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20 Attorneys for Plaintiffs and the Class

21 UNITED STATES DISTRICT COURT
22 SOUTHERN DISTRICT OF CALIFORNIA

23 KRISTI HASKINS, LAURA SCULLY,
24 and DONALD J. JANAK, individually
25 and as representatives of a class of
26 similarly situated persons in the General
27 Electric Retirement Savings Plan and the
28 General Electric Savings and Security
Program,

Plaintiffs,

CLASS ACTION

COMPLAINT

'17CV1960 CAB BLM

1 v.

2 GENERAL ELECTRIC COMPANY,
3 GENERAL ELECTRIC RETIREMENT
4 SAVINGS PLAN TRUSTEES, and
5 DOES 1-30,

6 Defendants.

7
8 **I. INTRODUCTION**

9
10 1. Plaintiffs Kristi Haskins, Laura Scully, and Donald J. Janak (“Plaintiffs”),
11 individually and as representatives of a class of similarly situated persons in General
12 Electric’s 401(k) Plan a/k/a the General Electric Retirement Savings Plan and its
13 predecessor, the General Electric Savings and Security Program (“Plan”) between January
14 1, 2011 and June 30, 2016 (“Class Period”), bring this action under the Employee
15 Retirement Income Security Act of 1974, as amended, 29 U.S.C. 1001, *et seq.* (“ERISA”),
16 against the Plan’s fiduciaries: General Electric Company (“GE”), General Electric
17 Retirement Savings Plan Trustees (“GE Plan Trustees”), and DOES 1 through 30 inclusive
18 (“DOES”) (collectively, “Defendants”). As described herein, Defendants have breached
19 their fiduciary duties and engaged in prohibited transactions and unlawful self-dealing in
20 violation of ERISA and to the detriment of Plaintiffs. Defendants’ harm to Plaintiffs arises
21 from five of the Plan’s funds: GE Institutional International Equity Fund (“International
22 Fund”), GE Institutional Strategic Investment Fund (“Strategic Fund”), GE RSP U.S.
23 Equity Fund (“RSP Equity Fund”), GE RSP U.S. Income Fund (“RSP Income Fund”)
24 (collectively, “GE Funds”) and GE Institutional Small Cap Equity Fund (“Small Cap
25 Fund”). Plaintiffs bring this action to remedy Defendants’ harm, unlawful conduct, prevent
26 further mismanagement of the Plan, and obtain equitable and other relief as provided by
27 ERISA.
28

1 **II. JURISDICTION AND VENUE**

2 2. This Court has exclusive jurisdiction over the subject matter of this action
3 under 28 U.S.C. § 1331 and ERISA § 502(e)(1), 29 U.S.C. § 1132(e)(1).

4 3. This district is the proper venue for this action under 28 U.S.C. § 1391(b) and
5 ERISA § 502(e)(2), 29 U.S.C. § 1132(e)(2) because it is the district where the Plan is
6 administered, where at least one of the alleged breaches took place, or where at least one
7 Defendant may be found. All Defendants are subject to nationwide service of process under
8 29 U.S.C. § 1132(e)(2).

9 **III. PARTIES**

10 **A. Plaintiffs**

11 4. Plaintiff KRISTI HASKINS is a participant in the Plan and a resident of San
12 Diego, California. Plaintiff Haskins suffered harm from her ownership of the GE Funds
13 and the Small Cap Fund during the Class Period.

14 5. Plaintiff LAURA SCULLY is a participant in the Plan and a resident of San
15 Diego, California. Plaintiff Scully suffered harm from her ownership of the RSP Equity
16 Fund and Small Cap Fund, among other investments she may have made in other GE
17 Funds, during the Class Period.

18 6. Plaintiff DONALD J. JANAK is a participant in the Plan and a resident of
19 Carrollton, Texas. Plaintiff Janak suffered harm from his ownership of the International
20 Fund, RSP Equity Fund, RSP Income Fund, and Small Cap Fund, among other investments
21 he may have made in other GE Funds, during the Class Period.

22 7. During the Class Period, Plaintiffs suffered harm from GE’s selection of poor-
23 to mediocre-performing investment options. GE’s management and administration of the
24 Plan deprived Plaintiffs of the investment returns GE could and should have pursued and
25 earned.

26 **B. Defendants**

27 8. Defendant GENERAL ELECTRIC COMPANY (“GE”) is a New York
28 corporation that operates a global digital industrial company and, until 2016, operated an

1 investment management business through GE Asset Management Incorporated
2 (“GEAM”). GE is the Plan’s sponsor and administrator and one of the Plan’s fiduciaries.
3 As the Plan’s administrator, GE is entrusted with the power to make the Plan’s rules and
4 regulations as well as use its discretion to control, manage, and administer the Plan’s
5 investment options. GE is obligated to act for the exclusive benefit of the Plan’s
6 participants and beneficiaries, select prudent investments for the Plan, monitor their
7 selected investments’ performance, and accordingly modify the Plan’s investment options
8 to maximize the benefits accruing to the Plan’s participants and beneficiaries.

9 9. Defendant GENERAL ELECTRIC RETIREMENT SAVINGS PLAN
10 TRUSTEES (“GE Plan Trustees”) are fiduciaries of the Plan and were officers of GEAM.
11 GE Plan Trustees were obligated to act for the exclusive benefit of the Plan’s participants
12 and beneficiaries, select prudent investments for the Plan, monitor their selected
13 investments’ performance, and accordingly modify the Plan’s investment options to
14 maximize the benefits accruing to the Plan’s participants and beneficiaries. To the extent
15 that GE Plan Trustees delegated any of their fiduciary functions to another person or entity,
16 that person or entity has not been disclosed to Plaintiffs and is also a fiduciary under 29
17 U.S.C. § 1002(21)(A).

18 10. DOE DEFENDANTS 1 to 30 (“DOES”) are sued herein under fictitious
19 names because after diligent and good faith efforts, their names, identities, and capacities,
20 whether individual, corporate, associate, or otherwise, are presently unknown to Plaintiffs.
21 Plaintiffs will make the names or identities of said Defendants known to the Court after the
22 information has been ascertained. Plaintiffs are informed and believe, and based thereupon
23 allege, that each of the Defendants designated herein as a DOE DEFENDANT has taken
24 part in some or all of the matters referred to herein and is thus responsible in some manner
25 for the allegations in this Complaint and is liable for the relief sought herein.

26 11. The Defendants are also subject to co-fiduciary liability under 29 U.S.C. §
27 1105(a)(1)(3) because they enabled other fiduciaries to commit breaches of fiduciary duties
28 through their appointment powers, failed to comply with 29 U.S.C. § 1104(a)(1) in the

1 administration of their duties, and failed to remedy the breach of duties they knew other
2 fiduciaries carried out.

3 **IV. PRELIMINARY STATEMENT**

4 12. Plaintiffs and the almost quarter of a million employees who participated in
5 the Plan (“the Plan’s participants”) during the Class Period are victims of Defendants’
6 failure to uphold their fiduciary duties.

7 13. The Plan is a profit-sharing plan that includes a “qualified cash or deferred
8 arrangement” as described in Section 401(k) of the Internal Revenue Code, I.R.C. § 401(k)
9 (1986) and is subject to the provisions of ERISA. The Plan is established and maintained
10 under a written document in accordance with 29 U.S.C. § 1102(a). The Plan has over \$28
11 billion in assets and is one of the largest 401(k) plans in the country. The Plan provides
12 retirement income for GE’s current and former employees. The retirement income the Plan
13 can provide depends on the amount the Plan’s participants invest, the amount the Company
14 contributes on behalf of its employees, and the performance of selected investment options
15 less the investments’ fees and expenses. The Plan’s fiduciaries exclusively control the
16 investment options selected and the costs of the Plan’s investments.

17 14. Each year, the Plan’s participants collectively invested billions of dollars in
18 the Plan. GE representatives encouraged the Plan’s participants at company meetings to
19 invest their 401(k) account assets in GE’s proprietary mutual funds, which GEAM
20 managed until July 1, 2016. GE was aware that despite the performance of the proprietary
21 mutual funds it selected for the Plan, GE would stand to earn significant revenues and
22 profits in investment management fees that GEAM would charge the Plan’s participants.

23 15. The Plan’s participants trusted GE to construct a 401(k) plan that prioritized
24 their interests over its profit and that offered superior investment options and world-class
25 investment management. Instead, GE prioritized profit over its fiduciary duty and saddled
26 the Plan’s participants with substandard proprietary mutual funds.

27 16. As of December 31, 2015, 68% of the Plan’s assets comprised GE-related
28

1 investment options and approximately 56% of the pooled investment fund options
2 available in the Plan consisted of five of GE's proprietary mutual funds.

3 17. The Plan was vital to GE's mutual fund business and the healthy growth of its
4 bottom line. According to public documents, as of December 31, 2015, the Plan owned the
5 vast majority of assets in the following proprietary mutual funds:

Fund Name	Percentage Owned by the Plan
GE Institutional International Equity Fund	90%
GE Institutional Small Cap Equity Fund	84%
GE Institutional Strategic Investment Fund	75%
GE RSP U.S. Income Fund	75%
GE RSP U.S. Equity Fund	70%

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12 18. GE's selection of its proprietary mutual funds for the Plan provided GEAM a
13 constant source of fees and helped inflate the market value of GEAM, which GE sold to
14 State Street for a reported \$485 million on July 1, 2016. At the time of the sale, GEAM
15 managed approximately \$8 billion of the Plan's assets.

16 19. Tainted by self-interest, GE's investment conduct was imprudent and disloyal.
17 GE selected and retained its poor-performing proprietary mutual funds for the Plan when
18 superior investment options were readily available. Moreover, to the detriment of the
19 Plan's participants, GE through GEAM profited from an arrangement where investment
20 sub-advisers managed the Plan for a rate less than the amount GEAM earned from the
21 Plan's participants in investment management fees.

22 20. During the Class Period, GE earned hundreds of millions of dollars from
23 GEAM and its management of the Plan, while the Plan's participants whom GE owed a
24 fiduciary duty suffered losses in the hundreds of millions of dollars.

25 **A. GE Selected and Retained Poor-Performing Proprietary Mutual Funds**

26 21. GE selected and retained four of its proprietary mutual funds in the Plan: the
27 International Fund, Strategic Fund, RSP Equity Fund, and RSP Income Fund (collectively,
28

1 “GE Funds”). GE Funds’ poor performance is demonstrated by comparing GE Funds’
2 annual and rolling investment returns to a broad measure of related market performance.¹
3 This comparative measure consists of various data points, including: (i) the fund’s own
4 broad based securities market index (e.g., the S&P 500 Index); (ii) the funds’ rankings and
5 ratings among Morningstar’s compilation of hundreds of funds with equivalent investment
6 strategies;² and, (iii) the investment leaders’ individual funds with an equivalent investment
7 strategy.

8 22. Any prudent fiduciary would have viewed each of the following GE Funds
9 during the Class Period as poor investments and would not have selected any of them or
10 would have promptly selected a superior investment option after it underperformed relative
11 to its benchmark:

- 12 i. **International Fund.** The International Fund suffered from chronic
13 underperformance relative to its benchmark and other readily available
14 alternatives dating back to January 2008. In the 9-year period between 2008
15 and 2016, the International Fund’s annual returns fell short of the benchmark
16 every year but 2012 and 2015. During that same period, the International
17 Fund underperformed relative to most of the comparable international equity
18 mutual funds Morningstar identified. In 2010, the International Fund
19 performed worse than 90% of the hundreds of international equity mutual
20 funds available on the market. The International Fund also performed worse
21 than 78%, 87%, and 73% of international equity mutual funds in 2011, 2014,
22

23
24
25 ¹ The United States Securities and Exchange Commission recognizes this comparative measure as the
26 prevailing method of evaluating a fund’s performance.

27 ² Morningstar, Inc. is a leading provider of independent investment research products (e.g., data and
28 research insights on managed investment products, publicly listed companies, and private capital
markets) for individual investors, financial advisors, asset managers, retirement plan providers and
sponsors, and institutional investors in the private capital markets in North America, Europe, Australia,
and Asia.

1 and 2016, respectively. Morningstar's total number of identified comparators
2 ranged between 339 and 592 mutual funds.

3 ii. **Strategic Fund.** The Strategic Fund suffered from chronic
4 underperformance relative to its benchmark and other readily available
5 alternatives dating back to January 2008. In the 9-year period between 2008
6 and 2016, the Strategic Fund's annual returns were below most of the
7 moderate-risk, target mutual funds Morningstar identified. In 2010, Strategic
8 Fund performed worse than 85% of the hundreds of moderate risk target
9 mutual funds available on the market. The Strategic Fund also performed
10 worse than 81%, 53%, 69%, and 78% of moderate risk target mutual funds
11 in 2011, 2013, 2014, and 2016, respectively. Morningstar's total number of
12 identified comparators ranged between 431 and 727 mutual funds.

13 iii. **RSP Equity Fund.** The RSP Equity Fund suffered from chronic
14 underperformance relative to its benchmark and other readily available
15 alternatives dating back to January 2009. In the 8-year period between 2009
16 and 2016, the RSP Equity Fund's annual returns were below the benchmark
17 in every year but 2009, 2012, and 2013. The underperformance was
18 significant in 2010, 2011, and 2015. During that same period, the RSP Equity
19 Fund underperformed relative to most of the comparable large cap mutual
20 funds Morningstar identified. In 2010, the RSP Equity Fund performed worse
21 than 87% of the hundreds of large cap mutual funds available on the market.
22 In 2011, 2015, and 2016, the RSP Equity Fund ranked in the bottom half of
23 large cap mutual funds. Morningstar's total number of identified comparators
24 exceeded 1,000 mutual funds.

25 iv. **RSP Income Fund.** From 2008 through 2010, the RSP Income Fund
26 underperformed its benchmark (i.e., the Bloomberg Barclays U.S. Aggregate
27 Bond Index) by 3.65%. During the same three-year period, the RSP Income
28 Fund also significantly underperformed relative to the comparable mutual

1 funds of investment leaders (e.g., Vanguard, PIMCO, and BlackRock) in the
2 fixed income asset class. The RSP Income Fund's underperformance relative
3 to comparable fixed income mutual funds continued until July 2016 when
4 GE sold GEAM to State Street.

5 23. Any reasonable, disinterested investor monitoring their investments would
6 have viewed these funds as imprudent investments. In fact, from 2011 through 2016, the
7 International Fund suffered significant redemptions as investors sought to distance
8 themselves from this fund and GE's advisory services. Similarly, from 2013 through 2016,
9 the Strategic Fund, RSP Equity Fund, and RSP Income Fund experienced net redemptions
10 as potential new investors sought to avoid these funds and GE's investment advisory
11 services.

12 24. As the investment adviser to GE Funds, GEAM—and by extension GE—was
13 or should have been aware of GE Funds' annual investment performance and investor
14 redemptions.

15 25. GEAM's poor management of GE Funds should have prompted GE to select
16 a more lucrative investment option for the Plan's participants. Instead, GE retained GE
17 Funds because it stood to benefit from the investment management fees GEAM was
18 collecting from the Plan's participants. GE's self-interest and failure of effort and/or
19 competence cost the Plan's participants at least tens of millions of dollars in fees and poor
20 investment performance every year.

21 **B. GE Charged the Plan's Participants Unreasonable Fees**

22 26. The Small Cap Fund was the only GE proprietary fund that consistently
23 outperformed its benchmark. However, in contrast to its practice with the GE Funds,
24 GEAM did not actively manage the Small Cap Fund's assets. Instead, it hired and
25 negotiated a fee with multiple investment sub-advisers to manage the fund. GEAM
26 collected an investment management fee from the Small Cap Fund's performance and
27 retained for itself the difference between the management fee it collected from the fund
28 and the fee it agreed to pay its investment sub-advisers. From this arrangement, GEAM—

1 and thereby GE—collected millions of dollars in unreasonable and/or excessive fees for
2 services that GE was ultimately responsible for performing as the Plan’s administrator.

3 27. As the Plan’s administrator, GE owed fiduciary duties to the Plan’s
4 participants. By charging excessive fees incident to administering the Plan, GE breached
5 its fiduciary duties and engaged in transactions prohibited under ERISA.

6 28. GE flouted its fiduciary duties and wrongfully wasted and mismanaged the
7 Plan’s assets. The Plan, as a whole, lost hundreds of millions of dollars due to GE’s
8 breaches of fiduciary duties. The approximately 250,000 current and former GE employees
9 who participated in the Plan deserved better from a leading global investment firm that
10 touts its investment acumen.

11 V. ERISA’S FIDUCIARY STANDARDS

12 29. ERISA imposes strict fiduciary duties of loyalty and prudence upon the
13 Defendants as fiduciaries of the Plan. 29 U.S.C. § 1104(a)(1), states, in relevant part, that
14 “a fiduciary shall discharge his duties with respect to a plan solely in the interest of the
15 participants and beneficiaries and—(A) for the exclusive purpose of (i) providing benefits
16 to participants and their beneficiaries; and (ii) defraying reasonable expenses of
17 administering the plan; (B) with the care, skill, prudence, and diligence under the
18 circumstances then prevailing that a prudent man acting in a like capacity and familiar with
19 such matters would use in the conduct of an enterprise of like character and with like aims.”

20 30. Under 29 U.S.C. § 1103(c)(1), with certain exceptions not relevant here, “the
21 assets of a plan shall never inure to the benefit of any employer and shall be held for the
22 exclusive purposes of providing benefits to participants in the plan and their beneficiaries
23 and defraying reasonable expenses of administering the plan.”

24 31. ERISA’s fiduciary duties are “the highest known to the law” and must be
25 performed “with an eye single” to the interests of participants. *Donovan v. Bierwirth*, 680
26 F.2d 263, 271-272 n.8 (2d Cir. 1982). Thus, “in deciding whether and to what extent to
27 invest in a particular investment, a fiduciary must ordinarily consider *only* factors relating
28 to the interests of plan participants and beneficiaries A decision to make an investment

1 may not be influenced by [other] factors unless the investment, when judged *solely* on the
2 basis of its economic value to the plan, would be equal or superior to alternative
3 investments available to the plan.” Dep’t of Labor ERISA Advisory Op. 88-16A, (Dec. 19,
4 1988) (emphasis added).

5 32. Under ERISA section 406(b)(1), 29 U.S.C. § 1106(b)(1), “[a] fiduciary with
6 respect to a plan shall not deal with the assets of the plan in his own interest or for his own
7 account.”

8 33. In measuring fiduciary conduct, courts have made it clear that the key element
9 is the process for considering and examining relevant information. As one court explained,
10 “ERISA § 404(a)(1)(B) requires only that [fiduciaries] vigorously and independently
11 investigate the wisdom of a contemplated investment; it matters not that the investment
12 succeeds or fails, as long as the investigation is intensive and scrupulous and . . . discharged
13 with the greatest degree of care that could be expected under all the circumstances by
14 reasonable beneficiaries and participants of the plan.” *Donovan v. Walton*, 609 F. Supp.
15 1221, 1238 (S.D. Fla. 1985).

16 34. Thus, to meet the prudent process requirement, fiduciaries must vigorously
17 and thoroughly investigate the investment options to obtain relevant information and then
18 base their decisions on the information obtained. This means considering competing funds
19 to determine which fund should be included in the plan’s investment line-up. “A fiduciary
20 must engage in an objective, thorough, and analytical process that involves consideration
21 of the quality of competing providers and investment products, as appropriate.” 72 Fed.
22 Reg. 60453 (October 24, 2007) (Preamble).

23 35. In satisfying these duties, fiduciaries should consider a variety of funds and
24 the expenses associated with the possible funds. *See Tibble v. Edison International*, 49
25 EBC 1725 (C.D. Cal. 2010) (noting that fiduciaries must engage in a thorough investigation
26 of the merits of an investment and noting that the fiduciaries considered five investment
27 criteria, including the expense ratio, when selecting funds).

1 36. Furthermore, under ERISA, a fiduciary “has a continuing duty to monitor
2 [plan] investments and remove imprudent ones” that exists “separate and apart from the
3 [fiduciary’s] duty to exercise prudence in selecting investments.” *Tibble v. Edison Int’l*,
4 135 S. Ct. 1823, 1828 (2015). If an investment is imprudent, the plan fiduciary “must
5 dispose of it within a reasonable time.” *Id.* (citation omitted).

6 37. ERISA also imposes explicit co-fiduciary liability on plan fiduciaries. 29
7 U.S.C. § 1105(a) provides for fiduciary liability for a co-fiduciary’s breach: “In addition
8 to any liability which he may have under any other provision of this part, a fiduciary with
9 respect to a plan shall be liable for a breach of fiduciary responsibility of another fiduciary
10 with respect to the same plan in the following circumstances: (1) if he participates
11 knowingly in, or knowingly undertakes to conceal, an act or omission of such other
12 fiduciary, knowing such act or omission is a breach; or (2) if, by his failure to comply with
13 section 404(a)(1) in the administration of his specific responsibilities which give risk to his
14 status as a fiduciary, he has enabled such other fiduciary to commit a breach; or (3) if he
15 has knowledge of a breach by such other fiduciary, unless he makes reasonable efforts
16 under the circumstances to remedy the breach.”

17 38. 29 U.S.C. § 1132(a)(2) authorizes a plan participant to bring a civil action to
18 enforce a breaching fiduciary’s liability to the plan under 29 U.S.C. § 1109. Section
19 1109(a) provides in relevant part: “Any person who is a fiduciary with respect to a plan
20 who breaches any of the responsibilities, obligations, or duties imposed upon fiduciaries
21 by this title shall be personally liable to make good to such plan any losses to the plan
22 resulting from each such breach, and to restore to such plan any profits of such fiduciary
23 which have been made through use of assets of the plan by the fiduciary, and shall be
24 subject to such other equitable or remedial relief as the court may deem appropriate,
25 including removal of such fiduciary.”

26 39. Under ERISA, “[t]he question of loss to the Plan . . . requires a comparison
27 between the actual performance of the Plan and the performance that would have otherwise
28 taken place.” *Bierwirth*, 754 F.2d at 1057.

VI. FACTS APPLICABLE TO ALL COUNTS

A. The Plan's Investments

40. As of December 31, 2015, the Plan had approximately \$28.5 billion in assets, with approximately \$14.5 billion in pooled investment funds. The GE Funds and the Small Cap Fund comprised about 56% of the Plan's assets among pooled investment funds.

Plan Investments	Value of Plan Investment (as of December 31, 2015)
GE Common Stock Fund	\$11,046,325,391
GE Investment Funds:	
GE RSP U.S. Income Fund	\$1,856,666,000
GE RSP U.S. Equity Fund	\$3,496,467,000
GE Institutional International Equity Fund	\$1,151,000,000
GE Institutional Small Cap Equity Fund	\$1,101,531,000
GE Institutional Strategic Investment Fund	\$595,930,000
Total GE Investment Funds	\$8,201,594,422
Non-GE Investment Funds:	
Non-U.S. Equity Index Fund	\$844,833,545
U.S. Aggregate Bond Index Fund	\$645,596,009
U.S. Large-Cap Equity Index Fund	\$3,115,339,870
U.S. Mid-Cap Equity Index Fund	\$902,027,992
U.S. Small-Cap Equity Index Fund	\$576,134,517
U.S. Treasury Inflation-Protected Securities Index Fund	\$281,069,727
Total Non-GE Investment Funds	\$6,365,001,660
Other Individual Investments	\$2,524,200,670

1 41. GE controlled the menu of investment options that were available to the Plan's
2 participants. Despite the market's many high-quality investment options, GE invested the
3 Plan's assets in five of its proprietary mutual funds. Each of these funds was the exclusive
4 investment option in its respective category of actively managed investment strategy. For
5 example, if a Plan participant wanted to invest in an actively managed large cap strategy,
6 RSP Equity Fund was the only available option.

7 42. GE managed each of these proprietary funds for a profit by charging
8 investors—including the Plan's participants—fees for services. The fee revenue and
9 GEAM's management of the Plan's assets enhanced the value of GEAM. GE realized the
10 value of GEAM—\$485 million—in its sale to State Street. GE therefore gained profits by
11 including each of these funds in the Plan.

12 43. GE's imprudent investment decisions, tainted through a process rife with self-
13 dealing, is evidenced in four principal ways: (A) GE year in and year out retained four
14 poor-performing proprietary mutual funds relative to their stated benchmarks and/or other
15 readily available mutual funds with comparable investment strategies; (B) GE, through
16 GEAM, collected millions of dollars of investment management fees despite GE Funds'
17 poor performance; (C) through the Plan, GE built and prolonged its investment
18 management business, which it then sold to State Street for a reported \$485 million; and
19 (D) GE, through GEAM, collected an investment management fee from the Small Cap
20 Fund's performance and retained for itself the difference between the management fee it
21 collected and the fee it agreed to pay its investment sub-advisers. In each case, GE
22 promoted its own business interests at the expense of the Plan's participants.

23 44. These incentives tainted GE's investment decisions. GE selected its
24 proprietary funds not based on their merits as investments or because doing so was in the
25 interest of the Plan's participants, but because these products provided significant revenues
26 and profits to GE. The GE Funds and the Small Cap Fund consistently suffered from high
27 fees, poor performance, or both, relative to comparable, readily apparent investment
28

1 options. A prudent, loyal fiduciary under these circumstances would not have selected or
2 retained such expensive, poor-performing investments.

3 **B. GE Failed to Remove Their Poor-Performing Proprietary Mutual Funds**

4 45. For the actively managed investment strategies—stock/bond allocation,
5 international equity, and U.S. equity—GE offered participants the single option of a GE
6 proprietary mutual fund geared to that strategy, even though comparable but better-
7 performing investment options were readily available. Indeed, these GE funds were so
8 under-performing—and superior investment options were so readily apparent—that an
9 adequate investigation would have revealed them as imprudent investments.

10 46. The Strategic Fund, International Fund, Small Cap Fund, RSP Equity Fund,
11 and RSP Income Fund are known in the industry as “actively managed” funds, which
12 means that each fund’s investment objective is to outperform a targeted “benchmark”
13 through superior stock picking skills after accounting for all expenses. “Actively managed”
14 funds stand in contrast to “passively managed” or index funds, which simply buy and hold
15 all the stocks within a given index.

16 47. Benchmarks can include broad based securities market indices such as the
17 Standard & Poor’s 500 Index (“S&P 500”), or the Morgan Stanley Europe, Australasia and
18 the Far East Index (“MSCI EAFE”). Benchmarks can also include a universe of hundreds
19 and thousands of funds with equivalent investment strategies, such as the Morningstar
20 Moderate Allocation Fund Category. Measuring a mutual fund’s performance against an
21 established benchmark is the most recognized method used by investors to assess the
22 success or failure of the mutual fund. When active fund managers succeed in beating their
23 benchmarks, this is commonly referred to as “beating the market.”

24 48. Three of the proprietary GE funds (i.e., the Strategic Fund, International Fund,
25 and RSP Equity Fund) consistently underperformed relative to not only their
26 benchmarks—and thus the market—but also the *majority* of available alternative funds.
27 Options that were readily apparent included the investment funds offered by highly
28

1 reputable groups such as T. Rowe Price, Fidelity, American Funds, and
2 Vanguard/Wellington.

3 49. The annual returns of the three funds were regularly below those of their T.
4 Rowe Price, Fidelity, American Funds, and Wellington counterparts. Moreover,
5 Morningstar consistently rated the three Funds in the bottom 50th and 75th percentile among
6 hundreds of funds with equivalent strategies. Accordingly, for each Fund, superior
7 alternative investments were readily apparent such that an adequate investigation would
8 have uncovered those alternatives.

9 50. The fourth proprietary GE fund, the RSP Income Fund, consistently
10 underperformed relative to other fixed income asset class mutual funds managed by
11 industry leaders Vanguard, PIMCO, and BlackRock. Accordingly, superior alternative
12 investments were readily apparent such that an adequate investigation would have
13 uncovered those alternatives.

14 51. Despite their ongoing underperformance during the Class Period, GE
15 continued to retain the GE Funds when any prudent fiduciary monitoring the Plan would
16 have removed them as early as 2011.

17 52. GE stood to, and did, benefit from the fees it charged the Plan's participants
18 for managing the GE Funds. Of course, had GE offered any of the readily apparent better-
19 performing, non-proprietary alternatives, it would have stood to lose tens of millions of
20 dollars, both from a loss of the fee revenue stream worth millions of dollars, and from a
21 reduction to GEAM's reported \$485 million price tag in the tens of millions of dollars.
22 Accordingly, the process used by GE to select and maintain its investment options was
23 tainted by failure of effort, competence, and/or loyalty.

24 53. Plaintiffs did not have knowledge of all material facts (including, among other
25 things, comparisons of the Plan's costs and investment performance versus other available
26 alternatives, comparisons to other similarly-sized plans, and information regarding
27 separate accounts and collective trusts) necessary to understand that Defendants breached
28 their fiduciary duties and engaged in other unlawful conduct in violation of ERISA, until

1 shortly before this suit was filed. Further, Plaintiffs do not have actual knowledge of the
2 specifics of Defendants' decision-making processes with respect to the Plan, including
3 Defendants' processes for selecting, monitoring, and removing the Plan's investments,
4 because this information is solely within the possession of Defendants prior to discovery.
5 For purposes of this Complaint, Plaintiffs have drawn reasonable inferences regarding
6 these processes based upon information and belief and the facts set forth herein.

7 54. Below, Plaintiffs describe in detail the performance of the Strategic Fund,
8 International Fund, RSP Equity Fund, and RSP Income Fund.

9 ***1. Strategic Fund***

10 55. The Strategic Fund invests primarily in a combination of U.S. and foreign
11 (non-U.S.) equity and debt securities and cash. The Strategic Fund measures relative
12 investment performance by comparing the weighted average performance of U.S., equity,
13 foreign equity, and fixed income securities to three indexes: S&P 500 Index, Barclay's
14 Aggregate U.S. Bond Index, and MSCI AWCI ex-US Index. Given the complexities of
15 trying to apply three different indexes to measure the weighted average of the Strategic
16 Fund's portfolio, Plaintiffs are relying on Morningstar for benchmark data for illustrative
17 purposes. Morningstar has identified the Strategic Fund's benchmark as Moderate Target
18 Risk Index and its fund category as Moderate Allocation.

19 56. During the Class Period, the Plan's assets under management in the Strategic
20 Fund ranged between approximately \$450 million and \$620 million. If a participant in
21 GE's 401(k) Plan sought a balanced-style investment portfolio that allocated between
22 stocks and bonds, the Strategic Fund was the only option available to the participant.

23 57. The placement of the Strategic Fund into GE's 401(k) was an important
24 arrangement for GE. The Plan's participants represented approximately 75% of the
25 Strategic Fund's total assets.

26 58. For the three-year period from 2008 through 2010, the Strategic Fund was
27 clearly an underachiever relative to its Morningstar Moderate Target Risk Index and the
28 approximately 500 other mutual funds in the Morningstar Moderate Allocation category.

1 The Strategic Fund also underperformed other well-known, readily available funds with
2 comparable investment strategies (e.g., T. Rowe Price Capital Appreciation Fund,
3 American Balanced Fund, Fidelity Puritan Fund, and Vanguard/Wellington Fund).

4 59. From January 1, 2008 through December 31, 2010, the Strategic Fund had a
5 cumulative return of 2.27%. The Moderate Target Risk Index, had a return of 11.91%. The
6 Strategic Fund also performed worse than 55%, 67%, and 85% of the mutual funds within
7 the Moderate Allocation category in 2008, 2009, and 2010, respectively. The T. Rowe
8 Price Capital Appreciation Fund had a return of 19.95%. The American Funds Balanced
9 Fund had a return of 9.95%. The Fidelity Puritan Fund had a return of 11.57%. The
10 Vanguard/Wellington Fund had a return of 11.15%.

11 60. During this same period, the Strategic Fund had fees that were 20% higher
12 than the better-performing American Balanced Fund, and 100% more expensive than the
13 better-performing Vanguard/Wellington Fund.

14 61. A reasonable investigation in 2010 would have revealed the
15 underperformance of the Strategic Fund. It would have also uncovered these readily-
16 apparent alternative investments that were better performing and in some cases cheaper. In
17 light of the available alternatives, a prudent fiduciary monitoring the Plan would not have
18 offered the Plan's participants the Strategic Fund. But GE did just that.

19 62. Investment performance did not improve from there. The Strategic Fund
20 performed worse than 81%, 53%, 69%, and 78% of funds within the Morningstar Moderate
21 Allocation category in 2011, 2013, 2014, and 2016, respectively. Morningstar's total
22 number of identified comparator mutual funds within the category ranged between 431 and
23 727 mutual funds.

24 63. From the beginning of calendar year 2011 through the end of calendar year
25 2016, the performance of the Strategic Fund was significantly below that of the comparable
26 T. Rowe Price, Fidelity, Vanguard/Wellington, and American Funds.

27 64. The chart provided immediately below this paragraph shows the relative
28 annual and cumulative performances of the Strategic Fund and the comparable mutual

1 funds of T. Rowe Price, Fidelity, Vanguard/Wellington, and American Funds. The
 2 underperformance of the GE Fund is striking.

Fund	2011	2012	2013	2014	2015	2016	Cumulative
Strategic Fund	-2.56	12.85	16.78	4.88	-1.18	5.52	+36.29%
T. Rowe Price							
Capital Appreciation Fund	3.19	14.70	22.43	12.25	5.42	8.34	+66.33%
GE +/-	-5.75	-1.85	-5.65	-7.37	-6.60	-2.82	
+/- Cumulative		-7.6	-13.25	-20.62	-27.22	-30.04	-30.04%
Fidelity Puritan							
Fund	.74	13.94	20.48	10.86	1.82	5.20	+53.04%
GE +/-	-3.30	-1.09	-3.70	-5.98	-3.00	+.32	
+/- Cumulative		-4.39	-8.09	-14.07	-17.07	-16.75	-16.75%
Vanguard/ Wellington Fund							
	3.95	12.67	19.96	9.90	.14	11.09	+57.71%
GE +/-	-6.51	+.18	-3.18	-5.02	-1.32	-5.57	
+/- Cumulative		-6.33	-9.51	-14.53	-15.85	-21.42	-21.42%
American Funds							
Balanced Fund	4.16	14.57	22.12	9.22	2.03	8.90	+61.00%
GE +/-	-6.72	-1.72	-5.34	-4.34	-3.21	-3.38	
+/- Cumulative		-8.44	-13.78	-18.12	-21.33	-24.71	-24.71%

21 65. During this period, the money flowing out of the Strategic Fund exceeded new
 22 money flowing into the Strategic Fund, as potential new investors sought to avoid the poor-
 23 performing fund and GE's investment advisory services. As the investment adviser to the
 24 Strategic Fund, GEAM would have been aware of the redemptions and lack of new sales
 25 aside from the reinvestment of dividends by existing shareholders. Despite chronic
 26 underperformance and net redemptions, GE continued to offer the Strategic Fund in the
 27 Plan.

1 66. The funds listed in the tables above are well known, readily available, and
2 easily accessible to all investors. These superior alternative investments were readily
3 apparent such that an adequate investigation and prudent monitoring would have uncovered
4 them. GE would not have had to scour the market to find them, particularly given GE's
5 presence in the investments marketplace. On the contrary, GE would likely have had to
6 scour the market to find an offering as poor-performing as the Strategic Fund.

7 67. Nevertheless, GE retained the Strategic Fund in the Plan when any reasonable
8 investor that was monitoring the investment would have weeded it out. GE did so even
9 after it became apparent that its performance was inferior to alternative, readily available
10 funds with an equivalent investment strategy. A fiduciary acting in the best interest of the
11 Plan's participants and with due care would have removed the Strategic Fund from the
12 Plan.

13 68. However, GE had business and financial incentives to select and maintain the
14 Strategic Fund in the Plan. Even though the Strategic Fund performed poorly, GEAM—
15 and thereby GE—collected millions of dollars in advisory fees from the fund. Furthermore,
16 the Strategic Fund's fee revenue enhanced the sale value of GEAM, which factored into
17 the reported \$485 million price GE received from its sale of GEAM. This by itself is
18 suggestive of improper self-dealing.

19 69. Not replacing the Strategic Fund with a better option had a negative impact
20 on participants. Listed in the table below is the hypothetical growth in investment value of
21 a \$400 million fund based on the investment performance of each fund for the period
22 beginning six years prior to the filing of this suit through June 30, 2016, the day before GE
23 sold GEAM.

Fund Name	Cumulative Performance	Annualized Performance	Growth of \$400 Million
Strategic Fund	49.48%	7.03%	\$598 million

1 2 3	T. Rowe Price Capital Appreciation Fund	101.47%	12.57%	\$806 million
4	Fidelity Puritan Fund	75.95%	10.01%	\$703 million
5 6	Vanguard Wellington Fund	76.52%	10.08%	\$706 million
7	American Funds Balanced Fund	88.66%	11.33%	\$750 million

8 70. GE's process for selecting, maintaining, and monitoring the Strategic Fund as
9 a Plan investment option was tainted by a failure of effort, competence, and/or loyalty. The
10 Plan's participants suffered millions of dollars in losses as a result of GE's breach of
11 fiduciary duty.

12 **2. International Fund**

13 71. Another chronic underperforming mutual fund option through June 2016 was
14 the International Fund. The International Fund invested primarily in companies located in
15 developed and emerging market countries outside the U.S. The International Fund's
16 prospectus identified the MSCI EAFE Index as its primary benchmark against which the
17 fund compared its investment performance.

18 72. If a participant in the Plan sought to invest with an actively managed
19 international large cap strategy, the International Fund was the only option available to the
20 participant. Between 2010 and 2015, the Plan's assets under management in the
21 International Fund ranged between approximately \$940 million and \$1.3 billion.

22 73. The placement of the International Fund into GE's 401(k) was an important
23 arrangement for GE. The Plan's participants represented approximately 90% of the
24 International Fund's total assets.

25 74. For the three-year period from 2008 through 2010, the International Fund was
26 clearly an underachiever relative to the MSCI EAFE Index and the approximately 500 other
27 mutual funds in the Morningstar Foreign Large Blend Category. The International Fund
28 also underperformed other well-known, readily available funds with comparable

1 investment strategies (e.g., T. Rowe Price Overseas Stock Fund, the American Funds
2 EuroPacific Growth Fund, and the Fidelity Diversified International Fund)³.

3 75. From January 1, 2008 through December 31, 2010, the International Fund had
4 a cumulative negative return of -11.51%. The MSCI EAFE Index had a negative return of
5 -3.85%. The International Fund also performed worse than 55%, 70%, and 90% of the over
6 300 mutual funds within Morningstar's Foreign Large Blend Category in 2008, 2009, and
7 2010, respectively. On an individual fund level, the Fidelity Diversified International Fund
8 had a negative return of -3.78%; the T. Rowe Price Overseas Stock Fund had a positive
9 return of 2.21%; and the American Funds EuroPacific Growth Fund had a positive return
10 of 8.58%.

11 76. A reasonable investigation in 2010 would have revealed the
12 underperformance of the International Fund. It would have also uncovered these readily
13 apparent better-performing, alternative investments. In light of the available alternatives, a
14 prudent fiduciary monitoring the Plan would not have offered the Plan's participants the
15 International Fund. But GE did just that.

16 77. The poor performance did not end there. In 2011, 2014, and 2016, the
17 International Fund performed worse than 78%, 87%, and 73% of international equity
18 mutual funds, respectively. Morningstar's total number of identified comparators ranged
19 between 339 and 592 mutual funds.

20 78. As the investment adviser to the International Fund, GEAM—and thereby
21 GE—would have been aware of the investment performance of the International Fund on
22 an annual basis, both in terms of its absolute performance and its benchmark, the MSCI
23 EAFE. Each year the International Fund's prospectuses disclosed the fund's annual
24 investment returns relative to the MSCI EAFE. Here are excerpts from the International
25 Fund's prospectuses for each year between, and including, 2008 and 2015:

26
27 _____

28 ³ Vanguard does not offer an actively managed fund for this investment strategy.

Fund	2008	2009	2010	2011	2012	2013	2014	2015
Fund's Returns	-44.35	27.35	5.49	-15.89	20.79	21.65	-7.68	-1.46
MSCI EAFE Index	-43.38	31.78	7.75%	-12.14	17.32	22.78	-4.90	-0.81

79. Other than 2012, the International Fund underperformed its benchmark every single year. Given these overall investment results, adequate monitoring would have revealed the imprudence of investing in the International Fund. Furthermore, an adequate investigation would have revealed superior, readily apparent funds with an international large cap investment strategy.

80. From the beginning of calendar year 2011 through the end of calendar year 2016, the International Fund's performance was significantly below that of the comparable funds of T. Rowe Price, Fidelity, and American Funds.

81. The chart provided immediately below shows the relative annual and cumulative performances of the International Fund and other mutual funds with equivalent investment strategies. The differences are striking.

Fund	2011	2012	2013	2014	2015	2016	Cumulative
International Fund	-15.89	20.79	21.65	-7.68	-0.46	-0.97	17.44%
T. Rowe Price Overseas Stock Fund	-10.12	18.59	21.75	-4.49	-2.45	3.01	26.29%
GE +/-	-5.77	+2.20	-0.10	-3.19	+1.99	-3.98	
+/- Cumulative		-3.57	-3.67	-6.86	-4.87	-8.85	-8.85%
Fidelity Overseas Fund	-15.80	25.30	26.97	-3.52	8.42	-1.20	40.17%
GE +/-	-0.09	-4.51	-5.32	-4.17	-8.87	+0.23	
+/- Cumulative		-4.60	-9.92	-14.09	-22.96	-22.73	-22.73%
American Funds EuroPacific Fund	-13.31	19.64	20.58	-2.29	-0.48	1.01	25.15
GE +/-	-2.58	+1.15	+1.07	-5.39	+0.02	-1.98	
+/- Cumulative		-1.43	-.36	-5.75	-5.73	-7.71	-7.71%

1 82. For each fiscal year from fiscal year 2011 through fiscal year 2016, the
2 International Fund suffered massive redemptions as investors sought to distance
3 themselves from the poor-performing fund and GE's investment advisory services. As the
4 investment adviser to the International Fund, GEAM would have been aware of the mass
5 redemptions. Despite chronic underperformance and redemptions, GE continued to offer
6 the International Fund in the Plan.

7 83. The funds listed in the tables above are well known, readily available, and
8 easily accessible to all investors. These superior alternative investments were readily
9 apparent such that an adequate investigation would have uncovered them. GE would not
10 have had to scour the market to find them, particularly given GE's presence in the
11 investments market place. On the contrary, GE would likely have had to scour the market
12 to find an offering as poor-performing as the International Fund.

13 84. Nevertheless, GE retained the International Fund in the Plan when any
14 reasonable investor monitoring the investment would have weeded it out. It did so even
15 after it became apparent that its performance was inferior to alternative, readily available
16 funds with an equivalent investment strategy. A fiduciary acting in the best interest of the
17 Plan's participants and with due care would have removed the International Fund from the
18 Plan.

19 85. However, GE had business and financial incentives to select and maintain the
20 International Fund in the Plan. Even though the International Fund performed poorly,
21 GEAM—and thereby GE—collected millions of dollars in advisory fees from the fund.
22 Furthermore, the International Fund's fee revenue enhanced the sale value of GEAM,
23 which factored into the reported \$485 million price GE received from its sale of GEAM.
24 This by itself is suggestive of improper self-dealing.

25 86. Not replacing the International Fund with a better option had a negative
26 impact on the Plan's participants. Listed in the table below is the hypothetical growth in
27 investment value of a \$1 billion fund based on the investment performance of each fund
28

1 for the period beginning approximately six years prior to the filing of this suit through June
2 30, 2016, the day before GE sold GEAM.

Fund Name	Cumulative Performance	Annualized Performance	Growth of \$1 Billion
International Fund	22.19%	3.44%	\$1.22 billion
T. Rowe Price Overseas Fund	34.17%	5.09%	\$1.34 billion
Fidelity Overseas Fund	57.03%	7.93%	\$1.57 billion
American Funds EuroPacific Fund	34.10%	5.08%	\$1.34 billion

10 87. GE's process for selecting and maintaining the International Fund as a Plan
11 investment option was tainted by a failure of effort, competence, and/or loyalty. The Plan's
12 participants suffered millions of dollars in losses as a result of GE's breach of fiduciary
13 duty.

14 3. *RSP Equity Fund*

15 88. The RSP Equity Fund provides yet another example of a poor-performing
16 proprietary fund that GE loaded onto the Plan despite superior, readily apparent alternative
17 funds. The RSP Equity Fund invested primarily in large capitalized U.S. companies. If a
18 Plan participant wanted to invest in an actively managed U.S. large cap stock fund, the
19 RSP Equity Fund was the only option available to the participant.

20 89. According to annual 401(k) disclosure statements GE furnished to the Plan's
21 participants, GE measured the RSP Equity Fund's investment results relative to the S&P
22 500 Index. During the Class Period, the Plan's assets under management in the RSP Equity
23 Fund ranged between approximately \$2.4 billion and \$3.8 billion.

24 90. The placement of the RSP Equity Fund into GE's 401(k) was an important
25 arrangement for GE. The Plan's participants represented approximately 70% of the RSP
26 Equity Fund's total assets.

27 91. In 2008 and 2009, the RSP Equity Fund performed favorably against its
28 benchmark, the S&P 500 Index. However, the RSP Equity Fund's investment performance

1 relative to the S&P 500 Index turned sour in 2010 and never recovered, as illustrated in the
2 chart below:

	2010	2011	2012	2013	2014	2015	2016
3 RSP Equity	10.71	-2.16	16.78	35.15	13.27	-2.05	10.13
4 Fund's							
5 Returns							
6 S&P 500 Index	15.06	2.11	16.00	32.38	13.69	1.38	11.96
7 Fund +/- Index	-4.35	-4.27	+0.77	+2.76	-0.42	-3.43	-1.83
8 Cumulative	-4.35	-8.62	-7.85	-5.09	-5.51	-8.94	-10.77

9 92. In the three-year period between 2008 through 2010, the RSP Equity Fund
10 had an investment return of +7.7%, which was below the investment returns generated by
11 comparable funds managed by T. Rowe Price, Fidelity, Vanguard, and American Funds.
12 For the same three-year period, the T. Rowe Price Institutional Large Cap Growth Fund
13 had an investment return of +8.83%; the Fidelity Large Cap Stock Fund had an investment
14 return of +21.21%; the Vanguard Institutional Total Stock Market Index Fund had an
15 investment return of +9.22%; and the American Funds AMCAP Fund had an investment
16 return of +16.23%.

17 93. A reasonable investigation in 2010 would have uncovered these alternative,
18 readily apparent investments and thus revealed the underperformance of the RSP Equity
19 Fund relative to these funds. In light of the available alternatives, a prudent fiduciary
20 monitoring the Plan would not have offered the Plan's participants the RSP Equity Fund.
21 But GE did just that.

22 94. The RSP Equity Fund's poor performance relative to the funds offered by T.
23 Rowe Price, Fidelity, Vanguard, and American Funds did not end there. The chart listed
24 below shows the relative annual and cumulative performances of the RSP Equity Fund and
25 the funds offered by T. Rowe Price, Fidelity, Vanguard, and American Funds. Again, the
26 differences are striking.

Fund	2011	2012	2013	2014	2015	2016	Cumulative
27 RSP Equity	-2.16	16.78	35.15	13.27	-2.05	10.13	+71.12%
28 Fund							

1	T. Rowe Price Institutional Large Cap Growth Fund	-1.40	17.55	44.44	8.72	10.08	2.85	+82.24%
2	GE +/-	-0.76	-0.77	-9.29	+4.55	-12.13	+7.28	
3	+/- Cumulative		-1.53	-10.82	-6.27	-18.4	-11.12	-11.12%
4								
5	Fidelity Large Cap Stock Fund	-1.62	20.71	39.24	10.13	-3.17	16.70	+81.99%
6	GE +/-	-0.54	-3.93	-4.09	+3.14	+1.12	-6.57	
7	+/- Cumulative		-4.47	-8.56	-5.42	-4.30	-10.87	-10.87%
8								
9	Vanguard Institutional Total Stock Market Index Fund	1.09	16.47	33.64	12.60	0.45	12.75	+77%
10	GE +/-	-3.25	+0.31	+1.51	+0.67	-2.50	-2.62	
11	+/- Cumulative		-2.94	-1.43	-.76	-3.26	-5.88	-5.88%
12								
13	American Funds AMCAP Fund	0.71	16.13	37.26	12.48	1.11	9.37	+77.06%
14	GE +/-	-2.87	+0.65	-2.11	+0.79	-3.16	+0.76	
15	+/- Cumulative		-2.22	-4.33	-3.54	-6.7	-5.94	-5.94%

19 95. During this period, the money flowing out of the RSP Equity Fund exceeded
20 new money flowing into the RSP Equity Fund, as potential new investors sought to avoid
21 the poor-performing fund and GE's investment advisory services. As the investment
22 adviser to the RSP Equity Fund, GEAM would have been aware of the net redemptions
23 and lack of new sales aside from the reinvestment of dividends by existing shareholders.
24 Despite chronic underperformance and redemptions, GE continued to offer the RSP Equity
25 Fund in the Plan.

26 96. The funds listed in the tables above are well known, readily available, and
27 easily accessible to all investors. These superior alternative investments were readily
28 apparent such that an adequate investigation would have uncovered them. GE would not

1 have had to scour the market to find them, particularly given GE's presence in the
2 investments marketplace.

3 97. Nevertheless, GE retained the RSP Equity Fund in the Plan when any
4 reasonable investor monitoring the investment would have weeded it out. GE did so even
5 long after it became apparent that the RSP Equity Fund's performance was inferior to
6 alternative, readily available funds with an equivalent investment strategy. A fiduciary
7 acting in the best interest of the Plan's participants and with due care would have removed
8 the RSP Equity Fund from the Plan.

9 98. However, GE had business and financial incentives to select and maintain the
10 RSP Equity Fund in the Plan. Even though the RSP Equity Fund performed poorly,
11 GEAM—and thereby GE—collected millions of dollars in advisory fees from the fund.
12 Furthermore, the RSP Equity Fund's fee revenue enhanced the sale value of GEAM, which
13 factored into the reported \$485 million price GE received from its sale of GEAM. This by
14 itself is suggestive of improper self-dealing.

15 99. Not replacing the RSP Equity Fund with a better option had a negative impact
16 on the Plan's participants. Listed in the table below is the hypothetical growth in investment
17 value of a \$2 billion fund based on the investment performance of each fund for the period
18 beginning approximately six years prior to the filing of this suit through June 30, 2016, the
19 day before GE sold GEAM.

Fund Name	Cumulative Performance	Annualized Performance	Growth of \$2 Billion
RSP Equity Fund	98.07%	12.25%	\$3.96 billion
T. Rowe Price Institutional Large Cap Growth Fund	124.20%	14.62%	\$4.48 billion
Fidelity Large Cap Stock Fund	109.43%	13.31%	\$4.18 billion
Vanguard Institutional Total Stock Market Index Fund	115.03%	13.81%	\$4.3 billion

American Funds AMCAP Fund	115.98%	13.90%	\$4.31 billion
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100. GE's process for selecting, maintaining, and monitoring the RSP Equity Fund as a Plan investment option was tainted by a failure of effort, competence, and/or loyalty. The Plan's participants suffered millions of dollars in losses as a result of GE's breach of fiduciary duty.

4. RSP Income Fund

101. The RSP Income Fund provides yet another example of a poor-performing proprietary fund that GE loaded onto the Plan despite superior, readily apparent alternative funds. The RSP Income Fund invested primarily in bonds with durations of one year or more. If a Plan participant wanted to invest in an actively managed bond fund, the RSP Income Fund was the only option available to the participant.

102. The placement of the RSP Income Fund into GE's 401(k) was an important arrangement for GE. The Plan's participants represented approximately 75% or more of the RSP Income Fund's total assets.

103. According to the RSP Income Fund's annual report, GE measured the RSP Income Fund's investment results relative to the Barclays US Aggregate Bond Index.⁴

104. During the Class Period, the Plan's assets under management in the RSP Income Fund ranged between approximately \$1.8 billion and \$2.2 billion.

105. In the three-year period between 2008 through 2010, the RSP Income Fund had cumulative investment returns of 14.06%, which was 3.65% less than the cumulative return of 17.71% that Barclays U.S. Aggregate Bond Index generated during the same period.

⁴The Barclays U.S. Aggregate Bond Index is a market value weighted index of taxable investment grade debt issues, including government, corporate, asset-backed and mortgage-backed securities, with maturities of one year or more. This index is designed to represent the performance of the U.S. investment grade first rate bond market.

1 106. The RSP Income Fund's investment return of 14.06% was also considerably
2 less than comparable bond funds managed by large, highly regarded fixed income
3 managers such as Vanguard, PIMCO, and BlackRock. The Vanguard Intermediate-Term
4 Bond Index Fund had a cumulative return of 21.53%. The PIMCO Income Fund had a
5 cumulative return of 34.2%. The BlackRock Total Return Fund had a cumulative return of
6 15.03%.

7 107. A reasonable investigation in 2010 would have uncovered these alternative,
8 readily apparent investments and thus revealed the underperformance of the RSP Income
9 Fund relative to these funds. In light of the available alternatives, a prudent fiduciary
10 monitoring the Plan would not have offered the Plan's participants the RSP Income Fund.
11 But GE did just that.

12 108. The RSP Income Fund's poor performance relative to the mutual funds
13 offered by Vanguard, PIMCO, and BlackRock did not end there. The chart listed below
14 shows the relative annual and cumulative performances of the RSP Income Fund and the
15 funds offered by Vanguard, PIMCO, and BlackRock. The underperformance is striking.

Fund	2011	2012	2013	2014	2015	2016	Cumulative
RSP Income Fund	8.01	5.87	-0.85	5.83	0.34	3.50	22.70%
Vanguard Intermediate-Term Bond Index Fund	10.78	7.05	-3.42	6.99	1.30	2.85	25.55%
GE +/-	-2.77	-1.18	+2.57	-1.16	-.96	+.65	
+/- Cumulative		-3.95	-1.38	-2.54	-3.51	-2.85	-2.85%
PIMCO Income Fund	6.37	22.17	4.80	7.18	2.64	8.72	51.88%
GE +/-	-1.64	-16.3	-5.65	-1.35	-2.3	-5.22	
+/- Cumulative		-14.66	-20.31	-21.66	-23.96	-29.18	-29.18%

BlackRock Total Return Fund	4.53	10.16	-0.20	8.05	0.35	3.45	26.34%
GE +/-	+3.48	-4.29	-.65	-2.22	-.01	+0.05%	
+/- Cumulative		-0.81	-1.46	-3.68	-3.69	-3.64	-3.64%

109. Beginning in 2012, the RSP Income Fund suffered from significant mass redemptions as investors sought to distance themselves from the poor-performing fund and GE's investment advisory services. As the investment adviser to the RSP Income Fund, GEAM would have been aware of the redemptions and lack of new sales aside from the reinvestment of dividends by existing shareholders. Despite chronic underperformance and redemptions, GE continued to offer the RSP Income Fund in the Plan.

110. The funds listed in the tables above are well known, readily available, and easily accessible to all investors. These superior alternative investments were readily apparent such that an adequate investigation would have uncovered them. GE would not have had to scour the market to find them, particularly given GE's presence in the investments marketplace.

111. Nevertheless, GE retained the RSP Income Fund in the Plan when any reasonable investor monitoring the investment would have weeded it out. GE did so even after it became apparent that the RSP Income Fund's performance was inferior to alternative, readily available funds with an equivalent investment strategy. A fiduciary acting in the best interest of the Plan's participants and with due care would have removed the RSP Income Fund from the Plan.

112. However, GE had business and financial incentives to select and maintain the RSP Income Fund in the Plan. Even though the RSP Income Fund performed poorly, GEAM—and thereby GE—collected millions of dollars in advisory fees from the fund. Furthermore, the RSP Income Fund's fee revenue enhanced the sale value of GEAM, which factored into the reported \$485 million price GE received from its sale of GEAM. This by itself is suggestive of improper self-dealing.

1 113. Not replacing the RSP Income Fund with a better option had a negative impact
 2 on the Plan's participants. Listed in the table immediately below is the hypothetical growth
 3 in investment value of a \$1.8 billion fund based on the investment performance of each
 4 fund for the period beginning approximately six years prior to the filing of this suit through
 5 June 30, 2016, the day before GE sold GEAM.

Fund Name	Cumulative Performance	Annualized Performance	Growth of \$1.8 Billion
RSP Income Fund	20.7%	3.91%	\$2.17 billion
Vanguard Intermediate-Term Bond Index Fund	24.65%	4.58%	\$2.24 billion
PIMCO Income Fund	46.69%	8.10%	\$2.64 billion
BlackRock Total Return Fund	26.67%	4.93%	\$2.28 billion

14 114. GE's process for selecting, maintaining, and monitoring the RSP Income
 15 Fund as a Plan investment option was tainted by a failure of effort, competence, and/or
 16 loyalty. The Plan's participants suffered millions of dollars in losses as a result of GE's
 17 breach of fiduciary duty.

18 **B. The Small Cap Fund Had Unreasonable Fees**

19 115. The one bright spot, in terms of the Plan's performance, was the Small Cap
 20 Fund. However, the Small Cap Fund too violated ERISA. In the case of the Small Cap
 21 Fund, GEAM did not actually furnish hands-on investment management of the Small Cap
 22 Fund's assets. Instead, it hired and negotiated a fee with multiple investment sub-advisers
 23 to manage the fund. GEAM collected an investment management fee from the Small Cap
 24 Fund's performance and retained for itself the difference between the fee it collected from
 25 the Small Cap Fund and the fee it chose to pay the other investment sub-advisers. Based
 26 on the disclosure in the Small Cap Fund's registration statement, GE retained for itself
 27
 28

1 approximately 30% of the annual .88% investment management fee collected on average
2 assets of about \$1 billion per annum during the Class Period.

3 116. The placement of the Small Cap Fund into GE's 401(k) was an important
4 arrangement for GE. Investment by the Plan's participants represented approximately 80%
5 or more of the Small Cap Fund's total assets. From this arrangement GEAM—and thereby
6 GE—collected millions of dollars in unreasonable and/or excessive fees for services that
7 GE was ultimately responsible for performing as the Plan's administrator.

8 117. As the Plan's administrator, GE owed fiduciary duties to the Plan's
9 participants. By charging excessive fees incident to administering the Plan, GE breached
10 its fiduciary duties and engaged in transactions prohibited under ERISA.

11 118. Defendants acted to benefit themselves by using proprietary investment funds
12 managed by GEAM, thereby enriching themselves at the expense of the Plan's participants.
13 Defendants' enrichment on the backs of the Plan's participants through the Plan's poor
14 investment performance and unreasonable fees was not enough. On July 1, 2016,
15 Defendants again furthered their own self-interest by selling GEAM to State Street for a
16 reported \$485 million.

17 119. By acting for their own benefit rather than solely in the interest of the Plan's
18 participants, Defendants breached their fiduciary duties of loyalty and prudence and
19 engaged in transactions expressly prohibited by ERISA.

20 **VII. CLASS ACTION ALLEGATIONS**

21 120. 29 U.S.C. § 1132(a)(2) authorizes any participant or beneficiary of the Plan
22 to bring an action individually on behalf of the Plan to enforce a breaching fiduciary's
23 liability to the Plan under 29 U.S.C. § 1109(a).

24 121. In acting in a representative capacity and to enhance the due process
25 protections of unnamed participants and beneficiaries of the Plan, Plaintiffs seek to certify
26 this action as a class action on behalf of all participants and beneficiaries of the Plan (the
27 "Class"). Plaintiffs seek to certify and to be appointed as a representative of the following
28 Class:

1 All participants and beneficiaries of the Plan, excluding the Defendants, from
2 2011 through June 30, 2016 (“Class Period”).

3 122. This action meets the requirements of Federal Rule of Civil Procedure 23(a)
4 and is certifiable as a class action for the following reasons:

- 5 a. The Class includes approximately 250,000 members and is so large that joinder
6 of all its members is impracticable.
- 7 b. There are questions of law and fact common to this Class because the Defendants
8 owed fiduciary duties to the Plan and to all participants and beneficiaries, and
9 took the actions and omissions alleged herein as to the Plan and not as to any
10 individual participant. Thus, common questions of law and fact include the
11 following without limitation: who are the fiduciaries liable for the remedies
12 provided by 29 U.S.C. § 1109(a); whether the fiduciaries of the Plan breached
13 their fiduciary duties to the Plan; what are the losses to the Plan resulting from
14 each breach of fiduciary duty; and what Plan-wide equitable and other relief the
15 Court should impose in light of Defendants’ breach of duty.
- 16 c. Plaintiffs’ claims are typical of the claims of the Class because each was a
17 participant during the Class Period. Plaintiffs and all participants in the Plan
18 were similarly harmed by Defendants’ misconduct. As a result of Defendants’
19 self-dealing and imprudence, Plaintiffs and all the Plan’s participants suffered
20 from excessive fees, deficient performance, and inadequate investment options.
21 This directly caused each of them substantial monetary harm. Plaintiffs and all
22 other participants’ retirement savings are depleted as compared to what they
23 could have realized in a robust and cost-effective Plan.
- 24 d. Plaintiffs are adequate representatives of the Class because each was a
25 participant in the Plan during the Class Period, has no interest that is in conflict
26 with the Class, is committed to the vigorous representation of the Class, and has
27 engaged experienced, and competent attorneys to represent the Class.
28

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

11 124. Additionally, or in the alternative, certification under Rule 23(b)(2) is
12 appropriate because Defendants have acted or refused to act on grounds that apply
13 generally to the Class, so that final injunctive relief or corresponding declaratory relief is
14 appropriate respecting the Class as a whole. Plaintiffs seek comprehensive reformation of
15 the Plan to make it a more viable retirement investment option, which will benefit them
16 and the Plan's participants.

17 125. Additionally, or in the alternative, this action may be certified as a class under
18 Rule 23(b)(3). A class action is the superior method for the fair and efficient adjudication
19 of this controversy because joinder of all participants and beneficiaries is impracticable,
20 the losses suffered by individual participants and beneficiaries may be small and it is
21 impracticable for individual members to enforce their rights through individual actions,
22 and the common questions of law and fact predominate over individual questions. Given
23 the nature of the allegations, no class member has an interest in individually controlling
24 the prosecution of this matter and Plaintiffs are aware of no difficulties likely to be
25 encountered in the management of this matter as a class action.

26 126. Additionally, or alternatively, this action may be certified as to particular
27 issues under Rule 23(c)(4), including, but not limited to, Defendants' liability to the Class
28 for their allegedly disloyal and imprudent conduct.

1 127. Plaintiffs’ counsel, Sanford Heisler Sharp, LLP, will fairly and adequately
2 represent the interests of the Class and is best able to represent the interests of the Class
3 under Rule 23(g).

4 **VIII. CAUSES OF ACTION**

5 **COUNT I**

6 **Breach of Duties of Loyalty and Prudence by Mismanaging the Investment**
7 **Options Selected For and Retained By the Plan During the Class Period**
8 **(Violation of ERISA, 29 U.S.C. § 1104)**

9 128. The allegations set forth in paragraphs 12 through 127 are realleged and
10 incorporated herein by reference.

11 129. GE used the Plan as a strategic and financial benefit to recruit and retain
12 workers.

13 130. In joining GE and subsequently enrolling in the Plan, GE employees trusted
14 and relied on GE’s resources and expertise to construct and maintain a state-of-the-art
15 401(k) plan.

16 131. At all relevant times during the Class Period, the Defendants acted as
17 fiduciaries within the meaning of 29 U.S.C. § 1002(21)(A), by exercising authority and
18 control with respect to the management of the Plan and its assets.

19 132. 29 U.S.C. § 1104(a)(1) requires plan fiduciaries to act “solely in the interest”
20 of plan participants and beneficiaries.

21 a. Subsection (A) of this section requires that the fiduciary act for the “exclusive
22 purpose” of providing benefits to plan participants and defraying reasonable
23 expenses of plan administration. 29 U.S.C. § 1104(a)(1)(A).

24 b. Subsection (B) adds the duty of prudence, requiring a plan fiduciary to act with
25 the “care, skill, prudence and diligence under the circumstances then prevailing
26 that a prudent man acting in a like capacity and familiar with such matters would
27 use in the conduct of an enterprise of a like character and with like aims.” 29
28 U.S.C. § 1104(a)(1)(B).

1 133. The scope of the fiduciary duties and responsibilities of Defendants includes
2 managing the assets of the Plan for the sole and exclusive benefit of the Plan’s participants
3 and beneficiaries, defraying reasonable expenses, and administering the plan with the care,
4 skill, diligence, and prudence required by ERISA. Defendants are responsible for selecting
5 prudent investment options, eliminating imprudent ones, evaluating and monitoring the
6 Plan’s investment on an on-going basis, and taking all necessary steps to ensure the Plan’s
7 assets are invested prudently.

8 134. Defendants selected and retained the Plan’s investment options. The process
9 for selecting and retaining the Plan’s investment portfolio options is and has been based on
10 a faulty investment process that was tainted by Defendants’ self-interest and imprudence.

11 135. The faulty process resulted in a plan loaded with relatively poor-to-mediocre
12 proprietary options which substantially impaired the Plan’s use, its value, and its
13 investment performance for all the Plan’s participants, past and present. This process
14 included the retention of these proprietary options despite sustained poor relative
15 investment performance.

16 136. A prudent investigation would have concluded that the process used by
17 Defendants was causing the Plan to waste hundreds of millions of dollars of the Plan’s
18 participants’ retirement savings.

19 137. The fact that the Plan’s poor investment options have caused material relative
20 underperformance constitutes a breach of Defendants’ fiduciary duty under ERISA to each
21 and every person who was a participant in the Plan during the Class Period regardless of
22 the investment option in which the participant had actually invested.

23 138. In failing to adequately consider better-performing investments for the Plan,
24 Defendants, with respect to the entire Plan, failed to discharge their duties with the care,
25 skill, prudence, and diligence under the circumstances then prevailing that a prudent man
26 acting in a like capacity and familiar with such matters would use in the conduct of an
27 enterprise of like character and with like aims.

1 from the Small Cap Fund’s performance and retained for itself—and thereby GE—the
2 difference between the fee it collected from the Small Cap Fund and the fee it agreed to
3 pay the other investment sub-advisers.

4 145. From this arrangement, GE collected millions of dollars in fee revenue for
5 performing a task that GE was otherwise obligated to perform as the Plan’s administrator.
6 In other words, this arrangement allowed GE, indirectly through the Small Cap Fund and
7 GEAM, to receive its own compensation as the administrator of the Plan and to collect
8 unreasonable and/or excessive fees from the Plan.

9 146. The GE Plan Trustees allowed GE and GEAM to make a profit from the Plan
10 by retaining the difference between what GEAM collected from the Small Cap Fund and
11 what it paid to investment sub-advisers.

12 147. Moreover, the GE Plan Trustees had a potential conflict of interest as
13 employees of GEAM, and failed to expressly consider the potential effect of that conflict
14 of interest on their decision-making.

15 148. By using its fiduciary authority to affect their own compensation and by
16 failing to use the excess fees collected from the Small Cap Fund to offset fees the Plan
17 would have otherwise had to pay, Defendants failed to discharge their duties with respect
18 to the Plan:

- 19 a. Solely in the interest of the participants and beneficiaries and for the exclusive
20 purpose of providing benefits to participants and beneficiaries and defraying
21 reasonable expenses of administering the Plan, in violation of 29 U.S.C. §
22 1104(a)(1)(A); and
- 23 b. With the care, skill, prudence, and diligence under the circumstances then
24 prevailing that a prudent person acting in a like capacity and familiar with such
25 matters would use in the conduct of an enterprise of a like character and with
26 like aims, in violation of 29 U.S.C. § 1104(a)(1)(B).

27 149. As a direct and proximate result of these breaches of fiduciary duties, the Plan
28 and each of its participants have suffered millions of dollars of damages for which

1 Defendants are jointly and severally liable pursuant to 29 U.S.C. § 1109. Pursuant to
2 ERISA, 29 U.S.C. §§ 1132(a)(2), 1132(a)(3), and 1109(a), Defendants are liable to make
3 good to the Plan the losses resulting from the aforementioned breaches, to restore to the
4 Plan any profits Defendants made through the use of Plan assets, to restore to the Plan any
5 profits resulting from the breaches of fiduciary duties alleged in this Count, and are subject
6 to other equitable or remedial relief as appropriate.

7 150. Each Defendant also knowingly participated in the breach of the other
8 Defendants, knowing that such acts were a breach; enabled the other Defendants to commit
9 a breach by failing to lawfully discharge its own fiduciary duties; and knew of the breach
10 by the other Defendants yet failed to make any reasonable effort under the circumstances
11 to remedy the breach. Thus, each Defendant is liable for the losses caused by the breach of
12 its co-fiduciary under ERISA section 409, 29 U.S.C. § 1105(a).

13 **COUNT III**

14 **Prohibited Transactions Concerning Investment Management** 15 **and Administrative Services Fees** 16 **(Violation of ERISA, 29 U.S.C. § 1106)**

17 151. The allegations set forth in paragraphs 12 through 127 are realleged and
18 incorporated herein by reference.

19 152. ERISA § 406(a)(1)(D), 29 U.S.C. § 1106(a)(1)(D), prohibits fiduciaries from
20 causing plans to engage in transactions that they know or should know constitute direct or
21 indirect transfers of the Plans' assets to, or use of the Plans' assets by or for the benefit of,
22 parties in interest.

23 153. ERISA § 406(b), 29 U.S.C. § 1106(b) prohibits fiduciary self-dealing.

- 24 a. Subsection (1) provides that a fiduciary shall not “deal with the assets of the
25 plan in his own interest or for his own account.”
26 b. Subsection (2) provides that a fiduciary shall not “in his individual or in any
27 other capacity act in any transaction involving the plan on behalf of a party (or
28

1 represent a party) whose interests are adverse to the interests of the plan or the
2 interests of its participants or beneficiaries.”

- 3 c. Subsection (3) provides that a fiduciary shall not “receive any consideration for
4 his own personal account from any party dealing with such plan in connection
5 with a transaction involving the assets of the plan.”

6 154. Defendants caused the Plan to utilize the Small Cap Fund.

7 155. Throughout the Class Period, Defendants dealt with the assets of the Plan in
8 their own interest and for their own account when they caused the Plan to pay unreasonable
9 investment management fees to GEAM. Under the arrangement with the Small Cap Fund,
10 GEAM charged the fund a separate investment management fee, investment advisory fee,
11 or similar fee.

12 156. Accordingly, Defendants engaged in prohibited transactions as follows:

- 13 a. By causing the Plan to engage in transactions that they know or should know
14 constitute direct or indirect transfers of the Plans’ assets to, or use of the Plans’
15 assets by or for the benefit of, parties in interest, in violation of 29 U.S.C. §
16 1106(a)(1)(D); and
17 b. By causing the Plan to engage in the above conduct and omissions, in which a
18 fiduciary to the Plan dealt with the assets of the plan in his own interest or for
19 his own account in violation of 29 U.S.C. § 1106(b)(1); and
20 c. By causing the Plan to engage in the above conduct and omissions, in which a
21 fiduciary to the Plan, in his individual or in any other capacity, acted on behalf
22 of a party whose interests were adverse to the interests of the Plan or the
23 interests of its participants or beneficiaries, in violation of 29 U.S.C. §
24 1106(b)(2); and
25 d. By causing the Plan to engage in the above conduct and omissions, in which a
26 fiduciary to the Plan received consideration for its own personal account from
27 any party dealing with the Plan in connection with a transaction involving the
28 assets of the Plan, in violation of 29 U.S.C. § 1106(b)(3); and

1 e. By causing the Plan to pay a separate investment management fee, investment
2 advisory fee, or similar fee violated the terms of Prohibited Transaction
3 Exemption 77-3.

4 157. Pursuant to 29 U.S.C. §§ 1132(a)(2), 1132(a)(3), and 1109(a), Defendants are
5 liable to restore all losses suffered by the Plan as a result of these prohibited transactions
6 and disgorge all revenues received and/or earned directly or indirectly by GE resulting
7 from the above-mentioned prohibited transactions or received in connection with the
8 management of the Plan's assets or other services performed for the Plan for more than
9 reasonable compensation.

10 **COUNT IV**

11 **Breach of Duties of Loyalty and Prudence by Failing to Remove or Replace**
12 **Certain GE Proprietary Funds as 401(k) Plan Investment Vehicles**
13 **(Violation of ERISA, 29 U.S.C. § 1104)**

14 158. The allegations set forth in paragraphs 12 through 127 are realleged and
15 incorporated herein by reference.

16 159. Defendants breached its duties of loyalty and prudence by selecting and then
17 failing to timely remove as Plan investment options each of the GE Funds—i.e., the
18 Strategic Fund, International Fund, RSP Equity Fund, and RSP Income Fund.

19 160. The GE Funds exhibited poor performance during and before the Class
20 Period. GE profited from the Plan by causing the Plan to retain GE's own poor-performing
21 proprietary funds.

22 161. A prudent investigation not tainted by self-interest would have revealed to a
23 reasonably prudent fiduciary that the GE Funds were inferior to other readily apparent
24 investment options. GE's conduct reflects a failure to consider and obtain better-
25 performing alternative, unaffiliated funds at the expense and to the detriment of the Plan.

26 162. Had a prudent and loyal fiduciary conducted such an investigation, it would
27 have concluded that the GE Funds were selected and retained for reasons other than the
28 best interest of the Plan and were causing the Plan to waste hundreds of millions of dollars

1 of employees' retirement savings in underperformance relative to prudent investment
2 options available to the Plan.

3 163. Defendants committed these breaches during each of the meetings of the GE
4 Plan Trustees that occurred periodically during each year of the Class Period. At each of
5 these meetings, the GE Plan Trustees had cause to remove the GE Funds based on their
6 poor performance, but failed to do so. A prudent fiduciary would have removed the GE
7 Funds from the Plan.

8 164. As a direct and proximate result of these breaches of fiduciary duties, the Plan
9 and each of its participants have suffered millions of dollars of damages and lost-
10 opportunity costs which continue to accrue and for which Defendants are jointly and
11 severally liable pursuant to 29 U.S.C. § 1109. Pursuant to ERISA, 29 U.S.C. §§ 1132(a)(2),
12 1132(a)(3), and 1109(a), Defendants are liable to make good to the Plan the losses resulting
13 from the aforementioned breaches, to restore to the Plan any profits Defendants made
14 through the use of Plan assets, to restore to the Plan any profits resulting from the breaches
15 of fiduciary duties alleged in this Count, and are subject to other equitable or remedial relief
16 as appropriate.

17 165. Each Defendant also knowingly participated in the breach of the other
18 Defendants, knowing that such acts were a breach; enabled the other Defendants to commit
19 a breach by failing to lawfully discharge its own fiduciary duties; and knew of the breach
20 by the other Defendants yet failed to make any reasonable effort under the circumstances
21 to remedy the breach. Thus, each Defendant is liable for the losses caused by the breach of
22 its co-fiduciary under ERISA section 409, 29 U.S.C. § 1105(a).

23 **COUNT V**

24 **Failure to Monitor Fiduciaries**

25 166. The allegations set forth in paragraphs 12 through 127 are realleged and
26 incorporated herein by reference.

27 167. As alleged above, GE is a fiduciary under 29 U.S.C. § 1002(21), and thus
28 bound by the duties of loyalty and prudence.

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

5 169. To the extent that the GE Plan Trustees managed the assets of the Plan, GE's
6 monitoring duty included an obligation to ensure that any delegated tasks were being
7 performed prudently and loyally.

8 170. The GE Plan Trustees monitoring duty included an obligation to ensure that
9 any delegated tasks were being performed prudently and loyally.

10 171. The Defendants breached their fiduciary monitoring duties, *inter alia*, by:

- 11 a. failing to monitor its appointees, to evaluate their performance, or to have a
12 system in place for doing so, and standing idly by as the Plan suffered enormous
13 losses as a result of their appointees' imprudent actions and omissions with
14 respect to the Plan;
- 15 b. failing to ensure that the monitored fiduciaries considered the ready availability
16 of comparable investment options for the Plan;
- 17 c. failing to remove appointees whose performance was inadequate in that they
18 continued to maintain imprudent investments; and
- 19 d. failing to remove options that did not even keep up with a majority of funds
20 with comparable investment strategies, all to the detriment of the Plan's
21 participants.

22 172. As a consequence of Defendants' breaches of their fiduciary duty to loyally
23 and prudently select investments and monitor their performance, the Plan failed to accrue
24 hundreds of millions of dollars of additional investment performance and moreover
25 suffered very substantial losses. Had Defendants discharged their fiduciary monitoring
26 duties loyally and prudently as described above, the losses suffered by the Plan would have
27 been avoided. Therefore, as a direct result of the breaches of fiduciary duty alleged herein,
28 Plaintiffs and the Plan's participants lost hundreds of millions of dollars.

1 173. Pursuant to 29 U.S.C. §§ 1132(a)(2), 1132(a)(3), and 1109(a), Defendants are
2 personally liable to make good and restore to the Plan any losses to the Plan resulting from
3 the breaches of fiduciary duties alleged in this Count, and are subject to other equitable or
4 remedial relief as appropriate.

5 **IX. PRAYER FOR RELIEF**

6 174. Plaintiffs, on behalf of the Plan’s participants and beneficiaries, respectfully
7 request that the Court:

- 8 A. Find and declare that the Defendants breached their fiduciary duties as
9 described above;
- 10 B. Find and adjudge that Defendants are personally liable to make good to the Plan
11 \$700 million in losses to the Plan resulting from each breach of fiduciary duty,
12 and to otherwise restore the Plan to the position it would have occupied but for
13 the breaches of fiduciary duty;
- 14 C. Determine the method by which Plan losses under 29 U.S.C. § 1109(a) should
15 be calculated;
- 16 D. Order Defendants to provide all accountings necessary to determine the
17 amounts Defendants must make good to the Plan under 29 U.S.C. § 1109(a);
- 18 E. Remove the fiduciaries who have breached their fiduciary duties and enjoin
19 them from future ERISA violations;
- 20 F. Reform the Plan to render it compliant with ERISA;
- 21 G. Surcharge against Defendants and in favor of the Plan all amounts involved in
22 any transactions which such accounting reveals were improper, excessive,
23 and/or in violation of ERISA;
- 24 H. Certify the Class, appoint Plaintiffs as class representatives, and appoint
25 Sanford Heisler Sharp, LLP as Class Counsel;
- 26 I. Award to the Plaintiffs and the Class their attorney’s fees and costs under 29
27 U.S.C. § 1132(g)(1) and/or the common fund doctrine;
- 28 J. Order the payment of interest to the extent it is allowed by law; and

1 K. Grant other equitable or remedial relief as the Court deems appropriate.
2

3
4 Dated: September 26, 2017

Respectfully Submitted,

5
6
7 /s/ Charles Field

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