UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

Debbie Damberg and Tony Severson, as representatives of a class of similarly situated persons, and on behalf of the LaMettry's 401K Profit Sharing Plan,

Plaintiffs,

v.

LaMettry's Collission, Inc., Steven P. Daniel, and Joanne M. LaMettry,

Defendants.

Civil No. ____________________

COMPLAINT

JURY TRIAL DEMAND ON ALL COUNTS TRIABLE

INTRODUCTION

1. Plaintiffs bring this action pursuant to 29 U.S.C. § 1132(a) on behalf of all similarly situated participants and beneficiaries of the LaMettry's 401K Profit Sharing Plan ("Plan") to recover financial losses suffered by the Plan and obtain injunctive and other equitable relief for the Plan from LaMettry's (the Plan Sponsor) and Chief Financial Officer Steven P. Daniel and President Joanne M. LaMettry (Daniel and LaMettry, collectively, "Trustees") based on breaches of their fiduciary duties.

2. Defendants breached their duties under ERISA by: 1) causing the Plan to pay hundreds of thousands of dollars in excessive fees to third-party service

providers; 2) selecting inappropriate and imprudent mutual fund classes for Plan assets that exposed Plan participants to excessive fees when lower cost options were available for the same set of investments; and 3) selecting investment options that were unnecessarily expensive relative to industry benchmarks and standards. Defendants failed to actively monitor the above providers, fees, investment classes, and investment options and failed to replace them with identical or similar lower fee providers and options.

JURISDICTION AND VENUE

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

4. This district is the proper venue for this action under 29 U.S.C. §1132(e)(2) and 28 U.S.C. §1391(b) because it is the district in which the Plan is administered, where the alleged breaches took place, and where Defendants may be found.

PARTIES

5. Ms. Damberg lives in Delano, Minnesota. She worked at LaMettry's for nearly 30 years, both as an estimator and in sales, and participated in the Plan the entire time. She is a participant in the Plan within the meaning of 29 U.S.C. § 1002(7).

6. Tony Severson lives in South Saint Paul, Minnesota. He worked at LaMettry's for nearly 25 years as an auto-body technician, and contributed to the Plan nearly the entire time. He is a participant in the Plan within the meaning of 29 U.S.C. § 1002(7).
7. LaMettry's Collission, Inc. is a Minnesota corporation that owns and operates auto body repair shops throughout the Twin Cities. Its employees are auto-body technicians, support staff, and administrators who rely on LaMettry's and the Plan it offers for their retirement savings.
8. LaMettry's is the sponsor of the Plan under 29 U.S.C. §1002(16)(B), administrator of the Plan under 29 U.S.C. §1002(16)(A), and a party in interest to the Plan under 29 U.S.C. §1002(14).
9. LaMettry's is a named fiduciary of the Plan under 29 U.S.C. § 1102(a)(2).
10. Steven P. Daniel is Chief Financial Officer at LaMettry's. He is a trustee of the Plan.
11. Joanne M. LaMettry is the President of LaMettry's. She is a trustee of the Plan.
12. Pursuant to 29 U.S.C. §1002(21), LaMettry's is and was a fiduciary to the Plan because it exercises discretionary authority or discretionary control regarding management of the Plan, exercises authority or control regarding

management or disposition of the Plan's assets, and/or has discretionary authority or discretionary responsibility in the administration of the Plan.

13. Daniel and LaMettry ("Trustees") were and are "administrators" of the Plan under 29 U.S.C. §1002(16)(A) and fiduciaries of the Plan under 29 U.S.C. §1102(a).

14. On information and belief, Trustees are also fiduciaries of the Plan under 29 U.S.C. §1002(21) because they exercise discretionary authority or control regarding management of the Plan, exercise discretionary authority or control regarding management or disposition of the Plan's assets, and/or have discretionary authority or discretionary responsibility in administration of the Plan.

15. As fiduciaries, Defendants had broad oversight of and ultimate decision-making authority respecting management and administration of the Plan and its assets, as well as appointment, removal, and monitoring of other fiduciaries and service providers that they appointed or to whom they assigned fiduciary responsibility.

LaMettry's 401K Profit Sharing Plan

16. LaMettry's employees' participate in an ERISA-governed plan called the LaMettry's Collision, Inc. 401(k) Profit Sharing Plan.

17. The Plan is an "employee pension benefit plan" under 29 U.S.C. §1002(2)(A) and an "individual account plan" or "defined contribution plan" under 29 U.S.C. §1002(34).

18. In 2014, the Plan consisted of approximately 114 active participants, and held approximately $9.2 million in total assets.

19. The size of a retirement plan's assets relates to the fees the market charges; larger asset sizes allow fiduciaries to negotiate lower fees.

20. As Plan fiduciaries, Defendants must operate under the standard of prudent financial experts. Defendants are responsible for, among other things, the selection and monitoring of the investment options made available to Plan participants; the selection and monitoring of service providers to the Plan; ensuring that all fees charged are reasonable and not excessive relative to services rendered; ensuring that a prudent process is employed in determining, among other things, the reasonableness of their decisions, the Plan's investments, and the fees paid by the Plan; avoiding conflicts of interest or self-dealing; and, operating for the exclusive benefit of Plan participants.

21. ERISA requires Defendants to engage in this deliberative process in their role as fiduciaries. The deliberative information is not disclosed to Plan participants.

22. Voya Retirement Insurance & Annuity Company[1] serves as service provider to the Plan and provides certain administrative and recordkeeping services. During the relevant time period, Voya receives and received payments from the Plan for its services.

23. Voya Financial Advisors, Inc. is a brokerage company that receives commissions from the Plan.

24. From 2010 to present, Defendants determined what investment choices Plan participants have as investment options. The investment options in the Plan include approximately 11 mutual funds ("Mutual Funds"), 7 pooled separate accounts, and a guaranteed investment contract offered by Voya ("Voya Fixed Account").

Defendants selected investment funds that charge excessive fees and failed to actively monitor them.

25. Defendants selected investment options that charge excessive fees relative to services rendered;[2] Defendants' selections caused the Plan and its participants

[1] In April 2014, the custodian and recordkeeper of the Plan changed its named from ING Life Insurance & Annuity Company to Voya Retirement Insurance & Annuity Company.

[2] In fact, on information and belief, the investment options selected by Defendants likely offered no additional services at all compared to equivalent or lower fee institutional funds. The institutional funds' investment management fees covered all necessary management or advisory services and therefore any alleged additional management services were either unnecessary or simply not performed.

to overpay hundreds of thousands of dollars. Defendants did not have or engage in a prudent process for the selection of these options, the evaluation of the fees, active monitoring of the options and fees, and ensuring that reasonably priced, prudent options were selected for the Plan.

26. Mutual fund companies often offer multiple classes for the same fund. Multiple class funds invest in an identical portfolio of securities, hold identical investment objectives, and have the same investment manager.

27. Nonetheless, different classes of the same fund have different fees and expenses. Fund classes with higher fees perform lower than fund classes with lower fees.

28. Defined contribution plans and other pooled investment vehicles often invest in share classes that are unavailable to individual investors because institutional investors enjoy increased bargaining power: they do not accept the comparatively higher fees charged to individual/retail investors with relatively small amounts available to invest.

29. Retail share class mutual funds generally have relatively small net worth investors with relatively small amounts to invest; these funds charge a higher fee than those lower fee share classes available to institutional investors, like defined contribution plans, with $1 million or more to invest.

30. Fiduciaries to defined contribution plans can and should use their plans' large asset size to obtain less expensive institutional rates.

31. Fiduciaries understand the Plan's asset amounts in each investment option and are uniquely positioned to ensure the reasonableness of the fees. Plan participants do not have this information nor are they in a position to negotiate for less expensive institutional rates. Prudent retirement plan fiduciaries select lower priced share class alternatives.

32. Lower fees have a strong impact on retirement savings over the course of a worker's career.[3]

Plan participants are paying excessive fees for the Plan's Mutual Funds and Pooled Separate Accounts.

Retail Mutual Funds

33. Defendants provide Mutual Funds in the Plan that charge far higher fees than readily available lower cost share class equivalents, institutional mutual funds, or separately managed accounts available to large asset holders such as the Plan.

34. The Plan qualifies for lower share class equivalents as well as institutional mutual funds and separately managed accounts.

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[3] See e.g., JENNIFER ERICKSON AND DAVID MADLAND, *Fixing the Drain on Retirement Savings: How Retirement Fees are Straining the Middle Class and What We Can Do About Them*, Center for American Progress, April 11, 2014.

35. For example, with the funds in the Plan (Column A) and the fees charged by those funds (Column B), in 2014,[4] Defendants imprudently provided dramatically higher cost share classes for *nearly every one* of the Mutual Fund Plan investment options (Compare with Columns C and D). Indeed in some instances, the retail fees for the Mutual Funds were more than 100% higher than identical institutional share class equivalents (Column E).

A: Name of Fund	B: Disclosed Fees for LaMettry's Selected Funds	C: Identical Institutional Share Class Equivalents to LaMettry's Selected Funds	D: Fees for Institutional Share Class Equivalents	E: Fees charged by LaMettry's Selected Funds compared to Institutional Share Class Equivalents
Franklin Mutual Shares R (TESRX)	1.30%	FMSHX	0.69%	188.41%
Columbia Mid Cap Value (CMUAX)	1.17%	NAMAZ	0.73%	160.27%

[4] Plaintiffs use 2014 throughout this Complaint for simplicity and brevity purposes as an illustrative year of the practices and fees applicable throughout the relevant period. Defendants engaged in the specified conduct – including causing the Plan to pay excessive recordkeeping fees, selecting inappropriate and imprudent mutual fund classes for Plan assets that exposed Plan participants to excessive fees when lower cost options were available for the same set of investments, and selecting investment options that were unnecessarily expensive relative to industry benchmarks and standards – throughout the relevant period.

American Funds New Perspectives (RNPCX)	1.10%	RNPGX	0.45%	244.44%
American Funds Growth Fund (RGACX)	0.98%	RGAGX	0.33%	296.97%
Eaton Vance Large Cap Value (ERSTX)	1.26%	EILVX	0.76%	165.79%
Lord Abbett Value Opportunities (LVOAX)	1.17%	LVOYX	0.92%	127.17%
American Funds Balanced (RLBCX)	0.94%	RLGBX	0.29%	324.14%

36. For each of the above lower fee funds, the investment managers, investment style, and underlying fund investments were identical to the retail fee funds.

37. The Plan's asset amounts qualified for the lower fee funds. Plan participants did not know that the Plan's asset amounts in these funds qualified for lower fees, but Defendants were required to be knowledgeable regarding such matters.

38. Defendants did not disclose to Plan participants that: lower share classes of the same investments from the same providers were available to the Plan; the selected funds charged higher fees than readily available alternatives designed to track the same market indices; the selected funds underperformed readily available and more cost-effective alternatives; all fees were paid from Plan assets and therefore depleted retirement savings; all of the Plan funds offered only retail shares despite the fact that Defendants enjoyed access to institutional shares; or that Defendants did not select the Plan options or continually evaluate them based on the reasonableness of fees charged.

39. Defendants' failure to consider these lower fee funds and actively monitor the fees of their selected funds compared to the lower fee funds – and the lack of any additional value or services in exchange for the higher fees charged by the selected funds – caused and continues to cause Plan participants to pay hundreds of thousands of dollars in excessive fees. Defendants did not have a prudent process – or any process – for the consideration, selection, evaluation, or active monitoring of these funds or their fees with respect to alternatives, including lower fee funds. Defendants failed to implement a prudent and adequate procedure to ensure that reasonably priced, prudent fund options were selected for the Plan.

40. Defendants also breached their duties by failing to consider low-cost institutional funds and investments appropriate for a Plan of this size.

41. Given the slate of options available to plans with assets above $9 million, prudent fiduciaries consider far lower cost investments that are accessible to institutional investors.

42. For example, with the funds in the Plan (Column A) and the fees charged by those funds (Column B), in 2014, Defendants imprudently provided dramatically higher cost share classes for all of the Mutual Fund Plan investment options compared to prudent low cost institutional equivalents available through low cost and well-respected Vanguard funds (Columns C and D). The retail fees for some of the Mutual Funds were over 1,000% higher than these low cost institutional equivalents (Column E).

A: Name of LaMettry's Selected Fund	B: Disclosed Fees for LaMettry's Selected Fund	C: Equivalent Institutional Funds with Lower Share Class Equivalents to LaMettry's Selected Funds	D: Fees for Institutional Lower Share Class Equivalents	E: Fees charged by LaMettry's Selected Funds compared to Institutional Lower Share Class Equivalents
Voya Money Market A (AEMXX)	0.68%	VMMXX	0.16%	425%
Columbia Mid Cap	1.17%	VMVAX	0.09%	1300%

Value (CMUAX)				
American Funds New Perspectives (RNPCX)	1.10%	VFWAX	0.14%	785.71%
American Funds Growth Fund (RGACX)	0.98%	VIGAX	0.09%	1088.89%
Eaton Vance Large Cap Value (ERSTX)	1.26%	VUVLX	0.26%	484.62%
Lord Abbett Value Opportunities (LVOAX)	1.17%	VIMAX	0.09%	1300%
American Funds Balanced (RLBCX)	0.94%	VBIAX	0.09%	1044.44%
Voya VIP Mid Cap	1.18%	VIMAX	0.09%	1311.11%
Voya Baron Small Cap	0.98%	VSGAX	0.09%	1088.89%
Voya VIP Contrafund	1.18%	VWUAX	0.33%	357.58%
Voya Stock Index	0.27%	VFIAX	0.05%	540%

Voya Columbia Small Cap	0.86%	VSIAX	0.09%	955.56%
Voya Templeton for Equity	1.17%	VFWAX	0.14%	835.71%
Voya Clarion RE	0.96%	VGSLX	0.12%	800%
Pioneer Strategic Income (STRIX)	1.42%	VBTLX	0.07%	2028.57%
Wagner Select	0.73%	VIMAX	0.09%	811.11%
Franklin Mutual Shares R (TESRX)	1.30%	VUVLX	0.26%	500%
Oppenheimer Gold & Minerals Fund R (OPGSX)	1.40%	VGPMX	0.29%	482.76%

43. Defendants did not disclose to Plan participants that: similar investments to those selected by Defendants for the Plan were available from other providers at significantly lower expense to the Plan; the selected funds charged higher fees than readily available alternatives designed to track the same market indices; the selected funds underperformed readily available

and more cost-effective alternatives; all fees were paid from Plan assets and therefore depleted retirement savings; or Defendants did not select the Plan funds or continually evaluate them based on the reasonableness of fees charged.

44. Defendants failed to have or engage in a prudent process – or any process – for the consideration, evaluation, selection, and active monitoring for these funds or lower fee alternatives. Defendants failed to implement a prudent and adequate procedure to ensure that reasonably priced, prudent investment options were selected for the Plan.

45. Defendants' failure to consider these low cost institutional funds – and actively monitor the fees charged by their selected funds compared to the low cost institutional funds – cost continues to cost plan participants hundreds of thousands of dollars in excessive fees.

Defendants failed to consider how lower-cost institutional funds could avoid excessive fees for the Pooled Separate Accounts.

46. Defendants also failed to consider how lower-cost institutional funds could be used to avoid excessive fees for the Pooled Separate Accounts, costing Plan participants additional hundreds of thousands of dollars.

47. The Pooled Separate Accounts, Voya Fidelity VIP Mid Cap Portfolio Service Class, Voya Fidelity VIP Contrafund Portfolio Service Class, and

Voya Stock Index Portfolio – Institutional class, also charge Plan participants dramatically excessive fees.

48. The Pooled Separate Accounts invest in in-house Voya exclusive products that often add an unnecessary layer of fees versus investing directly with the underlying investment manager.

49. The dramatically excessive fees charged in the Plan's retail Mutual Funds are also charged in the Pooled Separate Accounts.

50. For example, in 2014, the Voya VIP Fidelity Contrafund charged a fee of 118 basis points. If LaMettry used the institutional share class of the Mutual Fund, Fidelity Contrafund K Shares, the charge would have only been 64 basis points.

51. The Voya Fidelity VIP Mid Cap Portfolio Series charges a fee of 118 basis points. If LaMettry used the institutional share class of the Mutual Funds, the Fidelity Mid-Cap Stock Fund would only charge 76 basis points.

52. As demonstrated below, with the Pooled Separate Accounts in the Plan (Column A) and the fees charged by those funds (Column B), in 2014, LaMettry's imprudently provided dramatically higher fees for nearly all of the Pooled Separate Accounts (Columns C and D). In some instances, the Pooled Separate Accounts' fees are as high as 500% higher than necessary (Column E).

A	B	C	D	E
Voya Fidelity VIP Contrafund	1.18%	Fidelity Contrafund K Class	.64%	184%
Voya Fidelity VIP Mid Cap	1.18%	Fidelity Mid-Cap Stock Fund K	.76%	155%
Voya US Stock Index	.27%	Vanguard 500 Index Admiral Shares	.05%	540%

Column A – Name of Plan investment option

Column B – Fees charged by pooled account selected by the Plan

Column C – Equivalent Investment option readily available to the plan

Column D – Fees charged by the readily available alternative – often from the same underlying provider

Column E – Fees charged by Plan selected investments options as a ratio of the readily available alternative

53. Defendants did not disclose to Plan Participants that: similar investments to those selected by Defendants for the Plan were available from other providers at significantly lower expense to the Plan; the selected funds charged higher fees than readily available alternatives designed to track the same market indices; the selected funds underperformed readily available and more cost-effective alternatives; all fees were paid from Plan assets and therefore depleted retirement savings; or Defendants did not select the Plan funds or continually evaluate them based on the reasonableness of fees charged. Defendants failed to have or engage in a prudent process for the

consideration, evaluation, selection, and active monitoring of these investments or lower fee alternatives.

54. Defendants' failure to consider lower fee Mutual Funds, often from the same underlying investment manager, resulted in the Pooled Separate Accounts charging Plan participants hundreds of thousands of dollars in excessive fees.

Defendants failed to actively monitor recordkeeping and administrative fees.

55. Voya provides certain administrative and recordkeeping services to the Plan. Voya and its predecessor provided these services since at least 2010.

56. Voya provides typical recordkeeping services to the Plan that other retirement plans with similarly-sized participant populations receive from other service providers like Voya.

57. Those services include the tracking and reporting of Plan participants' account balances, the provision of quarterly statements and other communications to Plan participants, provision of on-line Plan and account information, retirement planning tools, tools, and call-in services.

58. Recordkeeping is a commodity service necessary for every defined contribution plan. Prudent fiduciaries solicit requests for proposals to companies that provide recordkeeping services in order to control costs.

59. The cost of a service provider providing recordkeeping services to a retirement plan depends on the number of participants, not on the amount of money in participants' accounts. That is, the cost of providing recordkeeping services to a participant with $100,000 in her retirement account is the same as the participant with $10,000 in her retirement account.

60. For this reason, prudent fiduciaries to retirement plans establish a fixed fee arrangement that does not vary depending on the size of plan assets or individual participant accounts.

Excessive payments by the Plan to Voya and ING

61. For retirement plans with over 100 participants, a reasonable annual per capita fee paid by retirement plan participants should not exceed $18.

62. Defendants allowed the Plan to pay dramatically higher fees than reasonable throughout the statutory period. For example, in 2014, Voya received revenue from the Plan for recordkeeping services that varied with participants' investment choices and dollar amounts invested: *the total fees approximated 1.22% of Plan assets*, for a total of $113,000.

63. Despite a reasonable per-capita fee for these services being no more than $18 for a plan of this size in terms of total participants, the Plan paid almost $886, or 4900% higher than a reasonable fee for these services.

64. The dramatically excessive fees paid by the Plan did not alter the basic recordkeeping services provided by Voya.

65. Defendants failed to assess or actively monitor the reasonableness of the fees and allowed the Plan to pay excessive fees throughout the relevant period. Defendants had a flawed process – or no process at all – for soliciting competitive bids, evaluating proposals with respect to services offered and reasonableness of fees for those services, actively monitoring the reasonableness of fees assessed to Plan participants, and choosing a service-provider on a periodic, competitive basis.

66. Separate from the above breaches stemming from the Plan's excessive direct payments to Voya, Defendants failed to assess the reasonableness of additional payments received by Voya from the investment companies of the Plan's investment options.

67. These additional payments, or kick-backs, sometimes referred to as revenue sharing, from the managers of the Plan's investment options to Voya provided an additional source of revenue to Voya from Plan participants' accounts, further reducing their retirement assets.

68. Despite the cost of recordkeeping services having nothing to do with asset size, the amount of these kick-backs increased along with annual increases in the size of Plan assets.

69. These kick-backs are asset-based and charged against Plan participants' asset amounts in each investment option.

70. For this reason, prudent fiduciaries regularly assess the amount of this asset based revenue sharing, if it is even used as a method of paying a service provider, to determine the reasonableness of these fees.

71. Defendants failed to assess the reasonableness of this source of additional asset-based compensation to Voya and allowed it to be uncapped, adding to the already excessive amount of Voya's fees paid by the Plan.

72. Defendants did not disclose the kick-backs[5] to Plan participants in any employee facing material or the Summary Plan Description. Defendants failed to disclose that the kick-backs were an unnecessary expense that depleted Plan assets and caused significantly reduced returns on participants' retirement savings. Defendants failed to disclose that the reason funds were even included in the slate of investment options was because of the kick-back arrangement between investment fund managers and Voya.

73. Prudent fiduciaries regularly solicit competitive bids from prospective service providers, including recordkeepers, in order to assess the reasonableness of the fees charged by their selected recordkeeper.

[5] These kick-backs are also referred to as "sub-agency transfer fees" or "12b-1 fees."

74. Defendants failed to request these bids from Voya's competitors or assess the reasonableness of fees charged by Voya.

75. Defendants' failure to request these bids resulted in Plan Participants paying hundreds of thousands of dollars in excessive fees for recordkeeping throughout the statutory period.

Bundled Expense Structure

76. Defendants selected a bundled expense structure for its 401K plan from Voya, which added unnecessary expense and complexity to the Plan to the detriment of its participants.

77. Voya charged Plan participants fees to offset sales and marketing expenses in addition to various support services.

78. Voya charged Plan participants two separate charges to administer this structure in addition to the previously mentioned investment fees: the Daily Asset Charge and the Voya Admin Fee. The charges were assessed as a percentage of plan assets daily and deducted from the participants monthly.

79. When both fees are combined, the Total Daily Asset Charges (TDAC), the daily fees associated with administering the structure range from 0.00% up to 0.90%.

80. The weighted combined average of these fees for Plan participants in 2014 was 0.58% - or an annual cost of approximately $53,000.

81. Plan participants received little to no value in exchange for these large fees. Voya provided no itemization of expenses incurred by the Plan participants that the TDAC was charged to cover, making the task of assessing its reasonableness impossible.

82. When TDAC charges are combined with investment expense charges previously outlined (Total Investment Expense or "TIE"), Plan participants are faced with a range from 1.17% to 1.97% for any fund invested in stocks or bonds. Only the proprietary Voya Fixed Account is not subject to TDAC.

83. Even if an unusually informed Plan participant wanted to maximize investment potential by investing in the stock market (widely benchmarked against the S&P 500) at the lowest possible expense, the Plan participant would face a TIE of 1.17%, or 1.12% greater than the best available alternative (Vanguard 500 Index Admiral Shares), a difference of 2,340%. Defendants and Voya stacked the deck with expensive investments and unnecessary charges costing Plan participants millions of dollars over time in lost retirement plan growth.

84. Defendants breached their fiduciary duty by selecting an unduly expensive structure for its 401K plan, failing to conduct an RFP for the structure to minimize expenses, failing to evaluate whether an unbundled or alternative fee structure was a better option, failing to conduct due diligence regarding

whether the assessed fees were appropriate, and failing to actively monitor the selected structure's fees and expenses.

ERISA'S FIDUCIARY STANDARDS

85. ERISA imposes strict fiduciary duties of loyalty and prudence on Defendants as fiduciaries of the Plan. 29 U.S.C. § 1104(a) states:

> [A] fiduciary shall discharge his duties with respect to a plan solely in the interest of the participants and beneficiaries and –
>
> (A) for the exclusive purpose of
>
> (i) providing benefits to participants and their beneficiaries; and
>
> (ii) defraying reasonable expenses of administering the plan; [and]
>
> (B) with the care, skill, prudence, and diligence under the circumstances then prevailing that a prudent man acting in a like capacity and familiar with such matters would use in the conduct of an enterprise of like character and with like aims.

86. Under ERISA, fiduciaries that exercise any authority or control over plan assets, including the selection of plan investments and service providers, must act prudently and solely in the interest of participants in the plan. "[T]he duty to conduct an independent investigation into the merits of a

particular investment" is "the most basic of ERISA's investment fiduciary duties."[6]

87. A fiduciary's duty of loyalty requires a fiduciary to act solely in the interest of plan participants and beneficiaries.[7]

CLASS ALLEGATIONS

88. 29 U.S.C. § 1132(a)(2) authorizes any participant or beneficiary of the Plan to bring an action individually on behalf of the Plan to recover for the Plan the remedies provided by 29 U.S.C. § 1109(a).

89. In acting in this representative capacity and to enhance the due process protections of unnamed participants and beneficiaries of the Plan, as an alternative to direct individual actions on behalf of the Plan under 29 U.S.C. § 1132(a)(2) and (3), Plaintiffs seek to certify this action as a class action on behalf of all participants and beneficiaries of the Plan from January 1, 2010, through date of judgment and to represent that class. This action is certifiable as a class action for the following reasons:

a. The Class includes over 100 members and is so large that joinder of all its members is impracticable.

[6] In re Unisys Savings Plan Litig., 74 F.3d 420, 435 (3d Cir. 1996); DOL Adv. Op. No. 88-16A.

[7] DOL Adv. Op. No. 98-04A; DOL Adv. Op. No. 88-16A.

b. The acts and omissions of Defendants, as set forth above, were performed regarding the Plan as a whole rather than performed differently as to individual participants.

c. The investment fund lineup is the same for all Plan participants as are the expense ratios for each fund in the Plan.

d. The participant communications from Defendants are the same for each Plan participant.

e. There are questions of law and fact common to this Class because Defendants owed fiduciary duties to the Plan and to all participants and beneficiaries and acted as alleged herein as to the Plan and not as to any individual participant. Thus, common questions of law and fact include the following, without limitation: whether each of the Defendants is a fiduciary to the Plan; the extent and nature of the duties Defendants owed to the Plan; whether Defendants breached their duties by paying excessive administrative and investment management fees from Plan assets; whether the Plan's fees are reasonable; whether the investment options selected by Defendants have been prudent; what are the losses to the Plan resulting from each breach of fiduciary duty; and, what non-monetary relief should be accorded to the Plan as a whole, including whether Defendants should be removed as fiduciaries.

f. Plaintiffs' claims are typical of the claims of the Class because they were participants during the time period at issue in this action.

g. Plaintiffs will adequately protect the interests of the Class because they have no interest that is in conflict with the Class, are committed to the vigorous representation of the Class, and have engaged experienced and competent attorneys to represent the Class. Plaintiffs' attorneys have agreed to advance the costs of this action contingent upon the outcome and are aware that no fee can be awarded without the Court's approval.

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

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

COUNT I
Disloyalty and Imprudence as to Excessive Fees in Investment Options

91. Plaintiffs incorporate the allegations contained in the previous paragraphs of this Complaint as if fully set forth herein.

92. Defendants are and were fiduciaries to the Plan under 29 U.S.C. § 1102(a)(1) and 29 U.S.C. § 1002(21).

93. The scope of the fiduciary duties and responsibilities of Defendants include discharging their duties with loyalty, care, skill, diligence, and prudence

required by ERISA.

94. Defendants are further required to act with respect to the Plan solely in the interest of the participants and beneficiaries and for the exclusive purpose of providing benefits to participants and their beneficiaries and defraying reasonable expenses of administering the Plan.

95. Defendants are required to monitor Plan investment options, eliminating imprudent options, evaluating the merits for the Plan's investments on an ongoing basis, and taking all necessary steps to ensure that the Plan's assets were invested prudently.

96. Defendants are required to make material disclosures to Plan participants regarding the Plan, including its fee structure, share classes, and kick-backs, and the impact of its fee structure, share classes, and kick-backs relative to its performance compared to available alternatives, including lower-cost alternatives from other providers.

97. Defendants breached their duties by retaining the higher fee share class investment options in the Plan when far lower cost funds with identical managers, investments styles, and stocks were available.

98. Defendants breached their fiduciary duties by failing to consider those lower cost funds with identical managers, investments styles, and stocks where available.

99. Defendants' process of monitoring and evaluating the reasonableness of the investment options was and is imprudent.

100. Defendants breached their duties by failing to consider lower cost institutional investments, like those offered by Vanguard.

101. As set forth above, by failing to consider these far lower cost investment alternatives, Defendants did not discharge their duties with respect to the Plan solely in the interest of the participants and beneficiaries and for the exclusive purpose of providing benefits to participants and their beneficiaries and defraying reasonable expenses of administering the Plan and instead acted for the purpose of benefitting Voya through providing significant sources of compensation to the Plan's service provider. Defendants therefore breached their fiduciary duties under 29 U.S.C. § 1104(a)(1)(A).

102. Defendants did not discharge their duties with respect to the Plan with the care, skill, prudence, and diligence under the circumstances then prevailing that a prudent person acting in a like capacity and familiar with such matters would use in the conduct of an enterprise of like character and with like aims. Defendants therefore breached their fiduciary duties under 29 U.S.C. § 1104(a)(1)(B).

103. Defendants failed to engage in a prudent process for the monitoring,

evaluation, and retention of Plan investment options. Such an investigation would have revealed to a reasonably prudent fiduciary that the retail share class investments in the Plan became imprudent and retained for reasons other than the best interest of the Plan and plan participants and beneficiaries and were and are causing the Plan to waste hundreds of thousands of dollars of participants' retirement savings in excessive and unreasonable fees.

104. Defendants' failure to consider alternative investments and retaining the higher cost retail share class funds caused the Plan to sustain underperformance damages.

105. Defendants also breached their fiduciary duties with respect to the Plan by failing to disclose to participants: 1) the kick-back fees in any employee facing materials, including the Summary Plan Description; 2) lower share classes of the same investments from the same providers were available to the Plan; and 3) similar investments to those selected by Defendants were available from other providers at significantly lower expense.

106. Each Defendant is personally liable, and Defendants are jointly and severally liable, under 29 U.S.C. § 1109(a) to make good to the Plan the losses to the Plan resulting from the aforementioned breaches and to

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

107. Pursuant to 29 U.S.C. §§ 1109(a), 1132(a)(2) and (a)(3), Defendants are liable to make good to the Plan any losses to the Plan resulting from the breaches of fiduciary duties alleged in this Count, to restore to the Plan any profits they received as a result of the breaches of fiduciary duties alleged in this Count, and to provide other equitable relief as appropriate.

COUNT II
Disloyalty and Imprudence as to Excessive Payments to Voya

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

109. Defendants were fiduciaries to the Plan under 29 U.S.C. § 1102(a)(1) and § 1002(21).

110. Voya received compensation from the Plan for its administrative and recordkeeping services in the form of direct payments from the Plan.

111. The compensation that Voya received for these services was excessive and unreasonable, and Defendants breached their fiduciary obligations under 29 U.S.C. § 1104(a)(1).

112. Defendants failed to monitor Voya's compensation to ensure that those payments provided no more than reasonable compensation, failed to recover for the Plan the amount of revenue Voya received that exceeded a reasonable fee for the type of services it provided, and failed to put the recordkeeping services out for competitive bidding.

113. Defendants also failed to have a prudent process for evaluating the reasonableness of this compensation paid by the Plan.

114. Defendants failed to monitor any indirect payments Voya received from Plan investments to ensure that those payments provided no more than reasonable compensation, failed to recover for the Plan the amount of those payments that exceeded a reasonable recordkeeping fee, and failed to negotiate a specific recordkeeping fee for the Plan that was reasonable for the services rendered.

115. Defendants breached their duties of prudence and loyalty in violation of 29 U.S.C. § 1104(a), and cost the Plan hundreds of thousands of dollars in excessive administrative fees paid to Voya.

116. Pursuant to 29 U.S.C. §§ 1109(a) and 1132(a)(2), Defendants are

liable to make good to the Plan any losses to the Plan resulting from this breach, as well as any other equitable or remedial relief the Court deems appropriate.

COUNT III
Failure to Monitor Fiduciaries

117. Plaintiffs incorporate the allegations contained in the previous paragraphs of this Complaint as if fully set forth herein.

118. As alleged above, Defendants are fiduciaries to the Plan. Thus, they are bound by the duties of loyalty, exclusive purpose, and prudence.

119. As alleged above, the scope of the fiduciary responsibilities of Defendants include the responsibility to appoint, and remove, and thus, monitor the performance of other fiduciaries.

120. Defendants had knowledge, or should have had knowledge, that their appointees were not properly performing their duties. Specifically, Defendants knew or should have known that their appointees' imprudence and inaction was costing the Plan hundreds of thousands of dollars because of the widespread use of investment options with excessive fees and service providers receiving excessive fees.

121. A monitoring fiduciary must ensure that the monitored fiduciaries are performing their fiduciary obligations, including those with respect to the investment and holding of plan assets, and must take prompt and

effective action to protect the plan and participants when they are not.

122. Defendants breached their fiduciary monitoring duties by, among other things:

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

b. failing to monitor their appointees' fiduciary process, which would have alerted any prudent fiduciary to the potential breach because of the widespread use of investment options with excessive fees and service providers receiving excessive fees;

c. failing to ensure that the monitored fiduciaries appreciated the ready availability of comparable and better performing investments that charged significantly lower fees and expenses; and

d. failing to remove appointees whose performance was inadequate in that they continued to maintain the imprudent options for participants' retirement savings in the Plan during the Class Period, and who breached their fiduciary duties under ERISA.

123. As a consequence of Defendants' breaches of fiduciary duty, the Plan suffered substantial losses. If Defendants discharged their fiduciary monitoring

duties prudently as described above, the losses suffered by the Plan would have been minimized or avoided. Therefore, as a direct result of the breaches of fiduciary duty alleged herein, the Plan, and indirectly the Plaintiffs and the other Class members, lost hundreds of thousands of dollars in retirement savings.

124. Pursuant to 29 U.S.C. §§ 1109(a), 1132(a)(2) and (a)(3), Defendants are liable to restore the losses to the Plan caused by their breaches of fiduciary duties and to provide other equitable relief as appropriate.

COUNT IV
Defendants Knowingly Participated in Breaches of Fiduciary Duties

125. Plaintiffs incorporate the allegations contained in the previous paragraphs of this Complaint as if fully set forth herein.

126. This Count alleges co-fiduciary liability against Defendants.

127. At all relevant times, Defendants were fiduciaries to the Plan as stated above.

128. Defendants, by their actions in participating in and abetting fiduciary breaches, are causing the Plan to remain invested in imprudent investment options, pay excessive fees for those investment options, and pay excessive fees to service providers.

129. As a direct result of Defendants' violations of ERISA, the Plan, and the Plan's participants and beneficiaries, including Plaintiffs, lost hundreds of

thousands of dollars.

130. Pursuant to 29 U.S.C. § 1132(a)(3), Defendants are liable for those losses.

REMEDY FOR BREACHES OF FIDUCIARY DUTY

131. 29 U.S.C. § 1132(a)(2) authorizes a plan participant to bring a civil action for appropriate relief under 29 U.S.C. § 1109. Section 1109 requires "any person who is a fiduciary…who breaches any of the…duties imposed upon fiduciaries…to make good to such plan any losses to the plan…" Section 1109 also authorizes "such other equitable or remedial relief as the court may deem appropriate…"

132. With respect to calculation of the losses to the Plan, breaches of fiduciary duty result in a presumption that, but for the breaches of fiduciary duty, the Plan would not have made or maintained their investments in the challenged investments and, instead, prudent fiduciaries would have invested the Plan's assets in prudent alternative investments available to them. Therefore, the Court should adopt the measure of loss most advantageous to the Plan. In this way, the remedy restores the Plan's lost value and puts the participants in the position they would have been in if the Plan had been properly administered.

133. Plaintiffs and the Class are therefore entitled to relief from Defendants in

the form of: (a) a monetary payment to make good to the Plan the losses resulting from the breaches of fiduciary duties alleged above in an amount to be proven at trial based on the principles described above, as provided by 29 U.S.C. § 1109(a); (b) injunctive and other appropriate equitable relief to remedy the breaches alleged above, as provided by 29 U.S.C. §§ 1109(a), 1132(a)(2) and (a)(3); (c) reasonable attorneys' fees and expenses, as provided by 29 U.S.C. § 1132(g), the common fund doctrine, and other applicable law; (d) taxable costs and interest on these amounts, as provided by law; and (e) such other legal or equitable relief as may be just and proper.

JURY TRIAL DEMANDED

134. Pursuant to Fed.R.Civ.P. 38 and the Constitution of the United States, Plaintiffs hereby demand a trial by jury.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs pray for relief as follows:

- Find and declare that Defendants breached their fiduciary duties as described above;
- Find and adjudge that Defendants are liable to make good to the Plan all losses that the Plan incurred as a result of the conduct described above and to restore the Plan to the position it would have been in but for the

breaches of fiduciary duty;

- Award actual monetary losses to the Plan;
- Order equitable restitution and other appropriate equitable monetary relief against Defendants;
- Order the permanent removal of Defendants from any positions of trust with respect to the Plan;
- Order Defendants to render an accounting;
- Surcharge against Defendants and in favor of the Plan all amounts involved in transactions that such accounting reveals were or are improper, excessive and/or in violation of ERISA;
- Enjoin Defendants from any further violations of its ERISA fiduciary responsibilities, obligations, and duties;
- Order the appointment of an independent fiduciary to administer the Plan;
- Order rescission of the Plan's investments in the higher fee share class options and order a process for the selection of investment options in the Plan;
- Order rescission of the Plan's contracts or agreements with Voya for its services to the Plan and (i) a bidding process for selection of a Plan record-keeper; and, (ii) the determination as to the necessity of any

marketing services necessary for the Plan.

- Order that this action be certified as a class action and that the Class be designated to receive the amounts restored or disgorged to the Plan by Defendants and a constructive trust be established for distribution to the extent required by law;
- Award Plaintiffs their attorneys' fees and costs pursuant to 29 U.S.C. § 1132(g) and/or the Common Fund doctrine;
- Order the payment of interest to the extent it is allowed by law; and
- Award such other and further relief as the Court deems equitable and just.

Dated: May 18, 2016

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