; and Yahoo Finance for the Fidelity funds (comparing the adjusted closing share price on the first and last day of the three-year period ending June 30, 2014).

¹⁷A \$500,000,000 hypothetical investment is consistent with the 401(k) Plan's actual investments

1 investment in the corresponding Fidelity TDF from Table 4 during the three-year period ending June
2 30, 2014.

3 **FIGURE 4**



15 126. Assuming the \$500 million hypothetical investments described above, the 401(k)
16 Plan and its participants whose accounts were invested through the Intel TDPs would have more
17 than \$600 million in additional retirement savings as of June 2014.

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

19 127. Before the Investment Committee changed the Intel TDP allocations in approximately
20 2011, the fees for the Intel TDPs ranged from 65 basis points to 71 basis points.¹⁸

21 128. Although the fees for the Intel TDPs were already substantially higher than index-
22 based TDFs such as those offered by Fidelity, the increased allocation to hedge funds beginning in
23 2011 significantly increased the expenses of the Intel TDPs, almost doubling the range of fees to
24 between 130 to 136 basis points. This significant investment and allocation to high-fee hedge funds

25
26 given the estimated \$3.5 billion managed through the Intel TDPs and the seven Intel TDPs
27 represented here.

28 ¹⁸Intel 401(k) Savings Plan: Important Plan and Investment-Related Information, Including the
Plan's Investment Options, Performance History, Fees and Expenses, at 6-8.

1 and private equity added no value. To the contrary, investing in high-fee hedge funds and private
 2 equity caused the Intel TDPs to consistently and substantially underperform index-based TDFs since
 3 2011 as shown in Figures 3 and 4 above.

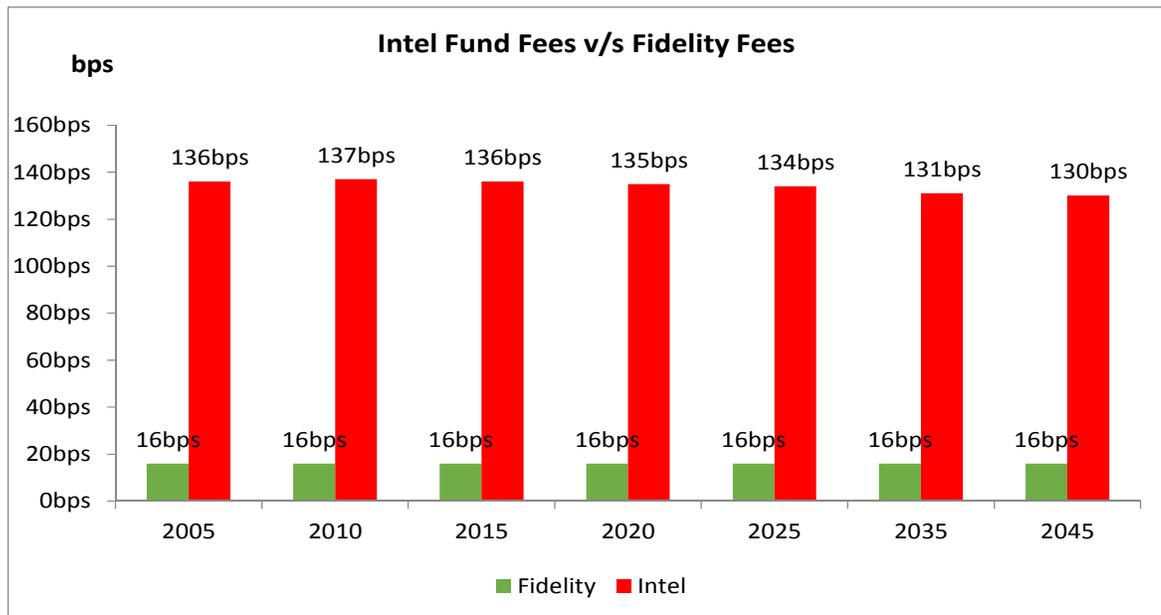
4 129. Table 4 compares the fees and expenses of the Intel TDPs to Fidelity’s index-based
 5 TDF offerings.¹⁹

6 **TABLE 4**

TD Year	Tckr	Fees		Intel Excess Fees
		Fidelity	Intel	
2005	FJIFX	0.0016	0.0136	850%
2010	FKIFX	0.0016	0.0137	856%
2015	FLIFX	0.0016	0.0136	850%
2020	FPIFX	0.0016	0.0135	844%
2025	FQIFX	0.0016	0.0134	838%
2035	FIHFX	0.0016	0.0131	819%
2045	FIOFX	0.0016	0.0130	813%
			Avg	838%

14 130. The fee differences are staggering, as Figure 5 illustrates.

15 **FIGURE 5**

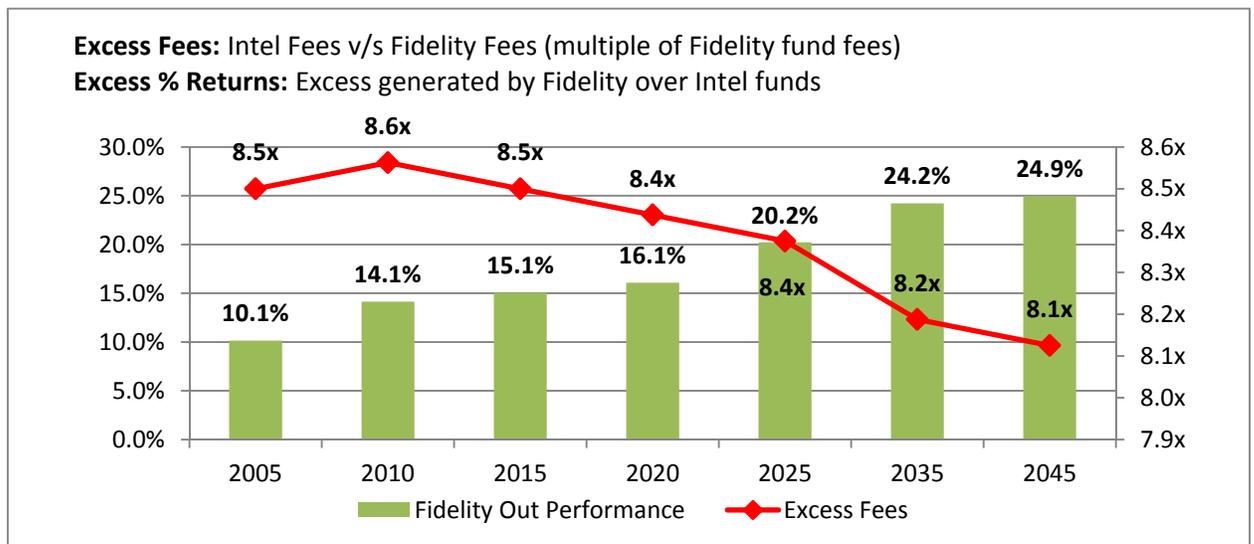


19 The sources for Table 5 are an Intel Target Date Funds fact sheet dated April 15, 2015 and fact sheets for the Fidelity funds.

131. As *What's behind the changes to Intel's worker retirement plans*, commented, the Intel TDPs are rising in expenses in contrast to the general trend in the industry, which is lowering expenses. Brent Hunsberger, *What's behind the changes to Intel's worker retirement plans*, The Oregonian (May 2, 2015), http://www.oregonlive.com/finance/index.ssf/2015/05/whats_behind_the_changes_to_in.html.

132. In other words, the 401(k) Plan and its participants paid huge fees for inferior performance, as reflected in Figure 6.

FIGURE 6



4. The Intel TDPs Imprudently Invested in Hedge Funds

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

134. MPT posits that the power of combining securities and asset classes that have low correlations to each other can bring immensely positive benefits to mitigating the impacts of market volatility to a portfolio. Behavioral theory shows that investors tend to act emotionally and irrationally to such volatility and often make knee-jerk decisions in the wake of market swings. In fact, a study circa 2008 showed that average retirement plan participants had achieved an approximate annual return of just 4% over the preceding 20 years due to such reactive impulses while the overall market (as gauged by the S&P 500) had averaged approximately 12%. Investors’

1 emotional decision making – due primarily to poorly diversified portfolios that showed pronounced
2 swings with the markets – led them to achieve barely a third of the market returns they could have
3 made had they simply stayed invested. A more diversified asset allocation tends to avert these
4 investor behavioral reactions.

5 135. Brinson, Beebower and Hood studied the impacts of asset allocation on 91 pension
6 funds over a 10 year period and found that 94% of performance can be explained purely by the asset
7 allocation and only 6% is explained by market timing and security selection. Gary P. Brinson et
8 al., *Determinants of Portfolio Performance*, 42 Financial Analysts Journal 133, 133-138 (1995). This
9 utterly refutes the alpha delivery of active securities selection, as with hedge funds, and underscores
10 that trying to achieve excess returns by either timing the markets or actively managing funds via
11 security selection is a generally superfluous strategy when considering a large pool of assets over a
12 long investment horizon covering many market cycles. Market timing and security selection are
13 typically tied to near-term cycles that tend to wash out over time. But TDFs are designed to be held
14 for a long period of time—to retirement age.

15 136. These two theories, in combination, argue for low-cost, passive fund management
16 with strictly disciplined asset allocation methodologies at the core of the investment process as being
17 the most effective and prudent approach to managing long-term, retirement-oriented assets such as
18 TDFs. This is what target date funds should seek to achieve as a one-stop fund for individual
19 retirement investors.

20 137. Hedge funds contradict these investment theories. Hedge funds are vehicles designed
21 to enable the manager to invest in near-term opportunities without adhering to a stated fund
22 objective. Most off-the-shelf TDFs go to great lengths to select underlying funds with clear
23 objectives in order to ensure that the benefits of MPT and asset allocation are properly captured.
24 1940 Act registered funds (i.e., mutual funds) in particular are obligated to state and adhere to their
25 investment objectives – therefore a fund that intends to invest in large cap value stocks will generally
26 stay in that space. In doing so, it will achieve the diversification benefits that the fund hopes to gain
27 from also having equity allocations in mid or small cap stocks and other different disciplines such as
28 growth stocks. Mutual funds also have stringent fee disclosure requirements. Even within an asset

1 class, such as equities, there are definite cyclical differences that can provide meaningful correlation
2 benefits. These benefits are even more pronounced at the asset class level.

3 138. In this regard, most TDFs employ a sliding scale of equity, fixed income and cash
4 allocations to provide substantial correlation benefits to market swings. Most off-the-shelf TDFs
5 avoid any meaningful use of leverage (as leverage is strictly constrained in 1940 Act funds) and
6 generally only minor use of derivatives usually for proxy or liquidity needs (and typically in the
7 fixed income allocation where bond liquidity is increasingly challenged). Thus the portfolio manager
8 of a standard target date fund has strong guidance as to the exposures he/she will get when
9 incorporating standard, prospectus-driven mutual funds into their fund-of-fund lineup. There is very
10 little concern that the value equity managers will flock into growth stocks and therefore create an
11 overconcentration of risk. There is even less concern that equity managers might invest heavily in
12 fixed income securities. There is essentially a mandated assurance of diversification that is lost
13 entirely when incorporating hedge funds. This is even truer of index-based TDFs where computer
14 programs dictate strict adherence to the given index and afford no manager discretion to deviate
15 from guidelines and strategies.

16 139. Hedge funds involved in event driven and directional bets are generally using either
17 focused security selection or market timing strategies, while distressed (and/or stressed) and value
18 driven are generally security selection funds. As per Brinson, Beebower & Hood, none of these
19 strategies make sense for a retirement investment. Hedge funds have been traditionally limited to
20 “accredited investors” who have over \$200,000 in annual income and/or over \$1,000,000 in net
21 worth. *Id.* The reason for limiting investment to those accredited investors is to restrict these
22 investments to those who can afford to lose their invested principal. Retirement accounts encompass
23 all levels from the c-suite to those working in the shipping department. Managing a retirement plan
24 therefore must focus always on the most vulnerable participant. Higher earning participants can
25 choose to take more risk, but TDFs are designed for everyone and need to be constructed to protect
26 the average employee.

27 140. The Intel Hedge Fund contained in the Intel TDFs purports to include 21 different
28 hedge funds. Of those funds at least 6 are primarily deemed Multi-Strategy, 5 are deemed

1 Directional, 5 involved Distressed (or Stressed) and 8 are Event Driven (several list many strategies).
2 All of these represent amongst the most potentially volatile of hedge fund strategies – with Multi-
3 Strategy in particular being the most ambiguous as the name itself indicates that the managers can
4 pretty much do whatever they want. Directional and Event driven strategies generally place bets on
5 the chance that a particular market event – such as a merger or a key interest rate change – takes
6 place. If the event does not occur, or if the ramifications are not as impactful, then the leveraging and
7 risk concentration employed will be for naught and potentially large losses can take place as a result.
8 Distressed strategies tend to seek opportunities with either equity or debt in companies or other
9 entities that are on the verge of a potentially calamitous event – such as a bankruptcy – thus driving
10 the price of their securities down. The hedge fund managers bet the event will not happen and buy
11 in. If the event does happen, the losses are usually deep and permanent. Conversely, if they are
12 “short” the event (i.e. a bet on the price of the securities going down) and it does not happen, losses
13 can exceed even the invested principal.

14 141. A key common bond across all of these strategies is that the managers often employ
15 copious amounts of leverage through various means such as borrowing, shorting or the use of
16 derivatives. They tie themselves into these positions and commit all their capital to sustain the
17 collateral requirement to maintain the trade through the cycle of the anticipated event. During this
18 build up, the funds are extremely illiquid. It is not surprising then that most hedge funds employ very
19 strict constraints around access to invested capital by their investors – often requiring months’ of
20 notice and reserving the right to deny such requests for redemptions at their discretion. During a
21 downturn event in the markets it is already well established that plan participants will tend to redeem
22 in a knee-jerk fashion. If these funds are unable to meet those redemption requests, the Investment
23 Committee will be forced to sell off other, more marketable investments – likely from the more
24 common public markets that are also likely to be experiencing the headline volatility driving these
25 investor reactions in the first place. The lock-up of hedge fund investments will cause selling in
26 traditional securities and further harm the invested principal of the plan participants.

27 142. Compounding the liquidity constraints of hedge funds are the common use of “side
28 pockets,” a practice whereby hedge fund managers move illiquid or impaired assets out of the main

1 fund into a separate holding vehicle. Creating a side pocket is solely within the discretion of the
2 hedge fund manager. As the Wall Street Journal reported, as early as 2006, regulators and investors
3 were become concerned about the abusive use of side pockets to mask underperformance and inflate
4 manager performance fees.²⁰ Further, because side pockets are often used for illiquid investments,
5 hedge fund managers impose onerous withdrawal constraints. In the wake of the 2008 financial
6 crisis, the SEC instituted several enforcement proceedings against hedge fund managers for
7 improper use of side pockets.²¹

8 143. Further, the vast majority of plan participants will roll their 401(k) investments into
9 an IRA (upon retirement or changing employers) or into a new employer's plan. Thus portability and
10 liquidity are important considerations in constructing and selecting a TDF. But hedge funds are not
11 liquid and not portable. During a volatile or down market, participants attempting to liquidate Intel
12 TDP holdings could find themselves constrained or forced to lock-in substantial realized losses.
13 Thus, the optimal TDF emphasizes liquidity at all points in the glide-path.

14 **5. Hedge Funds and Private Equity Are Generally Not Suitable For Balanced**
15 **Funds**

16 144. Like TDFs, balanced funds are designed as a one-stop fund for retirement plan
17 investors. A typical 60/40 equity/bond balanced fund is intended to reflect the broad performance of
18 the key securities markets in a ratio that balances risk and return suitable for the average investor.

19 145. Like TDFs, balanced funds in retirement plans need minimum levels of liquidity, and
20 volatility. And, given the two key investment theories discussed above, the surest way to consistent
21 and meaningful performance is low-cost index funds.

22 146. For these reasons, hedge funds and private equity are generally not suitable for
23 balanced funds and few, if any, balanced fund portfolio managers invest in hedge funds and private
24 equity. As the detailed analyses of hedge funds and private equity that follow reflect, hedge funds

26 ²⁰Gregory Zuckerman & Scott Patterson, *'Side Pocket' Accounts of Hedge Funds Studied*, The Wall
27 Street Journal (Aug. 4, 2006) <http://www.wsj.com/articles/SB115465505123626547>.

28 ²¹SEC Charges Hedge Fund Managers With Fraudulently Overvaluing Side-Pocketed Assets,
Defalcation, and Material Misrepresentation, U.S. Securities and Exchange Commission (October
19, 2010), <http://www.sec.gov/litigation/litreleases/2010/lr21699.htm>.

1 and private equity have high and hidden fees, uncompensated risk, higher than expected volatility,
 2 correlation to other asset classes, lack of transparency, and virtually no constraints on investment
 3 decisions (unlike mutual funds), notwithstanding the nominal strategy or asset class described in the
 4 offering and partnership documents.

5 **6. Risks and Costs of Hedge Funds and Private Equity**

6 147. Hedge funds and private equity funds are generally structured as investment
 7 partnerships. The investors are limited partners and the managers are general partners. Managers are
 8 typically paid under a “2 and 20” formula, meaning that the manager gets 2% of the assets under
 9 management and 20% of the profits generated by the fund’s investments.

10 a. *Hedge Funds.*

11 148. A “hedge fund” pools investor assets to pursue a variety of active management
 12 strategies.

13 149. Hedge funds invest in many different types of assets. They “do not constitute an asset
 14 class but rather provide access to particular trading strategies that may be employed by specific fund
 15 managers.”²² Hedge funds usually are classified according to their investment strategy.

16 (1) Valuation Risk.

17 150. Because the investment holdings and investment strategies of many hedge funds are
 18 often not well known, even to institutional investors like the Plans,²³ it is difficult for the fund assets
 19 to be marked to market. The Government Accountability Office noted in 2011 that “[b]ecause many
 20 hedge funds may own [securities traded infrequently or in low volume] and derivatives whose
 21 valuation can be complex and subjective, a retirement plan official may not be able to obtain timely
 22 information on the value of assets owned by a hedge fund. Further, hedge fund managers may
 23
 24

25 ²²Theda R. Haber et al., Report to the Secretary of Labor: *Hedge Funds and Private Equity*
Investments, at 6 (November 2011), <http://www.dol.gov/ebsa/pdf/2011ACReport3.pdf>.

26 ²³To think of the Plans as institutional investors is misleading. To be sure, the large amount of assets
 27 in the Plans affords them pricing opportunities such as selecting institutional product structures, e.g.,
 28 institutional share class mutual funds versus retail funds, but the vast majority of ultimate investors
 are rank and file employees, not sophisticated investors with millions of dollars in assets and the risk
 appetite to take a flyer on hedge funds and private equity.

1 decline to disclose information on asset holdings and the net value of individual assets largely
2 because the release of such information could compromise their trading strategy.”²⁴

3 (2) Investment Risk.

4 151. Hedge funds pose risks not found with traditional investments managed by registered
5 investment companies. For example, registered investment companies are subject to strict leverage
6 limits, whereas hedge funds “can make relatively unrestricted use of leverage.” *Id.* at 7. Leverage –
7 essentially borrowed money – “can magnify profits, but can also magnify losses to the fund if the
8 market goes against the fund’s expectations.” *Id.*

9 (3) Lack of Liquidity.

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

13 153. Alternately, hedge fund managers may only allow one capital redemption per quarter.
14 Once invested in a hedge fund, it is difficult for an investor to sell its interest in the fund and move to
15 another option. Unlike investments in other vehicles like mutual funds, a hedge fund investment
16 cannot simply be bought or sold any day of the week.

17 154. The hedge funds in Intel’s Hedge Fund typically require at least thirty days’ notice to
18 receive or redeem capital.²⁵

19 (4) High Fees.

20 155. The hedge funds in Intel’s Hedge Fund (the Hedge Fund managed by Intel is a fund-
21 of-hedge funds) charge incentive fees, and inclusion of hedge fund investments in the Plans’
22 portfolios has driven fees up.²⁶

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24
25 ²⁴Barbara Borbjerg, *Plans Face Challenges When Investing in Hedge Funds and Private Equity*, at 6
(August 31, 2011), <http://www.gao.gov/assets/90/82457.pdf>.

26 ²⁵Interview Moderated by Stacy L. Schaus, PIMCO Executive Vice President and Defined
27 Contribution Practice Leader with Stuart Odell, Assistant Treasurer of Retirement Investments, Intel
28 Corp., (March/April 2014)
http://media.pimco.com/Documents/PIMCO_DC_Dialogue_Odell_Schaus_Mar_Apr_2014.pdf.

²⁶*Id.*

1 156. Even without an incentive fee, a two percent annual flat fee on assets under
2 management is high and not justified in the defined contribution plan context. Such a fee is up to ten
3 times higher than the average standard wholesale level fees for pension plan investments – for
4 example, 2% versus 0.20%.²⁷ Indeed, one hedge fund industry expert has calculated that hedge fund
5 managers collected 98% of the profits generated by hedge funds during the years 1998-2010.²⁸

6 157. The high fees of hedge funds can have a significant negative impact on net
7 investment returns. For example, under the typical two and twenty fee structure, a 12% return would
8 be reduced to only 8% after deduction of fees.²⁹

9 158. The Investment Committee purportedly chose to invest in hedge funds in an attempt
10 to achieve at least three goals: to increase diversification of plan assets; to decrease the volatility of
11 the plan's investment performance; and to enhance the plan's performance overall.³⁰ However, such
12 investments do not provide adequate value in these areas to justify their high fees.

13 159. For example, hedge fund investments do not provide substantial risk reduction or risk
14 diversification for pension plan assets because they are correlated to the equity market. Correlation
15 means the extent to which different asset classes will simultaneously rise or fall, in lock step.
16 Specifically, according to data compiled by the hedge fund house AQR, the HFRI Fund Weighted
17 Composite Index – a leading hedge fund industry index – was 0.93 correlated with equity markets,
18 or nearly 100% correlated. Moreover, plan fiduciaries do not have sufficient visibility into the
19 strategies of their hedge fund investments to be able to properly understand the risk profile of the
20 investment; thus, hedge fund investment is not an effective diversification tool.

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24 ²⁷Bill Parish, *Intel Q4 2013 Earnings- Time to Fix Pension Plan*, Bill Parish- Parish & Company
25 Registered Investment Advisor Blog (January 16, 2014) ,<http://blog.billparish.com/2014/01/16/intel-q4-2013-earnings-time-to-fix-pension-plan/>.

26 ²⁸Simon Lack, *How The Hedge Fund Industry Has Kept 98% of The Profits In Fees*, SL Advisors:
27 The Hedge Fund Mirage Blog (January 23, 2012), <http://www.sl-advisors.com/how-the-hedge-fund-industry-has-kept-98-of-the-profits-in-fees/>.

28 ²⁹Borbjerg, *supra* note 24, at 8, n. 11.

³⁰*401K Global Diversified Fund*, *supra* note 5, at 3.

1 (5) Lack of Transparency.

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

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

13 162. It is very difficult for retirement plan fiduciaries to evaluate the performance of hedge
14 funds, because of the variety of hedge fund strategies; the substantial rate of turnover of funds
15 opening and closing; the selection bias created when new funds choose not to report returns until
16 after they have a run of good years; and the survivorship bias created when closed funds simply
17 disappear from hedge fund indices.³¹

18 (6) Operational Risks.

19 163. Retirement plans investing in hedge funds are also exposed to greater operational
20 risks than presented by traditional investments. As the GAO Report explained, operational risk is the
21 "risk of investment loss because of inadequate or failed internal processes, people, and systems, or
22 problems with external service providers." "Operational problems can arise from a number of
23 sources, including inexperienced operations personnel; inadequate internal controls; lack of
24 compliance standards and enforcement; errors in analyzing, trading or recording positions; or
25 outright fraud."³²

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28 ³¹Haber, *supra* note 22, at 13.

³²Borbjerg, *supra* note 24, at 8.

1 164. Hedge funds are not registered with the SEC, and are subject to few regulatory
2 controls. Unlike mutual funds and other registered investment companies in the United States, hedge
3 funds may avoid the registration requirement imposed by the Investment Company Act.³³ As Mr.
4 Dodd explained, the absence of such regulatory controls, coupled with the fact that many hedge
5 funds make it difficult for their assets to be marked to market, make hedge fund investments
6 “especially prone to financial fraud.”

7 165. Further, hedge fund strategies can be exceedingly complex. A prudent fiduciary must
8 be capable of understanding the strategy in order to evaluate whether it is appropriate for investment
9 of retirement plan assets. “[P]articular care should be exercised in due diligence of hedge funds,
10 because of the complex investment strategies they employ; the fact that hedge fund organizations are
11 frequently young and small; their use of leverage and the associated risks; the possibilities of
12 concentrated exposure to market and counterparty risks, and the generally more lightly regulated
13 nature of these organizations.”³⁴ “The process of selecting and monitoring hedge fund investments
14 requires additional resources and continuous support from experienced professionals, which may be
15 substantially more expensive than those required to select and monitor traditional investments.
16 Fiduciaries should understand the effort and costs that will be required, and should commit these
17 resources prior to investing in hedge funds.”³⁵

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

21 b. *Private Equity.*

22 167. The term “private equity” refers to a form of alternative investment which uses
23 pooled funds to invest in privately held companies. Investors are generally described as “limited
24 partners.”

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26 ³³Haber, *supra* note 22.

27 ³⁴Gary Bruebaker et al., *Principles and Best Practice for Hedge Fund Investors*, U.S. Commodity
28 Futures Trading Commission at 14 (January 15, 2009),
<http://www.cftc.gov/idc/groups/public/@swaps/documents/file/principlespractices.pdf>.

³⁵*Id.* at 7.

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

7 169. Private equity investments pose several challenges for retirement plans like the Intel
8 Plans at issue. These challenges generally make private equity investments imprudent for the Intel
9 Plans. In fact, the four largest TDF providers in the market, BlackRock, Fidelity, T. Rowe Price, and
10 Vanguard, do not include private equity in their TDF funds.³⁶

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

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

17 171. The private equity funds in Intel’s Private Equity Fund charge incentive fees.

18 172. An examination of private equity firms by the SEC has found that many private
19 equity managers charge hidden and inflated fees to investors in their funds. According to Andrew
20 Bowden, director of the SEC’s Office of Compliance Inspections and Examinations (OCIE), the
21 SEC identified “violations of law or material weaknesses in controls over 50% of the time.” This,
22 according to Mr. Bowden, is “a remarkable statistic.”³⁷ The SEC’s examination found that the most
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24

25 ³⁶Margaret Collins & Devin Banerjee, *Would You Like Some Private Equity in Your 401(k)?*,
26 Bloomberg Businessweek, (Apr. 4, 2013). <http://www.bloomberg.com/bw/articles/2013-04-04/would-you-like-some-private-equity-in-your-401-k>.

27 ³⁷Andrew J. Bowden, Director of the Office of Compliance Inspections and Examinations,
28 Spreading Sunshine in Private Equity, Address Before Private Fund Compliance Forum (May 16,
2014). <http://www.sec.gov/news/speech/2014--spch05062014ab.html>.

1 egregious violations were in the areas of fees, where the SEC found inadequate disclosures to
2 investors. Examples of hidden or undisclosed fees include:

- 3 (a) Accelerated Monitoring Fees. Many private equity managers charge monitoring fees
4 to the portfolio companies in the fund. These fees are charged at the portfolio
5 company level, not the fund level, and, thus, are generally invisible to investors.
6 Moreover, private equity managers often force monitoring agreements of ten years or
7 more on the portfolio companies they control. When the portfolio company is sold
8 before the monitoring agreement expires, the private equity manager accelerates the
9 fees for the remaining years of the contract even though the manager is no longer
10 monitoring the portfolio company. Disclosure of this practice is virtually nonexistent.
- 11 (b) Operating Partners. Private equity managers often foist “operating partners” or
12 consultants in which they have an interest or affiliation on portfolio companies
13 without the knowledge of investors. The fees collected by the private equity managers
14 via these arrangements are not disclosed to investors. As Mr. Bowden commented:
15 “Many of these Operating Partners, however, are paid directly by portfolio companies
16 or the funds without sufficient disclosure to investors. This effectively creates an
17 additional “back door” fee that many investors do not expect, especially since
18 Operating Partners often look and act just like other adviser employees. They usually
19 work exclusively for the manager; they have offices at the manager’s offices; they
20 invest in the manager’s funds on the same terms as other employees; they have the
21 title “partner”; and they appear both on the manager’s website and marketing
22 materials as full members of the team. Unlike the other employees of the adviser,
23 however, often they are not paid by the adviser but instead are expensed to either the
24 fund or to the portfolio companies that they advise.” *Id.* Mr. Bowden continues: There
25 are at least two problems with this. First, since these professionals are presented as
26 full members of the adviser’s team, investors often do not realize that they are paying
27 for them a la carte, in addition to the management fee and carried interest. The
28 adviser is able to generate a significant marketing benefit by presenting high-profile
and capable operators as part of its team, but it is the investors who are unknowingly
footing the bill for these resources. Second, most limited partnership agreements
require that a fee generated by employees or affiliates of the adviser offset the
management fee, in whole or in part. Operating Partners, however, are not usually
treated as employees or affiliates of the manager, and the fees they receive therefore
rarely offset management fees, even though in many cases the Operating Partners
walk, talk, act, and look just like employees or affiliates.” *Id.*
- (c) Usurping Fee Discounts. Private equity firms leverage investor capital to obtain
discounts on professional and vendor services for themselves, but cause their funds
and portfolio companies to use the same professionals and vendors without any
discounts.
- (d) Charging undisclosed “administrative” or other fees not contemplated by the limited
partnership agreement.
- (e) Exceeding the limits set in the limited partnership agreement around transaction fees
or charging transaction fees in cases not contemplated by the limited partnership
agreement, such as recapitalizations.
- (f) Hiring related-party service providers, who deliver services of questionable value.³⁸

38 *Id.*

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

9 174. The high fees of private equity funds can have a significant negative impact on net
10 investment returns. For example, under the typical two and twenty fee structure, a 12% return would
11 be reduced to only 8% after deduction of fees. GAO 11-901SP at 8, n.11.

12 (2) Valuation and Reporting.

13 175. The SEC has found deep problems in the way private equity conducts valuations of
14 Portfolio Companies. Common valuation problems identified by the SEC include:³⁹

- 15 (a) Advisers using a valuation methodology that is different from the one that has been
16 disclosed to investors.
- 17 (b) Cherry-picking comparables or adding back inappropriate items to EBITDA —
18 especially costs that are recurring and persist even after a strategic sale — if there are
19 not rational reasons for the changes, and/or if there are not sufficient disclosures to
20 alert investors.
- 21 (c) Changing the valuation methodology from period to period without additional
22 disclosure — even if such actions fit into a broadly defined valuation policy — unless
23 there’s a logical purpose for the change. For instance, the SEC has observed advisers
24 changing from using trailing comparables to using forward comparables, which
25 resulted in higher interim values for certain struggling investments. While making
26 such changes is not wrong in and of itself, the change in valuation methodology
27 should be consistent with the adviser’s valuation policy and should be sufficiently
28 disclosed to investors.

24 176. These valuation practices make it exceedingly difficult, if not impossible, to monitor
25 manager performance and evaluate fees accurately where fees are tied to assets under management
26 and therefore increase as valuations increase.

28 ³⁹*Id.*

1 **7. The Intel Fiduciaries Failed to Conduct an Appropriate Investigation**

2 177. Despite the gravity and variety of the risks inherent in investing defined contribution
3 plan assets in hedge funds, fiduciaries of the Plans allocated substantial Plan assets to hedge fund
4 investments—eventually almost \$2.5 billion as of the end of 2014. The Intel fiduciaries did not
5 properly conduct a prudent investigation.

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

7 178. According to Brent Hunsberger, *What's inside Intel's retirement plans? Hedge funds.*
8 *Lots of 'em.* (Aug. 30. 2014), Steven Odell, Intel's assistant treasurer for retirement plan
9 investments, and the Investment Committee members strongly believe that hedge funds can reduce
10 the ups and downs of traditional stock and bond markets. Hunsberger, *supra* note 4. The Investment
11 Committee supposedly included hedge funds in the Plans' asset allocation portfolios to increase
12 diversification and reduce risk.

13 179. But hedge funds should not be considered an independent asset class for purposes of
14 diversification. Rather, hedge funds generally invest in other widely held asset classes such as bonds
15 and equities but implement investment strategies that supposedly reduce volatility and risk. Thus it is
16 a mistake to think of hedge funds as asset diversification. Rather, hedge funds are simply a form of
17 active management. In other words, hedge funds are strategy diversification.

18 180. Odell adds that he believes hedge funds have good risk-adjusted returns.⁴⁰

19 181. Odell conceded that the Plans' hedge fund portfolio did not meet expectations during
20 the 2008 financial crisis—it lost 17% in 2008 as compared to a 5.2 percent gain in the Barclay's U.S.
21 Aggregate Bond Index. This should have caused the Investment Committee to reconsider its
22 investments in hedge funds.

23 182. But based on the Forms 5500 filed with the Department of Labor, the Investment
24 Committee added hedge funds after 2008, raising the number of managers in the hedge fund
25 portfolio from about 10 or 12 to 21 by 2011. Indeed, in 2009 the 401(k) Plan had less than one
26

27 ⁴⁰Robert Steyer, *Intel's 401(k) reboot aims for better outcomes*, Pensions & Investments (March 5,
28 2012), <http://www.pionline.com/article/20120305/PRINT/303059972/intels-401k-reboot-aims-for-better-outcomes/M>.

1 million dollars in hedge fund investments and the Retirement Plan had approximately \$550 million.
2 By the end of 2011, the 401(k) Plan held \$680 million in hedge fund assets and the Retirement Plan
3 held approximately \$1 billion. Rather than learn from the failures of hedge funds in 2008, the
4 Investment Committee doubled down with the Retirement Plan and increased the 401(k) Plan's
5 investment from under a million to over \$680 million.

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

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

9 184. In addition to the Investment Committee's personal experience with hedge fund
10 underperformance in 2008, numerous studies and reports published in the years before and after the
11 2008 financial crisis questioned the value of hedge funds. In light of its own experience and the
12 wealth of data available to it, the Investment Committee knew or should have known during the
13 Target Date and Diversified Fund Class Periods that hedge funds were an imprudent investment for
14 target date funds and balanced funds.

15 185. Unlike more traditional investment products, hedge funds typically charge both a
16 management fee (typically 1-2% and sometimes more) based upon the amount of assets under
17 management (the "Management Fee") and an annual performance fee (typically 20%) based on the
18 success of the fund (the "Performance Fee"). *The New Money Men*, The Economist (Feb. 17, 2005),
19 <http://www.economist.com/node/3666459>. Performance-based compensation arrangements with
20 managers may create an incentive to make investments that are riskier or more speculative than
21 would be the case if such arrangements were not in effect. In addition, because performance-based
22 compensation is calculated on a basis that may include unrealized appreciation of client account
23 assets, this compensation may be greater than if such compensation were based solely on realized
24 gains.

25 186. By at least 2006, studies of the performance of alternative investments began to
26 reveal that the returns produced by hedge funds – at least after 2000 – did not exceed the investment
27 performance of index-tracking mutual funds (at least once fees were subtracted from performance).
28 Reports of such studies were not buried in some obscure investment newsletter but were widely

1 published in articles such as *Rolling in It: Why Investors should kick up a fuss about hedge-fund fees*,
2 The Economist (Nov. 16, 2006), <http://www.economist.com/node8173853>; *The New Money Men*,
3 The Economist, Feb. 17, 2005 (citing studies). As a result, investors in hedge funds were taking
4 greater risks and paying much higher fees for performance that could have been obtained for lower
5 risk and lower fees.

6 187. As the Economist succinctly explained in *Rolling in It*, by November 2006, hedge
7 fund managers were receiving “Alpha pay for beta performance.” As Narayan Naik of the London
8 Business School noted in that Economist article, “pension funds ha[d] been advised to move into
9 hedge funds by consultants,” but those consultants had relied on outdated data from the 1990s and
10 biased data regarding performance and returns. *Rolling in It: Why Investors should kick up a fuss*
11 *about hedge-fund fees*, The Economist (Nov. 16, 2006), <http://www.economist.com/node8173853>.

12 188. As reported in a New York Times article, *How to Pay Millions and Lag Behind the*
13 *Market* on October 19, 2013, many overseers of public pension funds, desperate to bolster returns
14 and meet ballooning retiree obligations, have turned from traditional investments like stocks and
15 bonds to hedge funds and private equity. Gretchen Morgenson, *How to Pay Millions and Lag Behind*
16 *the Market*, The New York Times (October 19,
17 2013), [http://www.nytimes.com/2013/10/20/business/how-to-pay-millions-and-lag-behind-the-](http://www.nytimes.com/2013/10/20/business/how-to-pay-millions-and-lag-behind-the-market.html?_r=0)
18 [market.html?_r=0](http://www.nytimes.com/2013/10/20/business/how-to-pay-millions-and-lag-behind-the-market.html?_r=0).

19 189. In 2013, Benchmark Financial Services, a forensic firm hired by a Rhode Island
20 council of the American Federation of State, County and Municipal Employees, issued a report,
21 <http://www.ricouncil94.org/Portals/0/Uploads/Documents/Rhode%20Island%20X.pdf>, that
22 concluded that the Rhode Island Pension system’s \$2 billion investment in high-cost and opaque
23 alternative investments in hedge funds, private equity and venture capital had failed to outperform
24 the pension plan’s peer plans. Benchmark Financial Services, *Rhode Island Public Pension Reform:*
25 *Wall Street's License to Steal*, Rhode Island Council 94 (October 17,
26 2013), <http://ricouncil94.org/portals/0/uploads/documents/rhode%20island%20x.pdf>.

27 190. As reported by *Reuters* on January 7, 2011, in *Hedge Funds Rise in 2010 but lag*
28 *broader market*, both the Hennessee Group and Hedge Fund Research, groups that track

1 performance and asset flows, reported hedge funds gained approximately 10 percent in 2010, but
2 lagged behind the average stock market indexes and fell short of the average stock mutual fund's
3 returns. Svea Herbst-Bayliss, *Hedge funds rise in 2010 but lag broader market*, Reuters (January 7,
4 2011), [http://www.reuters.com/article/2011/01/07/us-hedgefunds-performance-](http://www.reuters.com/article/2011/01/07/us-hedgefunds-performance-idUSTRE7063QR20110107)
5 [idUSTRE7063QR20110107](http://www.reuters.com/article/2011/01/07/us-hedgefunds-performance-idUSTRE7063QR20110107). As reported by Reuters, the S&P 500 index gained 12.8 percent and the
6 average stock mutual fund rose 17.48 percent, according to data from Lipper Inc.

7 191. As reported in a 2012 Economist article, *Rich Managers, Poor Clients: A Devastating*
8 *Analysis of Hedge Fund Returns* (citing Simon Lack, *The Hedge Fund Mirage: The Illusion of Big*
9 *Money and Why It's Too Good to Be True*, (2012)) “since 1998, the effective return to hedge-fund
10 clients has only been 2.1% a year, half the return they could have achieved by investing in boring old
11 Treasury bills.” *Rich Managers, poor clients: A devastating analysis of hedge-fund returns*, The
12 Economist: Buttonwood’s notebook blog (January 7, 2012),
13 <http://www.economist.com/node/21542452>.

14 192. Surveys conducted of pension funds (both public and private) showed that fewer than
15 half the pension funds surveyed have investments in private equity and about one quarter have
16 investments in hedge funds. Borbjerg, *supra* note 24, at 13-19. Among those pension plans that do
17 invest in hedge funds and/or private equity, the investments generally represent a small share of the
18 total plan assets. According to the GAO Report one survey showed that “the average allocation to
19 hedge funds among plans with such investments was about 4 percent in 2007” and “among plans
20 with investments in private equity, the average was about 5 percent.” *Id.* at 13.

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

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

1 *Id.* at 13-14. The data on hedge fund and private equity allocations set forth in the GAO Report was
2 based on a survey conducted by Pension and Investments in 2007 of the largest 200 plans, ranked by
3 combined defined benefit and defined contribution plan assets. Of the 200 plans surveyed, only 133
4 completed the survey and provided asset allocation information.

5 194. Although there are a handful of very successful hedge funds and hedge fund
6 managers who have delivered good returns for their investors, the performance of hedge funds as a
7 group has not been good, the hedge fund indices suffer from several deficiencies, of which the
8 Investment Committee should have been aware in 2008-2011, and the overwhelming percentage of
9 hedge fund profits flow to managers, not investors.

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

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

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

24 198. Hedge funds also may hold illiquid investments that are valued at the discretion of the
25 manager. Given that fees are based on assets under management, hedge fund managers have an
26 incentive to inflate valuations to increase fees as well as to boost performance.

27 199. The various hedge fund indices do not have common standards. Indices differ on the
28 number of funds covered, inclusion criteria, strategy definitions, etc. They even account for

1 membership and survivorship bias differently. For instance, while Tremont Capital Management
2 segments funds into 9 strategies, Hedge Fund Research uses 20 strategies, and the Hennessee Group
3 uses 23 strategies. Inclusion criteria range from minimum assets to proof of an audited statement, for
4 example. Such differences can result in significant variation in performance statistics. As such, even
5 simple comparisons among hedge funds can be misleading.

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

8 201. In 2006, Vanguard published “Understanding Alternative Investments: A Primer on
9 Hedge Fund Evaluation.” Among other things, the author concluded: “Reported hedge fund returns
10 contain significant biases that skew conventional mean-variance and regression analysis.” The
11 Vanguard Report observed that generally hedge funds do not mitigate market risk to the extent
12 expected by investors. Christopher B. Phillips, *Understanding Alternative Investments: A Primer on*
13 *Hedge Fund Evaluation*, Vanguard Investment Counseling and Research
14 (2006), <https://personal.vanguard.com/pdf/s554.pdf>.

15 202. Hedge funds can be classified into two basic categories: non-directional and
16 opportunistic. Opportunistic strategies generally seek to overweight or underweight exposure to
17 systematic risk factors to exploit general market trends. Thus, opportunistic strategies generally are
18 exposed to the same market risk as the broader markets. Non-directional strategies are closest to the
19 original intent of hedge funds, whereby long and short positions are established in securities that
20 bear similar risk factor exposures. Consequently, security selection is critical.

21 203. Opportunistic strategies reveal similar mean returns, suggesting investors are exposed
22 to greater than expected risk. *Id.* at 10.

23 204. Certain non-directional strategies, including convertible arbitrage and fixed income
24 arbitrage, have recorded steeper losses than gains, suggesting that the significant relative downside
25 risk of volatility is asymmetric, which disproportionately costs investors in down markets.

26 205. Further, hedge fund use of leverage and derivatives can cause disproportionate
27 movements in hedge funds returns as compared to underlying asset class returns. These non-linear
28 movements can distort interpretation of mean and variance.

1 206. And event-driven, convertible arbitrage and fixed income arbitrage strategies have
2 highly negatively skewed returns. *Id.* at 11.

3 207. Thus, the author concluded (in 2006): “The implications of this are important,
4 because even with [hedge fund] index returns largely self-reported and concentrated on those funds
5 that do not fail, investors remain exposed to significant levels of extreme returns, particularly to the
6 downside. Accounting for survivorship bias and self-reporting would likely increase the non-
7 normality represented in hedge fund indexes. In sum, the experiences of individual and institutional
8 investors probably differ greatly from what might be expected from index-level analysis, with
9 investors exposed to greater probabilities of extreme returns.” *Id.* at 11.

10 208. With respect to operational risk, financial experts were reporting as early as 2008 that
11 operational risk associated with conflicts of interest within the fund and external to the fund can lead
12 to reduced average annualized returns by 1.68%.⁴¹

13 209. With respect to actual investor experience, the authors of a study first presented in
14 2009 and published in 2011 concluded that “the real alpha of hedge fund investors is close to
15 zero.”⁴² In other words, for all the active management and esoteric strategies employed by hedge
16 fund managers, the hedge fund managers add little or no value. The authors go on to conclude that
17 “[i]n absolute terms, the dollar-weighted returns [of hedge funds] are reliably lower than the return
18 of the S&P 500 index, and are only marginally higher than the risk-free rate as of the end of 2008.”
19 *Id.* These authors in turn cite to other studies finding small and sporadic alpha in hedge funds. The
20 main finding of the authors was that actual investor returns are 3 to 7 percent lower than reported
21 hedge fund returns. They conclude in 2009 that the actual risk-return profile of hedge fund investors
22 is much worse than investors would expect from observing hedge fund indices.

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25 ⁴¹Stephen Brown et al., *Mandatory Disclosure and Operational Risk: Evidence from Hedge Fund*
26 *Registration*, *Journal of Finance* (2008),
<http://depot.som.yale.edu/icf/papers/fileuploads/2472/original/06-15.pdf>.

27 ⁴²Ilia D. Dichev & Gewn Yu, *Higher risk, lower returns: What hedge fund investors really earn*, 100
28 *Journal of Financial Economics* 248 (July 20,
2009), <http://www.people.hbs.edu/gyu/higherrisklowerreturns.pdf>.

1 210. In 2010, Vanguard published a report titled “Do hedge funds hedge? The experience
2 of the Great Recession.”⁴³ The authors compared the performance of hedge funds to broad market
3 indices and a 60/40 portfolio of equities and bonds from October 2007 through February 2010.
4 During the first part of this period, October 2007 to February 2009, hedge fund strategies declined at
5 about -2% to -1.3%, substantially better than the broader equity indices, but not much better than a
6 60/40 portfolio, which had monthly returns of -2.3% during the same period. *Id.* at 3. From March
7 2009 to February 2010, however, the 60/40 portfolio outperformed all hedge fund categories except
8 one. And equity indices outperformed all hedge fund strategies substantially. *Id.* Moreover, the
9 authors reported a high performance correlation between all hedge fund categories, except one, and a
10 60/40 portfolio. The monthly correlation of the fund-of-hedge-funds index (the Intel Hedge Fund is a
11 fund-of-hedge funds) to a 60/40 portfolio was 0.67 during the period, raising serious questions about
12 whether there was any hedging at all. *Id.* at 3.

13 211. Indeed, just as the Investment Committee was making huge bets on hedge funds with
14 retirement savings, the Economist was reporting on the pitfalls of hedge funds.⁴⁴ Among other
15 things, the Economist noted that hedge funds were performing poorly in volatile markets, “the very
16 conditions in which hedge funds are meant to prosper.” The Economist presented a line chart
17 comparing hedge fund index returns with the S&P 500, which showed extremely high correlation in
18 volatility and performance, thus prompting the caption “Unhedged?”

19 212. In sum, the downside performance of hedge funds in 2008, although superior to
20 equity markets, nevertheless disappointed investors and did not provide the hedge that investors
21 expected. Hedge funds failed to do much better than a 60/40 portfolio in 2008, and have done a lot
22 worse since, including in the period March 2009 to 2011, when the Investment Committee loaded up
23 on hedge funds.

24
25 _____
26 ⁴³Geetesh Bhardwaj, Ph.D., *Do hedge funds hedge? The experience of the Great*
27 *Recession*, Vanguard Research (2010),
https://pressroom.vanguard.com/content/nonindexed/Do_hedge_funds_hedge_the_experience_of_the_great_recession.pdf.

28 ⁴⁴*Many unhappy returns*, The Economist (Aug. 20, 2011),
<http://www.economist.com/node/21526326>.

1 213. Indeed, institutional investors were questioning the virtues of hedge fund investments
 2 just as the Investment Committee was loading up on them. A survey of such investors revealed the
 3 following⁴⁵:

- 4 • 70% of institutional investors were demanding more transparency
- 5 • 80% of respondents reported a desire for better transparency into valuation
methodologies
- 6 • Whereas the 2008 respondents ranked poor performance as their #1 concern, by Q1
2010 they ranked “lack of transparency” and “liquidity risk” as their top concerns
- 7 • 72% of investors in hedge funds in 2010 were institutions, not individuals such as
retirement plan participants, and the vast majority did so for short time horizons: 94%
8 for 3 years; 52% for 6 years; and only 31% for 10 years or more
- 9 • Only 8% of hedge fund investors sought decreased volatility by investing in hedge
funds, suggesting that 92% of investors were well aware that hedge funds would
10 likely introduce more volatility
- 11 • Even amongst this institutional respondent base, nearly 50% allocated less than 10%
to hedge funds

12 214. More recently, hedge funds have continued to badly underperform and fail to provide
 13 downside market protections. As recently reported in the New York Times,⁴⁶ hedge fund investors
 14 have suffered deep losses in 2015. Investors in prominent and lesser known hedge funds have seen
 15 all of 2015’s gains wiped out, and are now in the red. Pershing Square Capital Management has lost
 16 9.4%; Marcato International has lost 11.6%; Glenview Capital Management is down 13.5%. Because
 17 of continued poor performance, investors are withdrawing from hedge funds and causing many
 18 hedge funds to close. Preqin, which publishes quarterly reports on hedge fund performance, recently
 19 reported that the third quarter of 2015 was the worst quarter for hedge funds since the third quarter
 20 of 2015, posting average losses in its benchmark of 4.08%.⁴⁷ Thus the Plans and their respective
 21 participants whose accounts were invested in Intel TDPs and the Diversified Fund continue to suffer
 22 substantial losses due to Defendants’ breaches of fiduciary duty.

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 24
 25 ⁴⁵*Institutional Hedge Fund Investing Comes of Age*, SEI (2010),
https://www.seic.com/IMS/SEI_2011HedgeFundWhitePaper_US.pdf.

26 ⁴⁶Alexandra Stevenson, *Hedge Fund Assets Decline by Biggest Amount Since Financial Crisis*, New
 27 York Times (Oct. 20, 2015), [http://www.nytimes.com/2015/10/21/business/dealbook/hedge-fund-
assets-decline-by-biggest-amount-since-financial-crisis.html?_r=0](http://www.nytimes.com/2015/10/21/business/dealbook/hedge-fund-assets-decline-by-biggest-amount-since-financial-crisis.html?_r=0).

28 ⁴⁷*The Preqin Quarterly Update: Hedge Funds, Q3 2015*, Preqin (2015),
<https://www.preqin.com/docs/quarterly/hf/Preqin-Quarterly-Hedge-Fund-Update-Q3-2015.pdf>.

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

2 215. As of April 30, 2015, Intel hired AllianceBernstein to manage its two alternative
3 investment portfolios, namely the Intel TDPs and the Diversified Fund, which had previously been
4 managed by the Investment Committee. As observed by Cordant Wealth, in Intel’s Target Date
5 Funds: Do They Hit the Mark?, according to Morningstar’s target date fund research,
6 AllianceBernstein target date funds “have some of the highest fees in the industry and poor past
7 performance.”⁴⁸ As reported by the Wall Street Journal in *Target Date 401(k)s Get a Taste of Hedge*
8 *Funds*, on September 11, 2015, AllianceBernstein is one of the few mutual fund providers that
9 actually include hedge funds in their target date funds. But, as the Wall Street Journal article
10 observed, only the “smaller players” like AllianceBernstein who “are seeking to ‘differentiate
11 themselves and find a place in the market” have added “hedge-fund-like ‘alternative’ mutual
12 funds.”⁴⁹ By contrast, “Fidelity Investments, Vanguard Group and T. Rowe Price Group, Inc., which
13 manage more than 70% of the assets in target-date mutual funds, haven’t embraced hedge-fund-like
14 investments.” *Id.* According to the Wall Street Journal article, even those smaller players who invest
15 some target date fund money in hedge funds invest 3% or less of their funds’ assets in these
16 alternative investments.

17 216. As a result of this underperformance, a prudent fiduciary would have re-evaluated the
18 selection of these, or all of, the Hedge Funds and Private Equity, and began divesting.

19 **9. Inadequate Disclosure of the Investments Underlying the Intel TDPs and**
20 **Diversified Fund**

21 217. According to applicable regulations, 29 C.F.R. § 2550-404a-5(a), entitled “Fiduciary
22 requirements for disclosure in participant-directed individual account plans” (the “Disclosure
23 Regulation”), the administrator of a participant-directed retirement plan must disclose several types
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25 _____
26 ⁴⁸Isaac Presley, *Intel’s Target Date Funds: Do They Hit the Mark*, Cordant Wealth Partners: The
27 Cordant Blog (May 18, 2015), <https://cordantwealth.com/intels-target-date-funds-do-they-hit-the-target/>.

28 ⁴⁹Anne Tergesen, *Target Date 401(k)s Get a Taste of Hedge Funds*, The Wall Street Journal
(September 11, 2015), <http://www.wsj.com/articles/target-date-401-k-s-get-a-taste-of-hedge-funds-1442001842>.

1 of information to participants in such a plan, both prior to the initial investment and also on an
2 ongoing basis, if there are material changes to the plan's investment options.

3 218. Under the Disclosure Regulation, the plan administrator – here, the Administrative
4 Committee – must ensure that participants “are made aware of their rights and responsibilities with
5 respect to the investment of assets held in, or contributed to, their accounts and are provided
6 sufficient information regarding the plan, including fees and expenses, and regarding designated
7 investment alternatives, including fees and expenses thereto, to make informed decisions with regard
8 to the management of their individual accounts.” 29 C.F.R. § 2550-404a-5(a).

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

- 11 a) An explanation of any specified limitations on investment instructions under the
12 terms of the plan, including any restrictions on transfer to or from a designated
13 investment alternative;
- 14 b) An identification of any designated investment alternatives offered under the plan;
- 15 c) An identification of any designated investment managers;
- 16 d) An explanation of any fees and expenses for general plan administrative services
17 which may be charged against individual accounts of participants and which are not
18 reflected in the total annual operating expenses of any designated investment
19 alternative and the dollar amount of such fees and expenses that are actually charged
20 to an individual account, on a quarterly basis;
- 21 e) The name of each designated investment alternative and the type or category of
22 investment; performance and benchmark data for such investment; detailed fee and
23 expense information such as expense ratios; the internet web site address containing
24 information about the designated investment alternative.

25 29 C.F.R. § 2550-404a-5(c)-(d).

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

1 221. Based on the documents provided to Plaintiff, the Administrative Committee
2 Defendants failed to disclose any of the required information regarding the Hedge Fund, the
3 Commodities Fund, or the Private Equity Fund.

4 222. These failures to disclose left the majority of participants in the Plans unaware
5 regarding the true content and character of their retirement savings, because investment in Intel
6 TDPs was the primary investment options for Intel's 401(k) Plan participants and the Diversified
7 Fund was the primary investment option for Retirement Plan participants. Even if participants were
8 provided some information that the TDPs and Diversified Fund included investments in hedge funds
9 and private equity, the plan fiduciaries failed to provide participants with adequate sufficient
10 information so that they could make any informed intelligent decision about whether investing in
11 these particular hedge funds and private equity funds was prudent.

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

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

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

25 226. Similarly, the Investment Committee designed the Retirement Plan to make the
26 Diversified Fund the main investment option for participants in the Plan. Until recently, the
27 Diversified Fund was the only fund available to participants under the age of 50. As a result, over
28 90% of the Plan's and participants' assets were invested via the Diversified Fund.

1 **VI. CLAIMS FOR RELIEF**

2 **Count I**

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

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

7 228. As fiduciaries of the Plans, the Investment Committee Defendants were required
8 pursuant to ERISA § 404(a)(1) to act solely in the interest of the participants and beneficiaries of the
9 plans they serve and “(A) for the exclusive purpose of: (i) providing benefits to participants and their
10 beneficiaries; and (ii) defraying reasonable expenses of administering the plan” and (B) to discharge
11 their duties “with the care, skill, prudence, and diligence under the circumstances then prevailing
12 that a prudent man acting in a like capacity and familiar with such matters would use in the conduct
13 of an enterprise of a like character and with like aims.”

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

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

20 231. Based on this excessive allocation to alternative investments, the Intel TDPs have all
21 underperformed their peer funds during the Target Date Class Period. For example, as Morningstar
22 observed with respect to the 2030 Intel TDP: “the fund has some vital differences from its
23 Morningstar Target Date 2026-2030 category peers. For one the fund invests 21% of its assets in a
24 wide mix of hedge fund strategies and has a 5% allocation to commodities, whereas none of its peers
25 own hedge funds and only a few have small commodity stakes. Moreover, the fund’s equity
26 allocation favors foreign stocks over U.S. stocks, whereas its typical competitor invests 70% in
27 domestic stocks and 30% overseas.”⁵⁰ The substantial divergence from peer group allocations means
28 that the Intel 2035 TDP underperformed the peer group by 400 basis points in 2013 alone.

⁵⁰Morningstar Report on *Target Date 2030 Fund*, Oregonian Live at 2 (March 31,

1 232. According to Morningstar, the entire suite of Intel TDPs “have lagged their respective
2 peers amid other market rallies, such as in 2012 and 2009.” Morningstar predicts that because of the
3 investments and allocations made by the Investment Committee, the Intel 2030 TDP is “less likely to
4 keep pace with competitors amid stock market booms.” *Id.* As the Intel TDPs all share the same
5 asset allocation model and the same underlying Investment Accounts, all of the Intel TDPs over-
6 allocate the accounts of participants in the 401(k) Plan and the Retirement Plan to alternative
7 investments and similarly underperformed.

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

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

17 235. Through the foregoing conduct, the Investment Committee Defendants have (a) failed
18 to act solely in the interest of the participants and beneficiaries of the Plans for the exclusive purpose
19 of providing them benefits, in violation of ERISA § 404(a)(1)(A), 29 U.S.C. § 1104(a)(1)(A), and
20 (b) failed to act with the care, skill, prudence and diligence under the circumstances then prevailing
21 that a prudent man acting in a like capacity and familiar with such matters would use in the conduct
22 of an enterprise of a like character and with like aims, in violation of ERISA § 404(a)(1)(B), 29
23 U.S.C. § 1104(a)(1)(B). Thus the Investment Committee Defendants breached their fiduciary duties
24 to the Plans and their participants and beneficiaries and are liable to restore all losses to the Plans
25 resulting from their investment decisions with respect to the Intel TDPs.

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27
28 2014), <http://media.oregonlive.com/finance/other/Target%20Date%202030%20Fund-1.pdf>.

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

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

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

10 238. As fiduciaries of the Plans with respect to the administration of the Plans, the
11 Administrative Committee Defendants were required pursuant to ERISA § 404(a)(1) to act solely in
12 the interest of the participants and beneficiaries of the plans they serve and "(A) for the exclusive
13 purpose of: (i) providing benefits to participants and their beneficiaries; and (ii) defraying reasonable
14 expenses of administering the plan" and (B) to discharge their duties "with the care, skill, prudence,
15 and diligence under the circumstances then prevailing that a prudent man acting in a like capacity
16 and familiar with such matters would use in the conduct of an enterprise of a like character and with
17 like aims."

18 239. Consistent with their obligations under ERISA § 404(a)(1)(A) and (B), the
19 Administrative Committee Defendants were required to ensure that participants "are made aware of
20 their rights and responsibilities with respect to the investment of assets held in, or contributed to,
21 their accounts and are provided sufficient information regarding the plan, including fees and
22 expenses, and regarding designated investment alternatives, including fees and expenses thereto, to
23 make informed decisions with regard to the management of their individual accounts." 29 C.F.R. §
24 2550-404a-5(a).

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

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

- 1 b) Identify the Hedge Fund and the Private Equity Fund as designated investment
2 alternatives offered under the plan;
- 3 c) Identify designated investment managers for the Hedge Fund and the Private Equity
4 Fund;
- 5 d) Provide an explanation of any fees and expenses for general plan administrative
6 services which may be charged against individual accounts of participants and which
7 are not reflected in the total annual operating expenses of designated investment
8 alternatives like the Hedge Fund and the Private Equity Fund and the dollar amount
9 of such fees and expenses that are actually charged to an individual account, on a
10 quarterly basis, for investment in such funds;
- 11 e) Provide the name of designated investment alternatives like the Hedge Fund and the
12 Private Equity Fund and the type or category of investment; performance and
13 benchmark data for each such investment; detailed fee and expense information such
14 as expense ratios; the internet web site address containing information about such
15 designated investment alternative.

16 *See* 29 C.F.R. § 2550-404a-5(c)-(d).

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

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

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

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

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

6 245. As fiduciaries of the Plans, the Investment Committee Defendants were required
7 pursuant to ERISA § 404(a)(1) to act solely in the interest of the participants and beneficiaries of the
8 plans they serve and “(A) for the exclusive purpose of: (i) providing benefits to participants and their
9 beneficiaries; and (ii) defraying reasonable expenses of administering the plan” and (B) to discharge
10 their duties “with the care, skill, prudence, and diligence under the circumstances then prevailing
11 that a prudent man acting in a like capacity and familiar with such matters would use in the conduct
12 of an enterprise of a like character and with like aims.”

13 246. The Investment Committee breached those duties to both the Retirement Plan and the
14 401(k) Plan and their participants by making asset allocation and investment decisions for the
15 Diversified Fund.

16 247. At the end of 2008, the Diversified Fund held approximately 5.28% of its assets,
17 about \$243 million, in hedge fund and private equity investments. A year later, the fund allocated
18 16.52% of its assets to hedge funds and private equity. In the following year, the Investment
19 Committee increased the Diversified Fund’s allocations to hedge funds and private equity and added
20 allocations to commodities, resulting in 22.23% of fund assets, approximately \$1.2 billion, allocated
21 to these alternative investments. By the end of 2013, the Investment Committee had caused the
22 Diversified Fund to allocate 36.71%, \$2.33 billion, to such alternative investments.

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

1 and familiar with such matters would use in the conduct of an enterprise of a like character and with
2 like aims.”

3 254. Consistent with their obligations under ERISA § 404(a)(1)(A) and (B), the
4 Administrative Committee Defendants were required to ensure that participants “are made aware of
5 their rights and responsibilities with respect to the investment of assets held in, or contributed to,
6 their accounts and are provided sufficient information regarding the plan, including fees and
7 expenses, and regarding designated investment alternatives, including fees and expenses thereto, to
8 make informed decisions with regard to the management of their individual accounts.” 29 C.F.R. §
9 2550-404a-5(a).

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

- 12 a) Provide an explanation of any specified limitations on investment instructions under
13 the terms of the plan, including any restrictions on transfer to or from designated
14 investment alternatives like the Hedge Fund and the Private Equity Fund;
- 15 b) Identify the Hedge Fund and the Private Equity Fund as designated investment
16 alternatives offered under the plan;
- 17 c) Identify designated investment managers for the Hedge Fund and the Private Equity
18 Fund;
- 19 d) Provide an explanation of any fees and expenses for general plan administrative
20 services which may be charged against individual accounts of participants and which
21 are not reflected in the total annual operating expenses of designated investment
22 alternatives like the Hedge Fund and the Private Equity Fund and the dollar amount
23 of such fees and expenses that are actually charged to an individual account, on a
24 quarterly basis, for investment in such funds;
- 25 e) Provide the name of designated investment alternatives like the Hedge Fund and the
26 Private Equity Fund and the type or category of investment; performance and
27 benchmark data for each such investment; detailed fee and expense information such
28 as expense ratios; the internet web site address containing information about such
designated investment alternative.

25 *See* 29 C.F.R. § 2550-404a-5(c)-(d).

26 256. The Administrative Committee failed to adequately disclose to participants and
27 beneficiaries in the Plans information regarding risks, fees and expenses associated with such hedge
28

1 funds and private equity funds. Although the Administrative Committee disclosed information
2 regarding the allocation strategy of the Diversified Fund as designated investment alternatives of the
3 Plans, it failed to provide the required disclosure for the Hedge Fund and Private Equity Fund in
4 which the Plans invested pursuant to the allocation models for the Diversified Fund. Among other
5 things, the Administrative Committee failed to provide adequate disclosures about: (1) the
6 arrangements between the Plans and the hedge and private equity fund managers in the Hedge Fund
7 and Private Equity Fund, respectively, including the fees and expenses and the investment strategies
8 and holdings for each fund; and the identity of the private equity and hedge fund firms and
9 individual managers.

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

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

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

18 259. As fiduciaries of the Plans, the Finance Committee Defendants were required
19 pursuant to ERISA § 404(a)(1) to act solely in the interest of the participants and beneficiaries of the
20 plans they serve and "(A) for the exclusive purpose of: (i) providing benefits to participants and their
21 beneficiaries; and (ii) defraying reasonable expenses of administering the plan" and (B) to discharge
22 their duties "with the care, skill, prudence, and diligence under the circumstances then prevailing
23 that a prudent man acting in a like capacity and familiar with such matters would use in the conduct
24 of an enterprise of a like character and with like aims."

25 260. Under ERISA, a fiduciary charged with the authority to select and remove other
26 fiduciaries or who, as a practical matter, in fact appoints other fiduciaries, has an ongoing duty to
27 monitor the performance of those persons whom the fiduciary is empowered to remove. An
28 appointing fiduciary therefore must, at reasonable intervals, ensure that the fiduciary it has appointed

1 is acting in compliance with the terms of the applicable plan, acting in accordance with ERISA and
2 applicable law, and satisfying the needs of the plan.

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

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

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

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

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

20 263. By failing to properly monitor the performance of the Finance Committee Defendants
21 the Board of Directors (a) failed to act solely in the interest of the participants and beneficiaries of
22 the Plans for the exclusive purpose of providing them benefits, in violation of ERISA
23 § 404(a)(1)(A), 29 U.S.C. § 1104(a)(1)(A), and (b) failed to act with the care, skill, prudence and
24 diligence under the circumstances then prevailing that a prudent man acting in a like capacity and
25 familiar with such matters would use in the conduct of an enterprise of a like character and with like
26 aims, in violation of ERISA § 404(a)(1)(B), 29 U.S.C. § 1104(a)(1)(B).

27 264. As a result of their breaches, the Finance Committee Defendants caused the Plans to
28 suffer losses, through the payment of excessive fees for active investment in alternatives like hedge

1 funds and private equity, and through loss of investment return that would have been gained through
2 prudent investment of the Plans' assets.

3
4 **Count VI**
(Co-fiduciary Liability Under ERISA § 405 Against All Defendants)

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

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

9 (1) he participates knowingly in or knowingly undertakes to conceal an act or omission
10 of such other fiduciary knowing such act or omission is a breach;

11 (2) by his failure to comply with ERISA § 404(a)(1) in the administration of his specific
12 responsibilities which give rise to his status as a fiduciary, he has enabled such other
13 fiduciary to commit a breach; or

14 (3) he knows of a breach by another fiduciary and fails to make reasonable efforts to
15 remedy it.

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

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

27 269. Each member of the Investment Committee knew that the Plans were invested heavily
28 in alternative investments such as the Hedge Fund Portfolio, the Commodities Fund, and the

1 Alternative Investments Fund in the Intel Master Trust, because the Investment Committee created
2 this asset allocation strategy.

3 270. The Finance Committee Defendants also knew that the Administrative Committee did
4 not disclose to participants the information required in the Disclosure Regulations, particularly
5 regarding such designated investment alternatives as the Hedge Fund Portfolio, the Commodities
6 Fund, and the Alternative Investments Fund in the Intel Master Trust, because pursuant to Section
7 13(m) of the Plan Documents, the Administrative Committee was responsible for reporting not less
8 than annually to the Finance Committee about its actions.

9 271. The Investment Committee Defendants also knew or should have known that the
10 Administrative Committee did not disclose to participants the information required in the Disclosure
11 Regulations, particularly regarding such designated investment alternatives as the Hedge Fund
12 Portfolio, the Commodities Fund, and the Alternative Investments Fund in the Intel Master Trust,
13 because they must have been aware of what information was being disclosed.

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

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

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

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

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

28

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

4 **VII. ENTITLEMENT TO RELIEF**

5 278. By virtue of the violations set forth in the foregoing paragraphs, Plaintiff and the
6 members of the Class are entitled to sue each of the fiduciary Defendants pursuant to ERISA §
7 502(a)(2), 29 U.S.C. § 1132(a)(2), for relief on behalf of the Plans as provided in ERISA § 409, 29
8 U.S.C. § 1109, including for recovery of any losses to the Plans, the recovery of any profits resulting
9 from the breaches of fiduciary duty, and such other equitable or remedial relief as the Court may
10 deem appropriate.

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

14 **VIII. PRAYER FOR RELIEF**

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

- 17 A. A declaration that the Defendants breached their fiduciary duties under ERISA;
- 18 B. An order compelling each fiduciary found to have breached his/her/its fiduciary
19 duties to the Plans to jointly and severally restore all losses to the Plans which resulted from the
20 breaches of fiduciary duty or by virtue of liability pursuant to ERISA § 405;
- 21 C. An order requiring (a) the disgorgement of profit made by any Defendant, (b) a
22 declaration of a constructive trust over any assets received by any breaching fiduciary in connection
23 with their breach of fiduciary duties or violations of ERISA, (c) an order requiring the Plans to divest
24 themselves of investments in hedge funds and commodity funds or (d) any other appropriate
25 equitable monetary relief, whichever is in the best interest of the Plans;
- 26 D. Ordering, pursuant to ERISA § 206(d)(4), that any amount to be paid to or necessary
27 to satisfy any breaching fiduciary's liability can be satisfied, in whole or in part, by attaching their
28 accounts in or benefits from the Plans;

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

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

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

10 H. Awarding Plaintiff and the Class their attorneys' fees and costs pursuant to ERISA
11 § 502(g), 29 U.S.C. § 1132(g), the common benefit doctrine and/or the common fund doctrine;

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

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

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1 Dated: October 29, 2015

Respectfully submitted,

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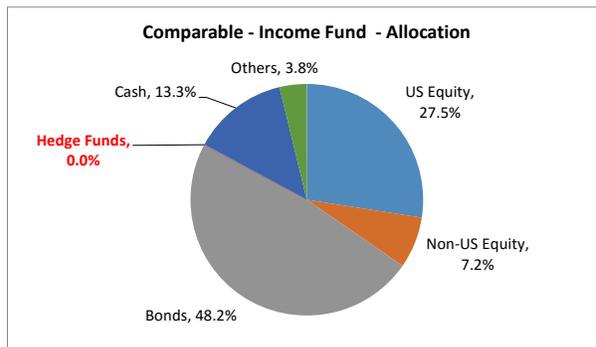
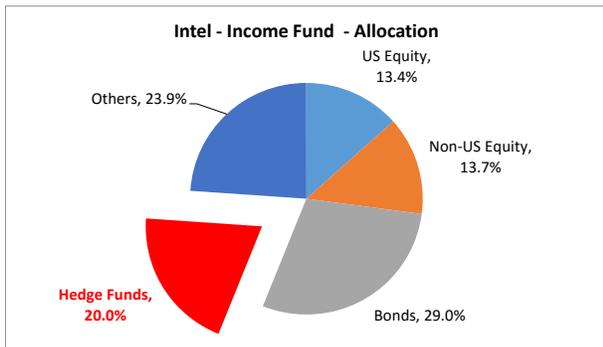
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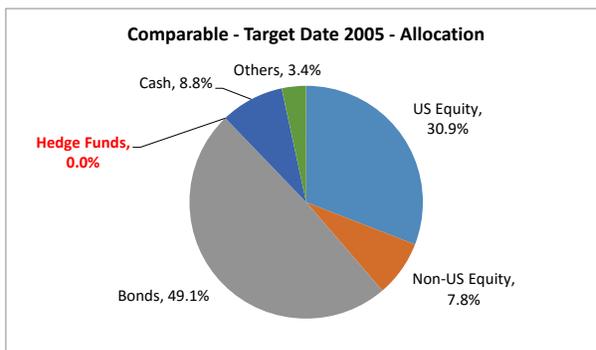
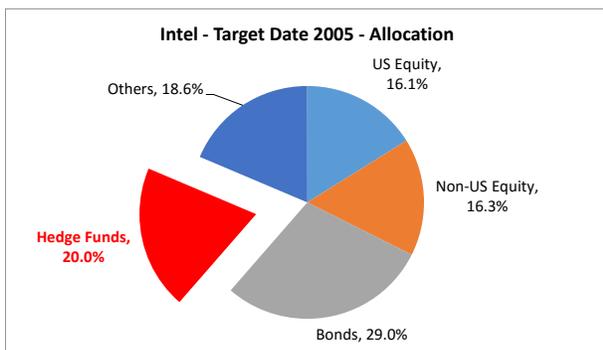
Attorneys for Plaintiff

EXHIBIT 1

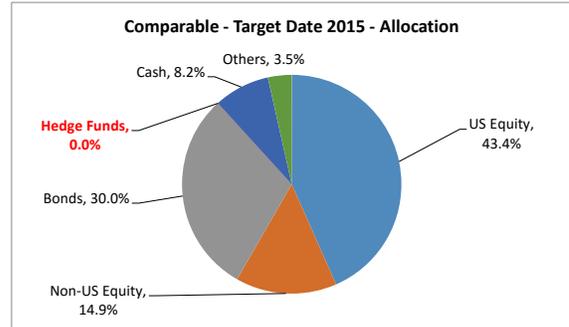
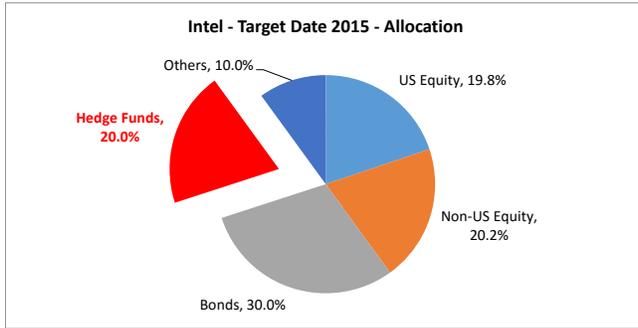
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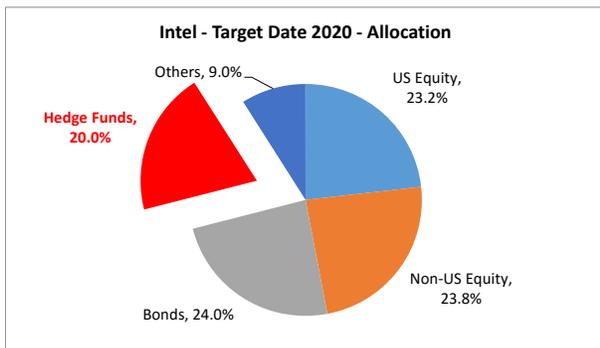
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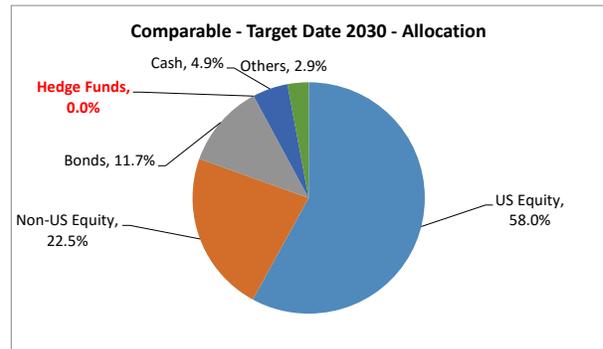
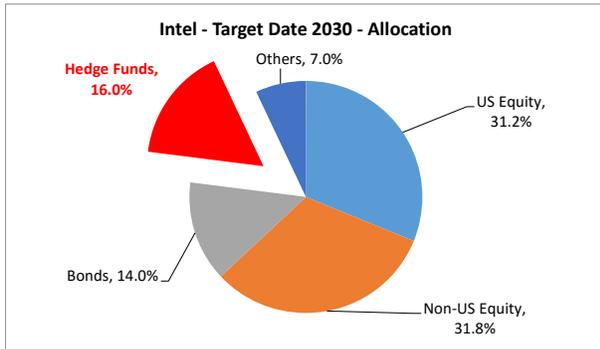
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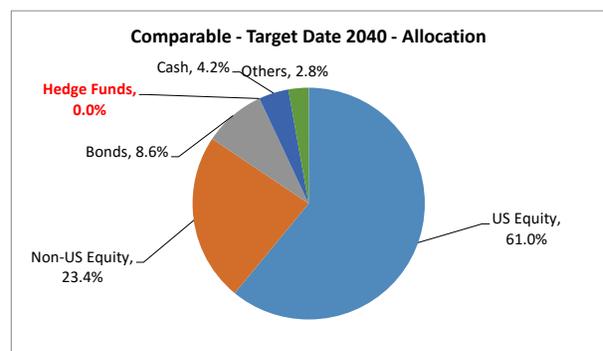
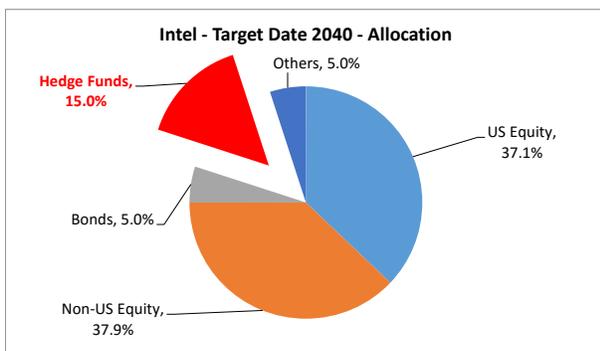
Target Date Fund - 2020



Target Date Fund - 2030



Target Date Fund – 2040



Target Date Fund – 2050

