UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF MASSACHUSETTS

JAMES ELLIS and WILLIAM PERRY, Plaintiffs, v. FIDELITY MANAGEMENT TRUST COMPANY, Defendant.	Case No.: **COMPLAINT** **CLASS ACTION (ERISA)**

PRELIMINARY STATEMENT

1. This is a case arising under the Employee Retirement Security Act of 1974 ("ERISA") about a "stable value fund," the Fidelity Group Employee Benefit Plan Managed Income Portfolio Commingled Pool ("MIP"), that at all relevant times had such low investment returns and high fees that it was an imprudent retirement investment. The poor performance and high fees of the MIP were the result of the intentional actions and omissions of the trustee and fiduciary for the MIP, Defendant Fidelity Management Trust Company ("Fidelity").

2. Prior to 2009, Fidelity engaged in an imprudent investment strategy for the MIP that caused substantial losses to the fund and accordingly exposed itself and the MIP's "wrap providers" to substantial losses. Faced with a substantial decline in the MIP's market value, and with resulting pressure from the wrap providers – which were exposed to liability in the event of significant MIP fund withdrawals – Fidelity responded by adopting an unduly conservative

investment strategy that was contrary to the purposes of stable value fund investing, agreeing to allow the wrap providers to charge excessive fees, and charging excessive fees for its own account. Fidelity did so to protect its own position *vis a vis* the wrap providers to the detriment of the investors in the MIP. Fidelity also charged excessive fees for its own account.

3. Exacerbating its fiduciary breach, Fidelity also attempted to conceal its improperly conservative investment and excessive fees from investors by solely reporting to investors an inappropriate "money market" benchmark for the MIP – rather than a proper stable value fund benchmark (as it had used at least to some extent in years past) – that made the MIP returns appear to be competitive, when in fact, they were extremely poor.

4. In so doing, Fidelity failed to exercise prudence in its investment strategy for the MIP. It caused the MIP to invest in and/or approved the MIP's investments in securities with low yields and low durations compared to what should be expected from stable value fund investments and hid this lack of prudence through use of an inappropriate benchmark.

5. Finally, Fidelity failed to continuously monitor and supervise its affiliate to which it delegated day-to-day management of the MIP. Despite the continued poor performance of the MIP, Fidelity took no action to cause its affiliate to change its investment strategies. This failure to monitor and supervise its affiliate and failure to cause the affiliate to change course after years of underperformance provides an independent basis for liability under ERISA. *See Tibble v. Edison International*, __ U.S. __, 135 S. Ct. 1823, 1828 (2015) (a "trustee has a continuing duty to monitor trust investments and remove imprudent ones").

6. This combination of poor performance and high fees caused the MIP at the relevant times to fail to produce a net investment return sufficient to outpace inflation. The MIP

also performed far worse than the average stable value fund and far worse than the most relevant benchmarks.

7. Fidelity thus breached the fiduciary duties imposed by ERISA and caused Plaintiffs and the members of the proposed Class they seek to represent injury in the form of diminution of investment returns they would have realized had the MIP been managed and supervised in accordance with the fiduciary duties required by ERISA.

JURISDICTION AND VENUE

8. Plaintiffs bring this action pursuant to ERISA §§ 502(a)(2) and 502(a)(3), 29 U.S.C. §§ 1132(a)(2), (3). This Court has subject matter jurisdiction over Plaintiffs' claims pursuant to ERISA § 502(e)(1), 29 U.S.C. § 1132(e)(1) and 28 U.S.C. § 1331 because this action arises under the laws of the United States.

9. Venue lies in the District of Massachusetts pursuant to ERISA § 502(e)(2), 29 U.S.C. § 1132(e)(2), because Fidelity resides within or may be found in this District and/or the alleged breaches of the duties imposed by ERISA took place in this District. Venue is also proper pursuant to 28 U.S.C. § 1391(b) because Fidelity resides in this District and/or a substantial part of the events or omissions giving rise to Plaintiffs' claims occurred within this District.

PARTIES

10. The MIP is and was offered as an investment option in 401(k) plans offered to Plaintiffs and the members of the Class. In 401(k) plans, employers provide an opportunity for employees to save their own pre-tax dollars in individual accounts, and in many cases, benefit from additional employer matching contributions. These plans give participants the opportunity to invest their accounts in a broad range of investment alternatives. With the recent significant

decline in the number of traditional pension plans, 401(k) plans have become the principal source of retirement savings for American workers.

11. The MIP is structured as a collective investment trust. As a result, the plans that invest in the MIP are deemed to own an undivided interest in the assets of the trust, which are thus considered to be "plan assets" as that term is defined in Section 3(42) of ERISA.

12. During the class period (defined below), Plaintiffs James Ellis and William Perry have been participants, as defined in ERISA § 3(7), 29 U.S.C. § 1002(7), in the Barnes & Noble 401(k) Plan ("Plan"). From 2009 to 2015, Ellis invested in the MIP. Ellis resides in Sacramento, CA. From 2009 to 2013, Perry invested in the MIP. Perry is a U.S. citizen that currently lives in France.

13. At all relevant times, the Plan was an employee pension benefit plan within the meaning of ERISA § 3(2)(A), 29 U.S.C. § 1002(2)(A), and an individual account plan within the meaning of ERISA § 3(34), 29 U.S.C. § 1002(34). Those ERISA-governed individual account retirement plans that offer investments in the MIP as a plan option are referred to collectively as "the Plans."

14. Defendant Fidelity is the Trustee of the MIP. As Trustee, Fidelity has primary responsibility for the administration of the MIP and the prudent investment of the MIP's assets. In furtherance of that responsibility, Fidelity provides services in connection with the MIP including investment management, accounting, and performance monitoring. These services involve both the grant and exercise of discretionary control by Fidelity over the MIP and its assets. Because it has discretionary authority and control over the assets in the MIP, which are "plan assets" as described above, Fidelity is a fiduciary to the Plans and the participants and

beneficiaries of the Plans, such as Plaintiffs and the members of the Class. Fidelity is headquartered in Boston, Massachusetts.

15. Fidelity delegated day-to-day management of the MIP to its affiliate, Fidelity Management and Research Company ("Fidelity MRC"). Despite this delegation, as trustee for the MIP, Fidelity had a continuing duty to supervise, monitor, and approve the investment decisions and performance of Fidelity MRC.

STABLE VALUE FUNDS

16. Under ERISA, a fiduciary's investment decisions must be prudent not in the abstract but with reference to the *specific goals* of a particular investment fund. A fiduciary must give "appropriate consideration" to facts and circumstances relevant to "the role the investment or investment course of action plays in that portion of the plan's investment portfolio with respect to which the fiduciary has investment duties." 29 C.F.R. § 2550.404a-1(b)(i). Thus, a fiduciary's investment decisions are evaluated under ERISA "in light of the *character and aims* of the particular type of plan he serves." *In re Unisys Savings Plan Litig.*, 74 F.3d 420, 435 (4th Cir. 1996) (emphasis added and quotation omitted).

17. The "character and aims" of stable value funds are well defined both by industry practice and ERISA regulations.

18. According to the trade association for the stable value industry, the Stable Value Investment Association ("SVIA"), a stable value fund should be invested in a "high-quality, diversified, fixed-income portfolio" that is "designed to preserve capital while providing steady positive returns."[1]

[1] Stable Value Investment Association, "Stable Value FAQ", http://stablevalue.org/knowledge/faqs/question/what-is-a-stable-value-fund (last viewed Oct. 3, 2013).

19. Under ERISA, employers that offer defined contribution retirement plans that wish to qualify for ERISA's fiduciary "safe harbor" are required to offer at least three options for investment, each with "materially different risk and return characteristics." One of these investment options must be a safe option: an "income producing, low risk, liquid fund, subfund, or account." 29 C.F.R. § 2550.404c-1 (emphasis added).

20. Stable value funds such as the MIP are a common option in 401(k) plans and are typically designated as the "safe" option required by ERISA regulations.

21. Stable value investments are (by volume of assets under management) the largest conservative investment segment in defined contribution retirement plans, with more than $700 billion in assets as of the end of 2013. They are included in nearly two-thirds of all defined contribution savings and profit sharing plans.

22. Stable value funds are an essential investment alternative for 401(k) plans for at least two important reasons. First, equity markets have historically been more volatile than the bond markets, and a stable value investment choice provides retirement plan participants the ability to move out of equity investments during periods of high market volatility into a stable investment that protects the participant's principal while offering a moderate rate of interest. Second, a stable value investment choice gives retirees, who cannot "ride out" the down periods in a market cycle, the ability to protect the value of their retirement savings and earn a reasonable rate of interest. This is especially important as investors near retirement age.

23. In the 1980s and early 1990s, the stable value investment was provided through traditional insurance company guaranteed investment contracts, or GICs, which offered a fixed rate of return for a period of years.

24. These traditional GICs have been largely supplanted by the current version of the stable value fund, often referred to as "synthetic GICs."

25. A stable value fund structured as a synthetic GIC, like the MIP, consists of two principal features. The first is an intermediate term bond fund. The investment manager for the stable value fund invests in a portfolio of intermediate term bonds with an average duration of approximately three to four years that will provide a significantly higher interest rate, or yield, than for example the short-term (average 60 days or less) securities typically held by a money market fund.

26. The shift from actual GICs to synthetic GICs was not intended to change the basic risk profile of stable value funds. "Consistent with the role of stable value as the 'safe' option in most defined benefit contribution plans today, the overriding objective in managing [the portfolios underlying the synthetic GIC] is preservation of principal. Liquidity to meet participant withdrawals is an additional factor, as is earning a fairly stable return which exceeds that of shorter maturity alternatives."[2]

27. More specifically, even though a synthetic GIC invests in a partially-insured fixed income portfolio (as described further below), that portfolio itself must be managed in accordance with the purposes of a stable value fund: "[t]he benchmark for these bonds, as well as the philosophy and strategies of the fixed income manager, should be consistent with the goals of a stable value fund."[3]

28. Despite the focus on principal preservation and liquidity, returns substantially higher than a money market fund are an essential characteristic of stable value funds. Stable

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[2] Frank J. Fabozzi, *The Handbook of Stable Value Investments* (1998), 83.

[3] *Id.*, 120.

value funds are designed to invest in longer-term securities than money market funds; accordingly, they are expected to provide a significantly higher return than money market funds. Typically, investments with a longer duration have higher returns than investments with a shorter duration. According to the American Institute of Certified Public Accountants, the returns of stable value funds are comparable to funds investing in intermediate-duration investment grade corporate bonds, without the associated market risk.[4]

29. The second principal feature of a stable value fund is a "wrap contract" issued by an insurance company or other financial institution that provides a guaranty that investors will receive the "book value" of their account, the value of their initial investments plus interest accrued at certain intervals of time that reflects the performance of the underlying bond fund. The latter element is referred to as the "crediting rate."

30. According to the SVIA, these wrap contracts are:

> . . .issued by a financial institution (such as an insurance company or bank) that wraps the underlying investments to provide the principal preservation and steady yield expected of stable value. … [T]hese contracts provide a credited rate of return, known as the crediting rate that changes periodically to reflect the ongoing performance of the underlying investments and smooths the returns of the bonds over time. It also ensures that the crediting rate to participants does not drop below zero and provides for participant transactions at contract value, which is the invested capital (or principal) plus accumulated earnings.[5]

31. The fair market value of the bonds purchased by the fund underlying the stable value fund will rise and fall with changes in prevailing interest rates and for other reasons. At any point in time, the market value of the underlying bond portfolio may be higher or lower than

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[4] Am. Institute of Certified Public Accountants, Employee Benefit Plan Audit Quality Ctr., "Stable Value Funds and Investment Contracts – An Overview," (Feb. 2006), *available at* http://www.raffa.com/Resources/Documents/AICPA_EBPAQC_TOPIX%20PRIMER_Stable%20Value%20Funds%20and%20Invest%20Contracts_Feb%202006.pdf (last visited Nov. 24, 2015).

[5] Stable Value Inv. Ass'n, "Synthetic Investment Contracts," *available at* http://stablevalue.org/knowledge/stable-value-synthetic-basics (last visited Nov. 24, 2015).

the book value of investors' accounts. The risk that the market value of the portfolio will be lower than the book value of participants' accounts is managed through the wrap contracts, as described above.

32. The wrap contracts provide a formula for determining the crediting rate applied to participants' accounts invested in the stable value fund, which is different from the yield of the underlying portfolio. Under normal circumstances, the crediting rate will be somewhat less than the yield. The difference between the yield of the portfolio and the crediting rate is the "spread." The spread allows the fund to build a reserve to account for anticipated declines in the market value of the underlying securities. The spread will be greater during periods when the market value of the portfolio is less than the book value of participants' accounts, and smaller when the market value is greater than the book value of participants' accounts. In fact, when market value exceeds book value by a certain amount, the spread could be negative; that is, the crediting rate may be higher than the yield on the underlying portfolio, and is paid for using some of the "reserve" represented by the excess of market value over book value.

33. When the market value is lower than book value, the spread determined by application of the crediting rate formula allows the fund to "heal." By giving participants less than what the portfolio is yielding, the market value of the fund will increase relative to the book value. More specifically, the crediting rate formula is designed so that the negative difference between the market value of assets and the book value of accounts is recovered over the duration of the underlying portfolio. For example, if the market value of assets was 98% of book value and the duration of the portfolio was four years, the two percent difference would be recovered over a period of four years. Therefore, the crediting rate produced by the formula would be 0.5% lower than the yield on the portfolio and at the end of four years, market value and book value

would be equal. If the formula for determining the crediting rate were applied using a duration of two years, the two percent difference would be recovered over a period of only two years and the crediting rate would have been one percent lower than the yield on the portfolio.

34. The wrap contract may also reduce the investment risk of the fund by providing liquidity. When for example, the market value of bonds in a stable value portfolio declines due to an increase in prevailing interest rates, the investment manager may in the absence of the wrap contract be required to sell some of those bonds to pay out benefits to investors, causing an actual and permanent loss to the fund. But if the bonds can be held to maturity, then market value will typically equal book value and there will be no loss. The wrap contract may allow for liquidity to prevent the need for sales prior to maturity.

35. The existence of the wrap contracts is important to stable value fund operations for at least two reasons. First, because the wrap providers are at risk for losses to the stable value funds, managers of such funds have incentives to appease the wrap providers at the expense of investors in the funds. Second, the wrap contracts provide the principal protection and liquidity essential to the operation of a stable value fund, allowing investment managers to focus on providing returns consistent with the other objectives of stable value investing.

THE FIDELITY MIP

36. As of October 1, 2009, the MIP held nearly $9.4 billion in assets. As of Sept. 30, 2014, the MIP held less than $6.3 billion in assets.

37. This precipitous decline in assets was due largely to participant withdrawals caused in part by the consistently poor performance of the MIP as described further below. Participant withdrawals totaled $1.1 billion in 2010, $822 million in 2011, $995 million in 2012, $100 million in 2013, and $511 million in 2014.

38. The MIP is supported by wrap contracts with AIG Financial Products, JP Morgan Chase Bank, Monumental Life Insurance Co., Rabobank Nederland, and State Street Bank and Trust (collectively the "Wrap Providers").

39. Virtually all wrap contracts are industry-standard documents that provide the same fundamental terms. For example all such contracts contain the same or substantially similar provisions regarding withdrawals and the same or substantially similar formula for determining the crediting rate. The standardized formula for determining the crediting rate provides a significant cushion for expected changes in the market value of the underlying portfolio as well as projected defaults of the underlying bonds, thereby significantly reducing the risk that the fund would ever suffer a loss.

40. Upon information and belief, the wrap contracts supporting the MIP were the industry-standard contracts described above.

41. Fidelity, pursuant to the Trust Agreement for the MIP and industry practice, promised to the Plans and their participants that it would manage the underlying intermediate term bond portfolio in a manner consistent with the objectives of stable value investing and credit participant accounts using the rate determined by the formula set forth in the wrap contracts.

42. Notwithstanding the first of these promises, in an effort to boost the yield of the MIP and thereby garner more management fees (for Fidelity) Fidelity, before the period at issue here, engaged in an imprudent and ultimately unsuccessful investment strategy by, among other things, causing large amounts of the MIP's assets to be held in various forms of securitized debt. For example, in 2006, asset-backed securities, mortgage-backed securities and collateralized debt obligations represented nearly 60 percent of the MIP's assets.

43. Those and other investments declined in value when the financial crisis struck in 2008, causing the MIP and the Plans that invested in it to suffer damage beginning in 2009 and continuing for years afterwards (due to the nature of the "crediting rate" investment return mechanism of stable value funds like the MIP, which amortizes investment losses over the duration of the portfolio). Specifically, in the fiscal year ending 2008, the MIP experienced a market value loss of about $381 million. This caused the effective return of the MIP on a market value basis to be close to zero for that year. By contrast, during that same fiscal year, the stated benchmark for the MIP earned close to an eight per cent yield despite the financial crisis.

44. These losses exposed the Wrap Providers to liability in the event of significant withdrawals from the fund.

45. Because of these losses caused by Fidelity's imprudent investment strategy, Fidelity faced increasing pressure from the Wrap Providers after 2008 to make changes to the underlying MIP investment portfolio and to make modifications to the existing wrap contracts for the MIP in order to decrease the Wrap Providers' exposure.

46. As a fiduciary in the exercise of its discretionary authority over plan assets, Fidelity significantly modified the asset allocation of the MIP to reduce the risk to the Wrap Providers that was inherent in the original wrap agreements.

47. As explained above, an essential element of the design of a stable value fund is to take advantage of the significantly-higher yield on intermediate term investment grade corporate and government bonds than the yield on ninety-day commercial paper in money market funds. Fidelity's management of the portfolio went from an overly aggressive investment strategy to an overly conservative investment strategy and to an unreasonably short average duration, which had a significant negative effect on the yield of the MIP investment portfolio on a market-value

basis and thus eventually the crediting rate paid to the Plans as investors in the MIP and Plaintiffs and members of the Class. For example, in the three-year period from September, 2007 to September 2010, investments in US Government and Agency obligations increased by four hundred percent, from 13.9% of the fund to 55.4%.

48. Managing the MIP portfolio to an unreasonably short average duration had an additional effect beyond decreasing yields on a market-value basis. The duration is also used in the calculation of the crediting rate. Fidelity agreed to modify the crediting rate formula in the wrap contracts by using a duration factor that was substantially less than four years. That modification had the effect of reducing the crediting rate paid to the Plans as investors in the MIP and thus Plaintiffs and members of the Class. For example, under the crediting rate formula, a reduction in the duration factor from four years to two years, at a time when the market value of the fund was equal to or less than book value, would effectively double the spreads between the yield on the portfolio and crediting rate, substantially reducing the crediting rate.

49. Prior to the bankruptcy of Lehman Brothers, the predominant benchmark for stable value funds, used both in wrap contracts and investment guidelines in contracts between stable value fund managers and participating ERISA plans was the Lehman Aggregate Intermediate Bond Index. This index had an average duration of approximately three to four years. Post-Lehman, this benchmark became the Barclays Intermediate U.S. Government/Credit Index or the Barclays 1-5 Government/Credit Index, with durations between four years and two years. A stable value fund should, in accordance with these benchmarks, have an average duration substantially higher than two years.

50. The reported average duration of the investments in the MIP was 2.2 years in 2009 and 2.3 years in 2010, at the very bottom of the range of typical stable value fund durations.

51. Fidelity also changed its mix of investments in an excessively-conservative direction. For example, as of September 30, 2007, the percentage of the fund's assets invested in US Treasuries was only 12.7 per cent; but as of September 30, 2011, it was 43.7 percent and as of September 30, 2012, it was 46 per cent. According to a survey of SVIA members, the average participating "pooled" stable value fund invested only about 22 percent of assets in such securities in 2011 and 25 percent of assets in such securities in 2012. U.S. Treasuries are typically the lowest risk, and thus lowest yielding, investments (other than cash and cash equivalents) held by stable value funds.

52. Although Fidelity may claim that it adopted this unduly-conservative investment strategy to further the goals of stable value investing, adopting a different investment strategy than Fidelity used with the MIP during the time period at issue would in no way be inconsistent with preserving principal, ensuring liquidity, or providing stable returns. As explained above, these features are largely accomplished through the wrap contracts and are features inherent to a stable value product.

53. As set forth below, competing stable value funds which were subject to the exact same underlying economic conditions as the MIP and had the same conservative investment goals earned substantially higher returns than the MIP during the relevant time period while at the same time preserving principal, ensuring liquidity, and providing stable returns.

54. At the same time as Fidelity provided a gratuitous benefit to the Wrap Providers by reducing risk to the Wrap Providers at the expense of investors' yields, it also paradoxically

agreed to an increase in the fees paid to the Wrap Providers. Between 2009 and 2011, as a fiduciary in the exercise of its discretionary authority over ERISA-covered retirement plan assets, which included the wrap contracts, Fidelity agreed to increase the wrap fees for the MIP from 8 basis points to 22 basis points or more. This fee increase had an immediate negative financial impact on participants in the Plans who invested in the MIP. The effect of the increase in wrap fees were that (i) the fees received by the Wrap Providers in cash increased by 14 basis points annually and (ii) the yield of the MIP to investors was correspondingly reduced by 14 basis points annually.

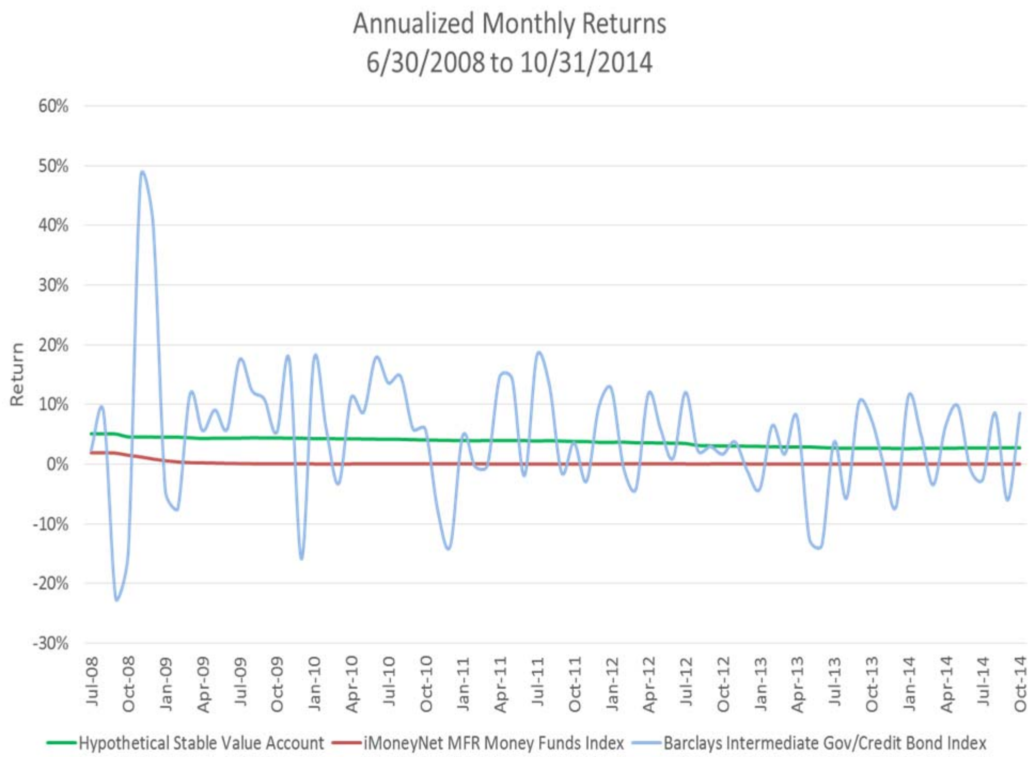
55. The changes in investment strategy and fee structure described above provided direct benefits to the wrap providers because they increased the revenue to the wrap providers while at the same time reducing the risk that the wrap providers would have to pay anything in connection with the guarantees for which they were being compensated. These changes also provided direct benefits to Fidelity as they reduced the risk of liability Fidelity might have to the wrap providers due to its previous poor management of the MIP. But these changes directly and materially reduced the crediting rate to be paid to participants in the Plans who had invested in the MIP and thus the Plaintiffs and members of the Class. Effectively, Fidelity paid for the problems that its mismanagement created with the Wrap Providers by bailing out the Wrap Providers with plan participants' money.

56. Fidelity disguised its conduct and the poor performance of the MIP by using a misleading and inappropriate benchmark in communications with plan sponsors and participants. During the class period, Fidelity's MIP fund fact sheets stated that the benchmark for the fund was the iMoneyNet First Tier Institutional Money Market Funds Average. As a point of

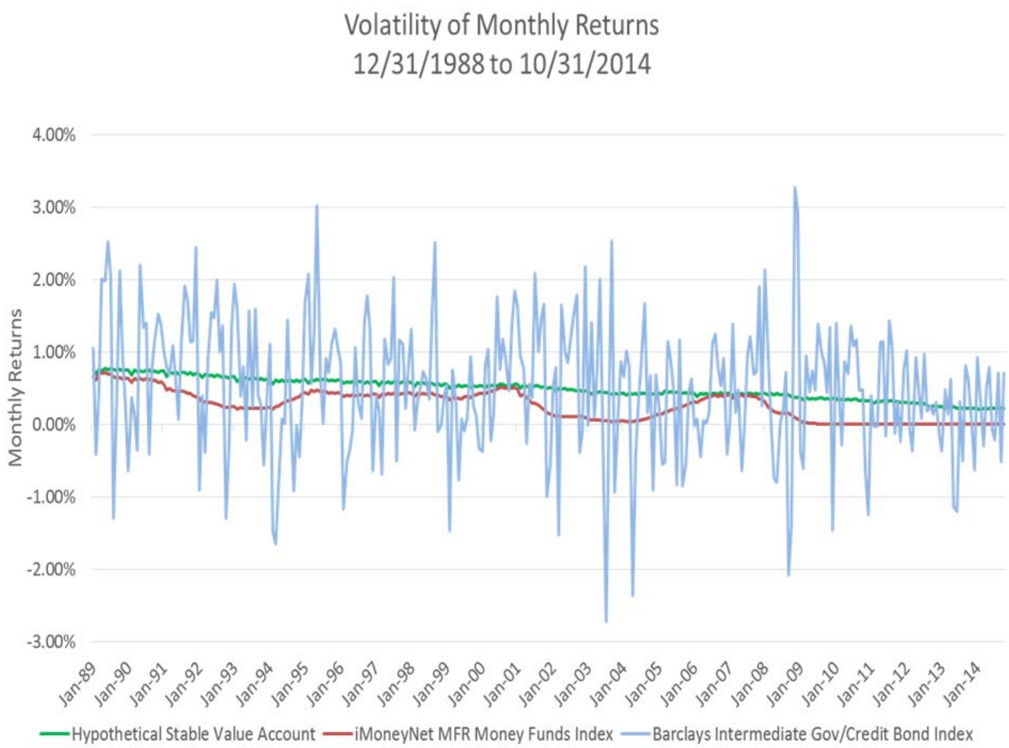
reference, the iMoneyNet First Tier Institutional Money Market Funds Average is used by Fidelity as the benchmark for Fidelity's money market funds.

57. The use of a money market fund as a benchmark for the MIP is misleading and violates the provision of 29 CFR §2550.404a-2 which requires the disclosure to retirement plan participants of an appropriate investment benchmark. This is because the MIP is not a money market fund, nor as a matter of design and operation should it offer a risk profile and returns similar to a money market fund. A money market fund manages risk through duration, and presents a simple proposition: investment grade corporate debt securities with a dollar-weighted average maturity of 60 calendar days or less are not susceptible to significant changes in value due to rising interest rates and are not likely to default in that average 60 days. As previously described, however, a stable value fund is an *intermediate* term bond fund covered by a wrap contract. The two investment products thus differ fundamentally. This is why the longer-duration indices described above are typically used for internal evaluative purposes and in contracts with wrap providers and plan sponsors.

58. Historically, stable value funds have substantially outperformed money market funds while offering far less volatility than bond funds:[6]

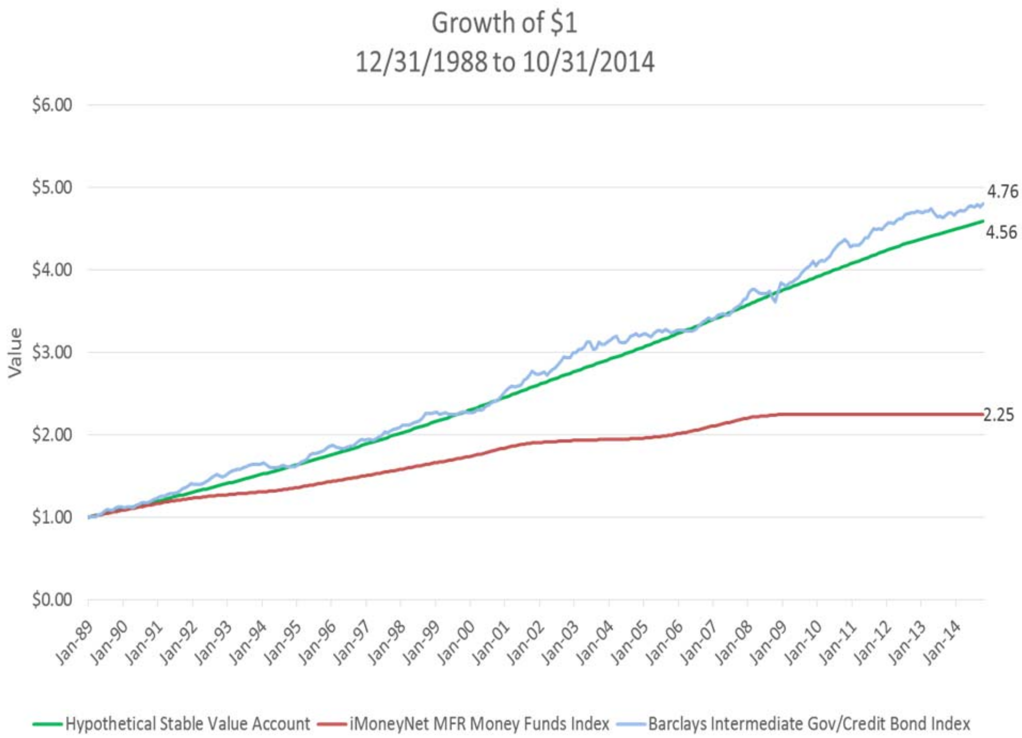


[6]Stable Value Inv. Ass'n, "Stable Value FAQ", *available at* http://stablevalue.org/media/misc/monthly.png and http://stablevalue.org/media/misc/vola.png (last visited Nov. 24, 2015).



59. Over a long time horizon, stable value funds have offered much higher accumulated returns than money market funds and just slightly less accumulated returns than bond funds:[7]

[7] Stable Value Inv. Ass'n, *available at* http://stablevalue.org/media/misc/monthly.png *and* http://stablevalue.org/media/misc/growth.png (last visited Nov. 24, 2015).



60. Thus, Fidelity's use of a money market benchmark for the MIP was misleading and served only to conceal the poor performance of the MIP.

PERFORMANCE OF THE MIP

61. Fidelity's investment strategy for the MIP was designed more to assuage the concerns and complaints of the Wrap Providers (which were caused by Fidelity's previously excessively-risky investment strategy) than to provide adequate retirement benefits to Plaintiffs and the members of the class.

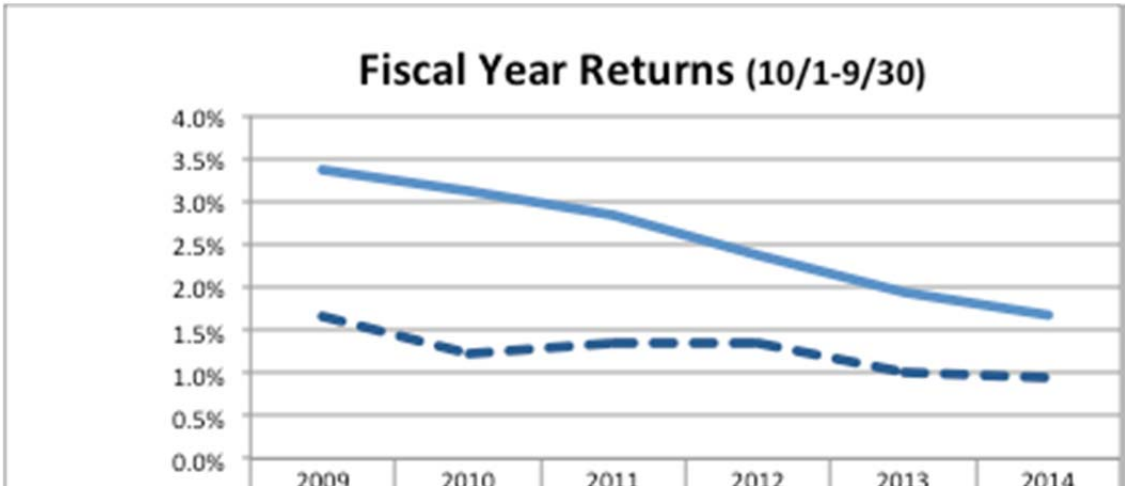
62. For three of the four years from 2010 through 2013, the MIP's crediting rate did not even exceed the inflation rate, as measured by the Consumer Price Index ("CPI"):[8]

[8] All figures in the following tables are for fiscal years from October 1 of the previous year to September 30 of the year referenced.

Year	MIP Crediting Rate	CPI
2010	1.22%	1.14%
2011	1.34%	3.87%
2012	1.35%	1.99%
2013	1.02%	1.18%

On a cumulative basis over this time period, the MIP yielded 6.0 per cent while the CPI increased 10.2 per cent.

63. Comparing the performance of the MIP with the Hueler Companies' Stable Value Indices (a stable value industry benchmark which aggregates the performance of over a dozen leading stable value funds) shows that the MIP consistently provided a substantially lower crediting rate than did similar funds during this time period:[9]



	2009	2010	2011	2012	2013	2014
Hueler	3.37%	3.12%	2.85%	2.37%	1.93%	1.67%
MIP	1.65%	1.22%	1.34%	1.35%	1.02%	0.94%

[9] The Hueler average is reported net of wrap fees but gross of management fees. Even if the Hueler performance is reduced to account for reasonable management fees, the MIP would still have substantially underperformed the industry average for each of these years.

64. The MIP's consistent underperformance is also reflected in the following table, which shows the MIP's crediting rate measured against its stated benchmark (until 2012), the Barclays U.S. 1-5 Government / Credit Bond Index:

Year	**MIP Crediting Rate**	**Barclays U.S. 1-5 Government / Credit**
2009	1.70%	7.36%
2010	1.22%	5.15%
2011	1.34%	2.08%
2012	1.35%	2.47%
2013	1.02%	0.34%

On a cumulative basis over this time period, the MIP yielded 6.8% per cent while the benchmark yielded 18.4 per cent.

65. The MIP's performance against this benchmark was so consistently poor that, with no explanation, the MIP ceased comparing its performance against this benchmark in its annual reports beginning in 2012 even though in previous years it had affirmatively represented that the benchmark provided a valid basis for comparison for the MIP. For example, in the 2008 annual report, Fidelity stated that "[t]o measure how the Portfolio stacked up against other conservative investment options, you can compare its return to the Barclays Capital U.S. 1-5 Government / Credit Bond A+ Index …." There was no fundamental change to the nature of stable value funds in 2012 that would justify the omission of comparison to this benchmark. Fidelity began to omit comparison to this benchmark both to mislead investors as to the poor performance of the MIP and in recognition of the fact that the MIP was no longer being managed as a true stable value fund.

66. The return on a stable value fund is a function of: (1) overall market conditions; (2) the stable value fund's investment strategy; and (3) the fees charged by the stable value funds, the managers of the fund, the parties that sell investments to the fund, and other service providers to the fund, such as insurers.

67. As set forth above, some diminution in stable value fund returns may result from market fluctuations. An individual stable value fund's investment strategy and fees, however, may also cause diminution in investment returns. While market fluctuations are outside the control of stable value fund fiduciaries, the investment strategy and fees are key attributes of stable value funds and within the control of these fiduciaries.

68. All the stable value funds reflected in the Hueler index and the MIP faced the exact same underlying economic conditions, including the financial crises and its aftermath. Furthermore, as set forth above, all these stable value funds were managed within similar risk parameters, which are largely determined by the structural features of stable value funds and investment guidelines imposed by common wrap providers.

69. For these reasons, returns from individual stable value funds have historically occurred in a relatively narrow band. As one researcher found:

> The return series of individual funds in the SV average are highly correlated among themselves. Both the average of pairwise correlation coefficients and an efficient measure of multiple correlation – the multirelation coefficient – indicate that the SV return series is highly representative of the individual fund returns.[10]

70. In this context, the MIP's extreme and consistent underperformance is striking and indicative of Fidelity's breaches of fiduciary duty in managing and supervising the MIP.

[10]David F. Babbel and Miguel A. Herce, "Stable Value Funds: Performance to Date," (January 1, 2011), *available at* http://ssrn.com/abstract=1734991 (last visited Nov. 24, 2015)).

THE MIP'S EXCESSIVE FEES

71. Although the MIP substantially underperformed compared to other stable value funds, it charged higher fees than such funds.

72. Fidelity charged excessively high fees for the management of the MIP, causing even greater deterioration in the MIP performance, which was well below the performance of its peer group of stable value funds and its benchmark. For example, the expense ratio for the MIP in 2012 was .69 percent (or 69 basis points). According to the SVIA, however, pooled and collective stable value funds had an average expense ratio of 41 basis points in 2012. Furthermore, the SVIA (among others) represented to the Securities and Exchange Commission in 2011 that the median expense ratio for stable value funds in general was only 34 basis points in 2009.[11] Thus, the MIP fees and expenses were far higher than the industry average, while its performance was well below the industry average.

73. At some point, even Fidelity recognized that the fees being charged for management of the MIP were excessive, and effective as of February 6, 2013 introduced a second share class for the MIP, Class 2 shares, that carried an investment management fee that was 20 basis points less than the fees charged for the Class 1 shares, notwithstanding the fact that there was otherwise no difference at all between the two share classes.[12] Fidelity, however, did not make the Class 2 shares available to all Plans participating in the MIP.

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[11] The Stable Value Inv. Ass'n, The Am. Bankers Ass'n, and the Fin.l Servs. Roundtable Response to the U.S. Commodity Futures Trading Comm'n and the Secs. and Exchange Comm'n Acceptance of Public Submissions Regarding Study of Stable Value Contracts at 18, n.53 (Sept. 26, 2011).

[12] On August 7, 2014, the Board of Trustees for the Montgomery County Maryland Retirement Savings Plan made an announcement to plan participants regarding the transition to Class 2. shares stating: "MIP Class 1 will be converted to the MIP Class 2 effective as of the close of regular trading on the New York Stock Exchange on September 10, 2014. The MIP Class 2 has lower fees as shown in the table above [indicating a fee reduction of 20 basis points], resulting in

74. Fidelity continues to administer Class 1 shares with an aggregate expense ratio of 79 basis points.[13]

CLASS ACTION ALLEGATIONS

75. Plaintiffs bring this action as a class action pursuant to Rules 23(a) and 23(b)(1) or, in the alternative, 23(b)(3) of the Federal Rules of Civil Procedure on behalf of the following class of similarly situated persons ("the Class"):

> All participants in defined contribution employee pension benefit plans within the meaning of ERISA § 3(2)(A), 29 U.S.C. § 1002(2)(A), who invested in the MIP from six years before the filing of this action until the time of trial (the "Class Period").

76. The members of the class are so numerous that joinder of all members is impracticable. While the exact number of Class members is unknown at this time and can only be ascertained through appropriate discovery, Plaintiffs believe that there are, at a minimum, several thousands of members of the Class given the size of the MIP (initially over $9 billion in assets under management).

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

(a) Whether Fidelity was a fiduciary of the Plans;

(c) Whether Fidelity breached its fiduciary duties with respect to the investment strategies, management, and supervision of the MIP;

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a higher return to participants. There is no difference in the investment objective, strategy, and risk between Class 1 and Class 2."

[13] *See* Managed Income Portfolio Fund Fact Sheet, *available at* https://nb.fidelity.com/public/workplacefunds/view-all/0632 (last viewed November 23, 2015).

(d) Whether the fees charged and/or collected by Fidelity and/or fees negotiated with the Wrap Providers in connection with the MIP were reasonable;

(e) Whether the compensation paid to Fidelity was unreasonable or excessive; and

(f) Whether Fidelity's alleged breaches of fiduciary duty and prohibited transactions caused losses to the Plans and their participants and, if so, in what amount.

78. There are no substantial individual questions among the class claims on the merits of this action.

79. Plaintiffs' claims are typical of the claims of the members of the putative class, as Plaintiffs and all other members of the putative class were harmed by Fidelity's wrongful conduct with respect to a single, commingled stable value fund, the MIP.

80. Plaintiffs have been injured by the breaches of fiduciary duty alleged in this Complaint and are committed to fairly, adequately, and vigorously representing and protecting the interests of the members of the class.

81. Plaintiffs have retained counsel competent and experienced in class action litigation of this nature for this purpose.

82. Neither Plaintiffs nor their counsel have any interests that might cause them to refrain from vigorously pursuing the claims in this class action. Thus, Plaintiffs are adequate representatives of the class.

83. Class certification of Plaintiffs' Claim for Relief is appropriate pursuant to Fed. R. Civ. P. 23(b)(1) because the prosecution of separate actions by individual Class members would create a risk of inconsistent or varying adjudications which would establish incompatible standards of conduct for Fidelity, and/or because adjudications with respect to individual Class members would as a practical matter be dispositive of the interests of non-party Class members.

84. In the alternative, class certification of Plaintiffs' Claims for Relief is also appropriate under Fed. R. Civ. P. 23(b)(3) because common issues of law and fact predominate over questions affecting only individual members of the Class. The only individualized issues will be the amount of damage each member of the Class incurred from the MIP's underperformance and excessive fees, and such damages can be readily calculated based on business records maintained by Fidelity.

85. Moreover, a class action is superior to other available methods for the fair and efficient adjudication of this controversy. Fidelity has injured Plaintiffs and the members of Class by diminishing their investment returns and obtained wrongful profits through overcharges. This diminution of returns and these overcharges are, on an individual level, small and difficult to detect but in the aggregate are enormous. Individual participants who have invested in the MIP, and even most Plans, have an insufficient stake in the outcome of this matter to devote substantial resources to pursue it.

86. On information and belief, the names and addresses of the class members are available from Fidelity and/or the Plans, and adequate notice can be provided to members of the class to the extent required by Fed. R. Civ. P. 23.

CLAIM FOR RELIEF

[Breach of Fiduciary Duty Under ERISA § 404(a), 29 U.S.C. § 1104(a)]

87. Plaintiffs incorporates each of the proceeding paragraphs as if set forth fully herein.

88. ERISA defines a fiduciary as anyone who exercises authority or control over the management or disposition of plan assets. 29 U.S.C. § 1002(21)(a).

89. As set forth above, Fidelity was an ERISA fiduciary for the Plans and their participants and beneficiaries, including Plaintiffs and the members of the Class, with respect to the MIP and the underlying assets of the MIP, including its investments and the wrap contracts.

90. ERISA § 404(a)(1), 29 U.S.C. § 1104(a)(1), requires, *inter alia*, that a plan fiduciary like Fidelity here discharge its duties with respect to a plan solely in the interest of the participants and beneficiaries and 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 a like character and with like aims.

91. The U.S. Department of Labor ("DOL") and case law have interpreted this duty. In order to comply with the duty of prudence, a fiduciary must give "appropriate consideration to those facts and circumstances that, given the scope of such fiduciary's investment duties, the fiduciary knows or should know are relevant to the particular investment or investment course of action involved, including the role that the investment or investment course of action plays in that portion of the plan's investment portfolio with respect to which the fiduciary has investment duties." 29 C.F.R. § 2550.404a-1(b)(1) "Appropriate consideration," according to DOL regulations, includes but is not necessarily limited to: "(i)[a] determination by the fiduciary that the particular investment or investment course of action is reasonably designed, as part of the portfolio (or whether applicable, that portion of the plan portfolio with respect to which the fiduciary has investment duties), to further the purposes of the plan, taking into consideration the risk of loss and the opportunity for gain (or other return) associated with the investment or investment course of action; and (ii) [c]onsideration of the following factors …: (A) [t]he composition of the portfolio with regard to diversification, (B) [t]he liquidity and current return of the portfolio relative to the anticipated cash flow requirements of the plan; and (c) [t]he

projected return of the portfolio relative to the funding objectives of the plan." 29 C.F.R. § 2550.404a-1(b)(2).

92. Among other things, a fiduciary's investment decisions are evaluated under ERISA "in light of the character and aims of the particular type of plan he serves." *In re Unisys Savings Plan Litig.*, 74 F.3d at 435 (emphasis added and quotation omitted). The "character and aims" of stable value funds are well defined both by ERISA regulations and industry practice as set forth above.

93. Fidelity's' conduct with respect to the MIP violated in numerous ways its fiduciary duties to act solely in the interests of plan participants and to act prudently in accordance with the goals of stable value investing as set forth above.

94. In summary, Fidelity put its own interests and the interests of the Wrap Providers first by adopting an unduly conservative investment strategy during the relevant time period to make up for an imprudently risky investment strategy contrary to the purposes of stable value fund investing it had employed in the past.

95. In addition, Fidelity allowed the Wrap Providers to charge excessive fees and allowed for other contractual changes that benefited Fidelity and the Wrap Providers at the expense of the participants in the Plans.

96. Fidelity also charged excessive fees for its own account.

97. Fidelity also failed to exercise prudence in its investment strategy for the MIP. It caused the MIP to invest and/or approved the MIP's investments in securities with relatively low yields and low durations compared to what should be expected from stable value fund investments.

98. Furthermore, under ERISA, a fiduciary such as a "trustee has a continuing duty to monitor trust investments and remove imprudent ones. This continuing duty exists separate and apart from the trustee's duty to exercise prudence in selecting investments at the outset." *Tibble*, 135 S. Ct.at 1828.

99. Contrary to this duty, Fidelity failed to continuously monitor and supervise Fidelity MRC. Despite the continued poor performance of the MIP, Fidelity took no action to cause its affiliate to change its investment strategies.

100. Fidelity's breaches caused the MIP to provide returns substantially and consistently less than other stable value funds subject to the same economic conditions and risk parameters and caused the participants in the Plans that invested in the MIP to pay excessive fees, both directly to Fidelity and to the Wrap Providers.

101. ERISA § 409, 29 U.S.C. § 1109, provides, *inter alia*, that any person who is a fiduciary with respect to a plan and who breaches any of the responsibilities, obligations, or duties imposed on fiduciaries by Title I of ERISA shall be personally liable to make good to the plan any losses to the plan resulting from each such breach, and additionally is subject to such other equitable or remedial relief as the court may deem appropriate, including removal of the fiduciary.

102. ERISA § 502(a)(2), 29 U.S.C. § 1132(a)(2), permits a plan participant to bring an action for relief under ERISA § 409.

103. ERISA § 502(a)(3), 29 U.S.C. § 1132(a)(3), permits a plan participant to bring an action to obtain appropriate equitable relief to enforce the provisions of Title I of ERISA or to enforce the terms of a plan.

104. Fidelity's actions caused the Plans and thus the Plaintiffs and the members of the Class to incur losses from diminution of investment returns as well as excessive fees in an amount to be proven at trial and Fidelity is liable for such losses.

105. Furthermore, Fidelity and its affiliates profited from Fidelity's breaches of fiduciary duty in an amount to be proven at trial and are liable to disgorge such profits wrongfully made through use of the Plans' assets.

PRAYER FOR RELIEF

Wherefore, Plaintiffs pray for judgment as follows:

A. Certify this action as a class action and appoint Plaintiffs' counsel as Class Counsel pursuant to Federal Rule of Civil Procedure 23;

B. Declare that Defendant has breached its fiduciary duties to the Class;

C. Enjoin Defendant from further violations of its fiduciary responsibilities, obligations, and duties and from further engaging in transactions prohibited by ERISA;

D. Order that Defendant make good to the Plans the losses resulting from its serial breaches of fiduciary duty;

E. Order that Defendant disgorge any profits that it has made through breaches of fiduciary duty and prohibited transactions and impose a constructive trust and/or equitable lien on any funds received by Defendant therefrom;

F. Award Plaintiffs reasonable attorneys' fees and costs of suit incurred herein pursuant to ERISA § 502(g), 29 U.S.C. § 1132(g), and/or for the benefit obtained for the common fund;

G. Order Defendant to pay prejudgment interest; and

H. Award such other and further relief as the Court deems equitable and just.

DATED this 11th day of December, 2015.

By: /s/ Paul T. Sullivan
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Attorneys for Plaintiffs

JS 44 (Rev. 12/12)

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. *(SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)*

I. (a) PLAINTIFFS

JAMES ELLIS and WILLIAM PERRY

(b) County of Residence of First Listed Plaintiff: Sacramento County, CA
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys *(Firm Name, Address, and Telephone Number)*
Paul T. Sullivan
Zelle Hofmann Voelbel & Mason LLP
600 Worcester Road, Ste. 101, Framingham, MA 01701 (781) 466-0700

DEFENDANTS

FIDELITY MANAGEMENT TRUST COMPANY

County of Residence of First Listed Defendant: Suffolk
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys *(If Known)*

II. BASIS OF JURISDICTION *(Place an "X" in One Box Only)*

❐ 1 U.S. Government Plaintiff
☒ 3 Federal Question *(U.S. Government Not a Party)*
❐ 2 U.S. Government Defendant
❐ 4 Diversity *(Indicate Citizenship of Parties in Item III)*

III. CITIZENSHIP OF PRINCIPAL PARTIES *(Place an "X" in One Box for Plaintiff and One Box for Defendant)*

(For Diversity Cases Only)

	PTF	DEF		PTF	DEF
Citizen of This State	❐ 1	❐ 1	Incorporated *or* Principal Place of Business In This State	❐ 4	❐ 4
Citizen of Another State	❐ 2	❐ 2	Incorporated *and* Principal Place of Business In Another State	❐ 5	❐ 5
Citizen or Subject of a Foreign Country	❐ 3	❐ 3	Foreign Nation	❐ 6	❐ 6

IV. NATURE OF SUIT *(Place an "X" in One Box Only)*

CONTRACT
❐ 110 Insurance
❐ 120 Marine
❐ 130 Miller Act
❐ 140 Negotiable Instrument
❐ 150 Recovery of Overpayment & Enforcement of Judgment
❐ 151 Medicare Act
❐ 152 Recovery of Defaulted Student Loans (Excludes Veterans)
❐ 153 Recovery of Overpayment of Veteran's Benefits
❐ 160 Stockholders' Suits
❐ 190 Other Contract
❐ 195 Contract Product Liability
❐ 196 Franchise

REAL PROPERTY
❐ 210 Land Condemnation
❐ 220 Foreclosure
❐ 230 Rent Lease & Ejectment
❐ 240 Torts to Land
❐ 245 Tort Product Liability
❐ 290 All Other Real Property

TORTS

PERSONAL INJURY
❐ 310 Airplane
❐ 315 Airplane Product Liability
❐ 320 Assault, Libel & Slander
❐ 330 Federal Employers' Liability
❐ 340 Marine
❐ 345 Marine Product Liability
❐ 350 Motor Vehicle
❐ 355 Motor Vehicle Product Liability
❐ 360 Other Personal Injury
❐ 362 Personal Injury - Medical Malpractice

PERSONAL INJURY
❐ 365 Personal Injury - Product Liability
❐ 367 Health Care/ Pharmaceutical Personal Injury Product Liability
❐ 368 Asbestos Personal Injury Product Liability

PERSONAL PROPERTY
❐ 370 Other Fraud
❐ 371 Truth in Lending
❐ 380 Other Personal Property Damage
❐ 385 Property Damage Product Liability

CIVIL RIGHTS
❐ 440 Other Civil Rights
❐ 441 Voting
❐ 442 Employment
❐ 443 Housing/ Accommodations
❐ 445 Amer. w/Disabilities - Employment
❐ 446 Amer. w/Disabilities - Other
❐ 448 Education

PRISONER PETITIONS
Habeas Corpus:
❐ 463 Alien Detainee
❐ 510 Motions to Vacate Sentence
❐ 530 General
❐ 535 Death Penalty
Other:
❐ 540 Mandamus & Other
❐ 550 Civil Rights
❐ 555 Prison Condition
❐ 560 Civil Detainee - Conditions of Confinement

FORFEITURE/PENALTY
❐ 625 Drug Related Seizure of Property 21 USC 881
❐ 690 Other

LABOR
❐ 710 Fair Labor Standards Act
❐ 720 Labor/Management Relations
❐ 740 Railway Labor Act
❐ 751 Family and Medical Leave Act
❐ 790 Other Labor Litigation
☒ 791 Employee Retirement Income Security Act

IMMIGRATION
❐ 462 Naturalization Application
❐ 465 Other Immigration Actions

BANKRUPTCY
❐ 422 Appeal 28 USC 158
❐ 423 Withdrawal 28 USC 157

PROPERTY RIGHTS
❐ 820 Copyrights
❐ 830 Patent
❐ 840 Trademark

SOCIAL SECURITY
❐ 861 HIA (1395ff)
❐ 862 Black Lung (923)
❐ 863 DIWC/DIWW (405(g))
❐ 864 SSID Title XVI
❐ 865 RSI (405(g))

FEDERAL TAX SUITS
❐ 870 Taxes (U.S. Plaintiff or Defendant)
❐ 871 IRS—Third Party 26 USC 7609

OTHER STATUTES
❐ 375 False Claims Act
❐ 400 State Reapportionment
❐ 410 Antitrust
❐ 430 Banks and Banking
❐ 450 Commerce
❐ 460 Deportation
❐ 470 Racketeer Influenced and Corrupt Organizations
❐ 480 Consumer Credit
❐ 490 Cable/Sat TV
❐ 850 Securities/Commodities/ Exchange
❐ 890 Other Statutory Actions
❐ 891 Agricultural Acts
❐ 893 Environmental Matters
❐ 895 Freedom of Information Act
❐ 896 Arbitration
❐ 899 Administrative Procedure Act/Review or Appeal of Agency Decision
❐ 950 Constitutionality of State Statutes

V. ORIGIN *(Place an "X" in One Box Only)*

☒ 1 Original Proceeding
❐ 2 Removed from State Court
❐ 3 Remanded from Appellate Court
❐ 4 Reinstated or Reopened
❐ 5 Transferred from Another District *(specify)*
❐ 6 Multidistrict Litigation

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing ***(Do not cite jurisdictional statutes unless diversity)***:
ERISA §§ 502(a)(2) and 502(a)(3), 29 U.S.C. §§ 1132(a)(2), (3); ERISA § 404(a), 29 U.S.C. 1104(a)

Brief description of cause:
ERISA Class Action for breach of fiduciary duty.

VII. REQUESTED IN COMPLAINT:

☒ CHECK IF THIS IS A **CLASS ACTION** UNDER RULE 23, F.R.Cv.P.

DEMAND $

CHECK YES only if demanded in complaint:
JURY DEMAND: ❐ Yes ☒ No

VIII. RELATED CASE(S) IF ANY

(See instructions): JUDGE ____________ DOCKET NUMBER ____________

DATE: 12/11/2015

SIGNATURE OF ATTORNEY OF RECORD: /s/ Paul T. Sullivan

FOR OFFICE USE ONLY

RECEIPT # ______ AMOUNT ______ APPLYING IFP ______ JUDGE ______ MAG. JUDGE ______

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

1. **Title of case (name of first party on each side only)** James Ellis v. Fidelity Management Trust Company

2. **Category in which the case belongs based upon the numbered nature of suit code listed on the civil cover sheet. (See local rule 40.1(a)(1)).**

☐ **I. 410, 441, 470, 535, 830*, 891, 893, 895, R.23, REGARDLESS OF NATURE OF SUIT.**

☐ **II. 110, 130, 140, 160, 190, 196, 230, 240, 290,320,362, 370, 371, 380, 430, 440, 442, 443, 445, 446, 448, 710, 720, 740, 790, 820*, 840*, 850, 870, 871.**

☑ **III. 120, 150, 151, 152, 153, 195, 210, 220, 245, 310, 315, 330, 340, 345, 350, 355, 360, 365, 367, 368, 375, 385, 400, 422, 423, 450, 460, 462, 463, 465, 480, 490, 510, 530, 540, 550, 555, 625, 690, 751, 791, 861-865, 890, 896, 899, 950.**

***Also complete AO 120 or AO 121. for patent, trademark or copyright cases.**

3. **Title and number, if any, of related cases. (See local rule 40.1(g)). If more than one prior related case has been filed in this district please indicate the title and number of the first filed case in this court.**

4. **Has a prior action between the same parties and based on the same claim ever been filed in this court?**

YES ☐ **NO** ☑

5. **Does the complaint in this case question the constitutionality of an act of congress affecting the public interest? (See 28 USC §2403)**

YES ☐ **NO** ☑

If so, is the U.S.A. or an officer, agent or employee of the U.S. a party?

YES ☐ **NO** ☑

6. **Is this case required to be heard and determined by a district court of three judges pursuant to title 28 USC §2284?**

YES ☐ **NO** ☑

7. **Do <u>all</u> of the parties in this action, excluding governmental agencies of the United States and the Commonwealth of Massachusetts ("governmental agencies"), residing in Massachusetts reside in the same division? - (See Local Rule 40.1(d)).**

YES ☑ **NO** ☐

A. If yes, in which division do <u>all</u> of the non-governmental parties reside?

Eastern Division ☑ **Central Division** ☐ **Western Division** ☐

B. If no, in which division do the majority of the plaintiffs or the only parties, excluding governmental agencies, residing in Massachusetts reside?

Eastern Division ☐ **Central Division** ☐ **Western Division** ☐

8. **If filing a Notice of Removal - are there any motions pending in the state court requiring the attention of this Court? (If yes, submit a separate sheet identifying the motions)**

YES ☐ **NO** ☑

(PLEASE TYPE OR PRINT)

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