No. 18-1116

IN THE

Supreme Court of the United States

INTEL CORPORATION INVESTMENT POLICY COMMITTEE, ET AL.,

Petitioners,

v.

CHRISTOPHER M. SULYMA,

Respondent.

On Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit

JOINT APPENDIX VOLUME I

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CERTIORARI GRANTED JUNE 10, 2019

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UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

No. 17-15864

CHRISTOPHER SULYMA,

Appellant

v.

INTEL CORPORATION INVESTMENT POLICY COMMITTEE, et al.

Appellees.

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF CALIFORNIA

[Hon. Nathanael M. Cousins, U.S. Magistrate Judge]

RELEVANT DOCKET ENTRIES

Date Filed	Docket Text
4/27/2017	Docketed Cause And Entered Appearances Of Counsel. Send Mq: Yes. The Schedule Is Set As Follows: Mediation Questionnaire Due On 05/04/2017. Transcript Ordered By 05/24/2017. Transcript Due 06/23/2017. Appellant Christopher M. Sulyma Opening Brief Due 08/02/2017. Appellees Charlene Barshefsky, Susan L. Decker, John J. Donahoe, Finance Committee Of The

	Intel Corporation Board Of Directors, Reed Hundt, Intel Corporation 401(K) Savings Plan, Intel Corporation Investment Policy Committee, Intel Retirement Contribution Plan, Intel Retirement Plans Administrative Committee, Ravi Jacob, James D. Plummer, David S. Pottruck And Frank D. Yeary Answering Brief Due 09/05/2017. Appellant's Optional Reply Brief Is Due 14 Days After Service Of The Answering Brief. [10414126] (RT) [Entered: 04/27/2017 03:32 PM]
* * *	
12/29/2017	Filed Clerk Order: The Opening Brief [16] Submitted By Christopher M. Sulyma Is Filed. Within 7 Days Of The Filing Of This Order, Filer Is Ordered To File 7 Copies Of The Brief In Paper Format, Accompanied By Certification, Attached To The End Of Each Copy Of The Brief, That The Brief Is Identical To The Version Submitted Electronically. Cover Color: Blue. The Paper Copies Shall Be Printed From The Pdf Version Of The Brief Created From The Word Processing Application, Not From Pacer Or Appellate Cm/ECF. The Court Has Reviewed The Excerpts Of Record [15] Submitted By Christopher M. Sulyma. Within 7 Days Of This Order, Filer Is Ordered To File 4 Copies Of The Excerpts In Paper

	Format, With A White Cover. The Paper Copies Must Be In The Format Described In 9th Circuit Rule 30-1.6. [10708384] (SML) [Entered: 12/29/2017 04:20 PM]
* * *	
3/1/2018	Filed Clerk Order: The Answering Brief [22] Submitted By Appellees Is Filed. Within 7 Days Of The Filing Of This Order, Filer Is Ordered To File 7 Copies Of The Brief In Paper Format, Accompanied By Certification, Attached To The End Of Each Copy Of The Brief, That The Brief Is Identical To The Version Submitted Electronically. Cover Color: Red. The Paper Copies Shall Be Printed From The Pdf Version Of The Brief Created From The Word Processing Application, Not From Pacer Or Appellate Cm/ECF. The Court Has Reviewed The Supplemental Excerpts Of Record [23] Submitted By Appellees. Within 7 Days Of This Order, Filer Is Ordered To File 4 Copies Of The Excerpts In Paper Format, With A White Cover. The Paper Copies Must Be In The Format Described In 9th Circuit Rule 30-1.6. [10782473] (KWG) [Entered: 03/01/2018 10:58 AM]
* * *	

4/23/2018	Filed Clerk Order: The Reply Brief [29] Submitted By Christopher M. Sulyma Is Filed. Within 7 Days Of The Filing Of This Order, Filer Is Ordered To File 7 Copies Of The Brief In Paper Format, Accompanied By Certification, Attached To The End Of Each Copy Of The Brief, That The Brief Is Identical To The Version Submitted Electronically. Cover Color: Gray. The Paper Copies Shall Be Printed From The Pdf Version Of The Brief Created From The Word Processing Application, Not From Pacer Or Appellate Cm/ECF. [10846044] (KWG) [Entered: 04/23/2018 09:13 AM]
* * *	
10/18/2018	Argued And Submitted To J. Clifford Wallace, Susan P. Graber And Robert S. Lasnik. [11051756] (Bjk) [Entered: 10/18/2018 11:56 AM]
* * *	
11/28/2018	Filed Opinion (J. Clifford Wallace, Susan P. Graber And Robert S. Lasnik) Reversed And Remanded. Judge: Jcw Authoring, Filed And Entered Judgment. [11101139] (RMM) [Entered: 11/28/2018 07:36 AM]
* * *	
12/20/2018	Mandate Issued. (JCW, SPG And RSL) Costs Taxed Against Appellee In The

	Amount Of $379.70. [11127478] (RL) [Entered: 12/20/2018 09:01 AM]

UNITED STATES DISTRICT COURT FOR THE NOTHERN DISTRICT OF CALIFORNIA

No. 15-cv-04977 NC

CHRISTOPHER M. SULYMA, et al.

Plaintiffs

v.

INTEL CORPORATION INVESTMENT POLICY COMMITTEE, et al.

Defendants.

RELEVANT DOCKET ENTRIES

Date Filed	**No.**	**Docket Text**
10/29/2015	1	COMPLAINT against All Defendants (Filing fee $400, receipt number 0971-9952676.). Filed by Christopher M. Sulyma. (Attachments: #1 Civil Cover Sheet) (Barton, R.) (Filed on 10/29/2015) (Entered: 10/29/2015)
	* * *	
4/26/2016	93	AMENDED COMPLAINT /Consolidated Class Action Complaint against All Defendants. Filed by Christopher M. Sulyma. (Attachments: #1 Exhibit A to Consolidated Complaint) (Creitz, Joseph) (Filed on 4/26/2016) (Entered: 04/26/2016)

* * *		
5/26/2016	103	MOTION to Dismiss and Memorandum in Support filed by Charlene Barshefsky, Terra Castaldi, Susan L. Decker, Ronald D. Dickel, John J. Donahoe, Finance Committee of the Intel Corporation Board of Directors, Christopher Geczy, Tami Graham, Reed Hundt, Intel Corporation Investment Policy Committee, Intel Retirement Plans Administrative Committee, Ravi Jacob, Cary Klafter, Stuart Odell, Nanci S. Palmintere, James D. Plummer, David S. Pottruck, Tiffany Doon Silva, Arvind Sodhani, Richard Taylor, Frank D. Yeary. Motion Hearing set for 7/6/2016 01:00 PM in Courtroom 7, 4th Floor, San Jose before Magistrate Judge Nathanael M. Cousins. Responses due by 6/9/2016. Replies due by 6/16/2016. (Attachments: #1 Declaration of John J. Buckley, Jr., #2 Exhibits 1 and 2, #3 Exhibits 3 through 8, #4 Exhibits 9 through 14, #5 Proposed Order) (Buckley, John) (Filed on 5/26/2016) (Entered: 05/26/2016)
* * *		
6/23/2016	108	RESPONSE (re 103 MOTION to Dismiss and Memorandum in Support) Plaintiff's Opposition to

		Defendants' Motion to Dismiss and Objections to Defendants' "Evidence" filed byChristopher M. Sulyma. (Attachments: #1 Declaration Declaration of Christopher Sulyma with its Exhibits A, B, and C, #2 Declaration Declaration of Kate Tenenbaum with its Exhibits A, B and C) (Creitz, Joseph) (Filed on 6/23/2016) (Entered: 06/23/2016)
7/13/2016	109	REPLY (re 103 MOTION to Dismiss and Memorandum in Support) filed by Charlene Barshefsky, Terra Castaldi, Susan L. Decker, Ronald D. Dickel, John J. Donahoe, Finance Committee of the Intel Corporation Board of Directors, Christopher Geczy, Tami Graham, Reed Hundt, Intel Corporation Investment Policy Committee, Intel Retirement Plans Administrative Committee, Ravi Jacob, Cary Klafter, Stuart Odell, Nanci S. Palmintere, James D. Plummer, David S. Pottruck, Tiffany Doon Silva, Arvind Sodhani, Richard Taylor, Frank D. Yeary. (Attachments: #1 Supplemental Declaration of John J. Buckley, Jr., #2 Exhibit 15, #3 Exhibit 16, #4 Declaration of Michael Knutson, #5 Declaration of Thomas

		Vogel) (Buckley, John) (Filed on 7/13/2016) (Entered: 07/13/2016)
	* * *	
8/10/2016	111	Minute Entry for proceedings held before Magistrate Judge Nathanael M. Cousins. Hearing re Motion to Dismiss 103 held on 8/10/2016: Court takes motion under submission. Plaintiff's Attorneys: Joseph Barton, Joseph Creitz. Defendants' Attorneys: John Buckley, Myron Rumeld, Scott Cooper. (FTR Time 2:19pm - 3:45pm.) This is a text only Minute Entry. (lmh, COURT STAFF) (Date Filed: 8/10/2016) (Entered: 08/10/2016)
	* * *	
8/18/2016	114	ORDER CONVERTING DEFENDANTS' MOTION TO DISMISS INTO A MOTION FOR SUMMARY JUDGMENT; ORDERING LIMITED DISCOVERY ON DEFENDANTS' STATUTE OF LIMITATIONS DEFENSE. Re: Dkt. No. 103. The parties must meet and confer and submit their proposed discovery and briefing plan by 8/26/2016. The Court sets a hearing on the defendants' motion for summary judgment on the statute of limitations and a case management conference for 12/14/2016 01:00 PM in Courtroom 7, 4th Floor, San Jose.

		Signed by Judge Nathanael Cousins on 8/18/2016. (lmh, COURT STAFF) (Filed on 8/18/2016) (Entered: 08/18/2016)
* * *		
10/19/2016	122	NOTICE OF MOTION AND MOTION FOR SUMMARY JUDGMENT; MEMORANDUM IN SUPPORT filed by Charlene Barshefsky, Terra Castaldi, Susan L. Decker, Ronald D. Dickel, John J. Donahoe, Finance Committee of the Intel Corporation Board of Directors, Christopher Geczy, Tami Graham, Reed Hundt, Intel Corporation Investment Policy Committee, Intel Retirement Plans Administrative Committee, Ravi Jacob, Cary Klafter, Stuart Odell, Nanci S. Palmintere, James D. Plummer, David S. Pottruck, Tiffany Doon Silva, Arvind Sodhani, Richard Taylor, Frank D. Yeary. Motion Hearing set for 12/14/2016 01:00 PM in Courtroom 7, 4th Floor, San Jose before Magistrate Judge Nathanael M. Cousins. Responses due by 11/16/2016. Replies due by 11/30/2016. (Attachments: #1 Declaration of Thomas Vogel, #2 Declaration of Christina Smith, #3 Declaration of Jason Rawlins, #4 Declaration of Cynthia Baumeister, #5 Proposed

		Order) (Cooper, Scott) (Filed on 10/19/2016) Modified on 10/20/2016 (bws, COURT STAFF). (Entered: 10/19/2016)
10/19/2016	123	Declaration of John J. Buckley, Jr. in Support of 122 MOTION for Summary Judgment filed by Charlene Barshefsky, Terra Castaldi, Susan L. Decker, Ronald D. Dickel, John J. Donahoe, Finance Committee of the Intel Corporation Board of Directors, Christopher Geczy, Tami Graham, Reed Hundt, Intel Corporation Investment Policy Committee, Intel Retirement Plans Administrative Committee, Ravi Jacob, Cary Klafter, Stuart Odell, Nanci S. Palmintere, James D. Plummer, David S. Pottruck, Tiffany Doon Silva, Arvind Sodhani, Richard Taylor, Frank D. Yeary. (Attachments: #1 Exhibit 1, #2 Exhibit 2, #3 Exhibit 3, #4 Exhibit 4) (Related document(s) 122) (Cooper, Scott) (Filed on 10/19/2016) (Entered: 10/19/2016)
10/19/2016	124	EXHIBITS 5-6 re 123 Declaration in Support filed by Charlene Barshefsky, Terra Castaldi, Susan L. Decker, Ronald D. Dickel, John J. Donahoe, Finance Committee of the Intel Corporation Board of Directors, Christopher Geczy, Tami

		Graham, Reed Hundt, Intel Corporation Investment Policy Committee, Intel Retirement Plans Administrative Committee, Ravi Jacob, Cary Klafter, Stuart Odell, Nanci S. Palmintere, James D. Plummer, David S. Pottruck, Tiffany Doon Silva, Arvind Sodhani, Richard Taylor, Frank D. Yeary. (Attachments: #1 Exhibit 6) (Related document(s) 123) (Cooper, Scott) (Filed on 10/19/2016) Modified on 10/20/2016 (bws, COURT STAFF). (Entered: 10/19/2016)
10/19/2016	125	EXHIBITS 7-11 re 123 Declaration in Support filed by Charlene Barshefsky, Terra Castaldi, Susan L. Decker, Ronald D. Dickel, John J. Donahoe, Finance Committee of the Intel Corporation Board of Directors, Christopher Geczy, Tami Graham, Reed Hundt, Intel Corporation Investment Policy Committee, Intel Retirement Plans Administrative Committee, Ravi Jacob, Cary Klafter, Stuart Odell, Nanci S. Palmintere, James D. Plummer, David S. Pottruck, Tiffany Doon Silva, Arvind Sodhani, Richard Taylor, Frank D Yeary. (Attachments: #1 Exhibit 8, #2 Exhibit 9, #3 Exhibit 10, #4 Exhibit 11) (Related document(s) 123) (Cooper, Scott) (Filed

		on 10/19/2016) Modified on 10/20/2016 (bws, COURT STAFF). (Entered: 10/19/2016)
10/19/2016	126	EXHIBITS 12-17 re 123 Declaration in Support filed by Charlene Barshefsky, Terra Castaldi, Susan L. Decker, Ronald D. Dickel, John J. Donahoe, Finance Committee of the Intel Corporation Board of Directors, Christopher Geczy, Tami Graham, Reed Hundt, Intel Corporation Investment Policy Committee, Intel Retirement Plans Administrative Committee, Ravi Jacob, Cary Klafter, Stuart Odell, Nanci S. Palmintere, James D. Plummer, David S. Pottruck, Tiffany Doon Silva, Arvind Sodhani, Richard Taylor, Frank D. Yeary. (Attachments: #1 Exhibit 13, #2 Exhibit 14, #3 Exhibit 15, #4 Exhibit 16, #5 Exhibit 17) (Cooper, Scott) (Filed on 10/19/2016) Modified on 10/20/2016 (bws, COURT STAFF). (Entered: 10/19/2016)
10/19/2016	127	EXHIBITS 18-25 re 123 Declaration in Support filed by Charlene Barshefsky, Terra Castaldi, Susan L. Decker, Ronald D. Dickel, John J. Donahoe, Finance Committee of the Intel Corporation Board of Directors, Christopher Geczy, Tami Graham, Reed Hundt, Intel

		Corporation Investment Policy Committee, Intel Retirement Plans Administrative Committee, Ravi Jacob, Cary Klafter, Stuart Odell, Nanci S. Palmintere, James D. Plummer, David S. Pottruck, Tiffany Doon Silva, Arvind Sodhani, Richard Taylor, Frank D. Yeary. (Attachments: #1 Exhibit 19, #2 Exhibit 20, #3 Exhibit 21, #4 Exhibit 22, #5 Exhibit 23, #6 Exhibit 24, #7 Exhibit 25) (Cooper, Scott) (Filed on 10/19/2016) Modified on 10/20/2016 (bws, COURT STAFF). (Entered: 10/19/2016)
10/19/2016	128	EXHIBITS 26-34 re 123 Declaration in Support filed by Charlene Barshefsky, Terra Castaldi, Susan L. Decker, Ronald D. Dickel, John J. Donahoe, Finance Committee of the Intel Corporation Board of Directors, Christopher Geczy, Tami Graham, Reed Hundt, Intel Corporation Investment Policy Committee, Intel Retirement Plans Administrative Committee, Ravi Jacob, Cary Klafter, Stuart Odell, Nanci S. Palmintere, James D. Plummer, David S. Pottruck, Tiffany Doon Silva, Arvind Sodhani, Richard Taylor, Frank D. Yeary. (Attachments: #1 Exhibit 27, #2 Exhibit 28, #3 Exhibit 29,

		#4 Exhibit 30, #5 Exhibit 31, #6 Exhibit 32, #7Exhibit 33, #8 Exhibit 34) (Cooper, Scott) (Filed on 10/19/2016) Modified on 10/20/2016 (bws, COURT STAFF). (Entered: 10/19/2016)
10/19/2016	129	EXHIBITS 35-45 re 123 Declaration in Support,, filed by Charlene Barshefsky, Terra Castaldi, Susan L. Decker, Ronald D. Dickel, John J. Donahoe, Finance Committee of the Intel Corporation Board of Directors, Christopher Geczy, Tami Graham, Reed Hundt, Intel Corporation Investment Policy Committee, Intel Retirement Plans Administrative Committee, Ravi Jacob, Cary Klafter, Stuart Odell, Nanci S. Palmintere, James D. Plummer, David S. Pottruck, Tiffany Doon Silva, Arvind Sodhani, Richard Taylor, Frank D. Yeary. (Attachments: #1 Exhibit 36, #2 Exhibit 37, #3 Exhibit 38, #4 Exhibit 39, #5 Exhibit 40, #6 Exhibit 41, #7 Exhibit 42, #8 Exhibit 43, #9 Exhibit 44, #10 Exhibit 45) (Cooper, Scott) (Filed on 10/19/2016) Modified on 10/20/2016 (bws, COURT STAFF). (Entered: 10/19/2016)
10/19/2016	130	EXHIBITS 46-52 re 123 Declaration in Support filed by Charlene Barshefsky, Terra Castaldi, Susan

		L. Decker, Ronald D. Dickel, John J. Donahoe, Finance Committee of the Intel Corporation Board of Directors, Christopher Geczy, Tami Graham, Reed Hundt, Intel Corporation Investment Policy Committee, Intel Retirement Plans Administrative Committee, Ravi Jacob, Cary Klafter, Stuart Odell, Nanci S. Palmintere, James D Plummer, David S. Pottruck, Tiffany Doon Silva, Arvind Sodhani, Richard Taylor, Frank D. Yeary. (Attachments: #1 Exhibit 47, #2 Exhibit 48, #3 Exhibit 49, #4 Exhibit 50, #5 Exhibit 51, #6 Exhibit 52) (Cooper, Scott) (Filed on 10/19/2016) Modified on 10/20/2016 (bws, COURT STAFF). (Entered: 10/19/2016)
* * *		
11/16/2016	134	MEMORANDUM IN OPPOSITION TO DEFENDANTS MOTION FOR SUMMARY JUDGMENT (re 122 MOTION for Summary Judgment filed by Christopher M. Sulyma. (Creitz, Joseph) (Filed on 11/16/2016) Modified on 11/17/2016 (bws, COURT STAFF). (Entered: 11/16/2016)
11/16/2016	135	DECLARATION of Joseph Barton in Opposition to 134 Opposition/Response to Motion for Summary Judgment filed by

		Christopher M. Sulyma. (Attachments: #1 Exhibit A, #2 Exhibit B, #3 Exhibit C, #4 Exhibit D, #5 Exhibit E, #6 Exhibit F, #7 Exhibit G, #8 Exhibit H, #9 Exhibit I, #10 Exhibit J, #11 Exhibit K, #12 Exhibit L, #13 Exhibit M, #14 Exhibit N, #15 Exhibit O, #16 Exhibit P, #17 Exhibit Q, #18 Exhibit R, #19 Exhibit S, #20 Exhibit T, #21 Exhibit U, #22 Exhibit V, #23 Exhibit W)(Related document(s) 134) (Creitz, Joseph) (Filed on 11/16/2016) (Entered: 11/16/2016)
11/16/2016	136	DECLARATION OF CHRISTOPHER M. SULYMA IN OPPOSITION TO DEFENDANTS MOTION FOR SUMMARY JUDGMENT 134 filed by Christopher M. Sulyma. (Attachments: #1 Exhibit X, #2 Exhibit Y, #3 Exhibit Z) (Creitz, Joseph) (Filed on 11/16/2016) Modified on 11/17/2016 (bws, COURT STAFF). (Entered: 11/16/2016)
11/30/2016	137	REPLY IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT (re 122 MOTION for Summary Judgment filed by Charlene Barshefsky, Terra Castaldi, Susan L. Decker, Ronald D. Dickel, John J. Donahoe, Finance Committee of the Intel Corporation Board of

		Directors, Christopher Geczy, Tami Graham, Reed Hundt, Intel Corporation Investment Policy Committee, Intel Retirement Plans Administrative Committee, Ravi Jacob, Cary Klafter, Stuart Odell, Nanci S. Palmintere, James D. Plummer, David S. Pottruck, Tiffany Doon Silva, Arvind Sodhani, Richard Taylor, Frank D. Yeary. (Attachments: #1 Second Declaration of John J. Buckley, Jr., #2 Exhibit 53, #3 Exhibit 54, #4 Exhibit 55, #5 Exhibit 56, #6 Exhibit 57, #7 Exhibit 58, #8 Second Declaration of Cynthia Baumeister, #9 Second Declaration of Christina Smith) (Buckley, John) (Filed on 11/30/2016) Modified on 12/1/2016 (bws, COURT STAFF). (Entered: 11/30/2016)
	* * *	
3/31/2017	145	ORDER GRANTING DEFENDANTS' MOTION FOR SUMMARY JUDGMENT. Re: Dkt. No. 122. Signed by Judge Nathanael Cousins. (lmh, COURT STAFF) (Filed on 3/31/2017) (Entered: 03/31/2017)
3/31/2017	146	JUDGMENT: In accordance with the Court's March 31, 2017, order granting defendants' motion for summary judgment, judgment is entered in favor of defendants and

		against Sulyma with respect to all claims asserted in the complaint. *** Civil Case Terminated. Signed by Judge Nathanael Cousins on 3/31/2017. (lmh, COURT STAFF) (Filed on 3/31/2017) (Entered: 03/31/2017)
4/24/2017	147	NOTICE OF APPEAL to the 9th Circuit Court of Appeals filed by Christopher M. Sulyma. (Appeal fee of $505 receipt number 0971-11336857 paid.) (Attachments: #1 Exhibit Order, #2 Exhibit Judgment) (Creitz, Joseph) (Filed on 4/24/2017) (Entered: 04/24/2017)

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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

Case No: 5:15-cv-04977-NC
Case No. 5:16-cv-00522

CHRISTOPHER M. SULYMA,
AND ALL OTHERS SIMILARLY SITUATED,

Plaintiff,

v.

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

Defendants,

and

INTEL 401(K) SAVINGS PLAN AND INTEL RETIREMENT CONTRIBUTION PLAN,

Nominal Defendants.

CONSOLIDATED COMPLAINT CLASS ACTION

TABLE OF CONTENTS

I. NATURE OF THE ACTION

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

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

Plaintiff's account in the Retirement Plan was invested in the Diversified Fund.

3. The Intel Retirement Plans Investment Policy Committee ("Investment Committee") was the fiduciary for both Plans responsible for choosing, managing, and monitoring the Plans' investments. At least until 2015 when it hired an investment manager, the Investment Committee was responsible for and did: (1) create the Intel TDPs and Diversified Fund; (2) develop, choose and manage the asset allocation models for the Intel TDPs and Diversified Fund; and (3) choose and manage the pooled investment funds (the "Investment Funds")[1] representing various asset classes and investment strategies to which the Intel TDPs and Diversified Fund allocated their respective investments.

4. The Investment Committee created a suite of custom target date portfolios, the Intel Target Date Portfolios (or TDPs). The Intel TDPs are not actual "funds" as such but a set of portfolios consisting of allocations to several underlying funds, namely the Investment Funds, managed by the Investment Committee.

5. The Investment Committee also created the Diversified Fund, which too is a portfolio consisting of allocations, not an actual fund as such. The Diversified Fund was the sole investment available to the overwhelming majority of participants in the Retirement Plan, including Plaintiff. Like the Intel TDPs, the Diversified Fund allocated participant accounts to the Investment Funds.

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[1] The Plans and the Intel Minimum Pension Plan own a percentage of the assets in each Investment Fund.

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

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

8. Through at least the first quarter of 2015, the Investment Committee was responsible for choosing the asset allocation models and Investment Funds for the Intel TDPs and the Diversified Fund. Beginning in 2011, the Investment Committee dramatically altered the asset allocation model for the Intel TDPs by increasing Intel TDP investments in hedge funds from about $50 million to $680 million, an increase of 1,300%.

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

fund's investment in private equity increased from about $83 million to $810 million, an increase of 968%.

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

11. The Investment Committee's decisions were imprudent because: (1) the allocations and investments of the Intel TDPs and the Diversified Fund were unprecedented departures from prevailing standards for the design and allocation of, respectively, target date funds ("TDFs") and balanced funds without appropriate consideration of facts and circumstances relevant to this investment course of action, including whether it was reasonably designed to further the purposes of the Plans, in light of risk of loss, opportunity for gain, diversification and liquidity and without a sufficiently rigorous, thorough and documented basis; (2) the Investment Committee knew or should have known that the asset allocation models and heavy investments in hedge funds and private equity would expose the Plans to the risk of losses (including opportunity cost); and (3) the asset allocation models and heavy investments in hedge funds and private equity caused the Plans to incur significant fees and expenses as compared to essentially all other professionally managed asset allocation funds and exposed the Plans to significant risks without commensurate expected reward.

12. As a result of the Investment Committee's insufficient decision-making process and unjustified decisions, the Plans and their participants suffered hundreds of millions of dollars in losses during the six

years preceding the filing of this Complaint as compared to what they would have earned if the Defendants had given appropriate consideration to facts and circumstances relevant to the purposes of the Plans, in light of the risk of loss, opportunity for gain, diversity and liquidity.

13. The Intel TDPs have substantially underperformed peer TDFs, as detailed in Part V.C.3.b,below. Although Defendants failed to provide documents to Plaintiff disclosing the amount invested by the 401(k) Plan via Intel TDPs, the amount was estimated in June 2015 to be approximately $3.63 billion.[2] Given the underperformance compared to peer TDFs, and the billions of dollars allocated to Intel TDPs, the Plans have lost hundreds of millions of dollars that they would have otherwise earned had the Intel TDPs been prudently allocated since 2011, when the Investment Committee implemented the current Intel TDP asset allocation model and contemporaneously increased the Intel TDPs' allocations to hedge funds.

14. Similarly, the Diversified Fund has underperformed peer balanced funds.[3] From May 2007, when the Diversified Fund began investing in hedge funds

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

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

and private equity, through May 2014, the fund underperformed a Vanguard balanced fund, the LifeStrategy Moderate Growth Fund (Ticker: VSMGX), by approximately 50 basis points (.50%) annually.[4] As of June 2015, the Retirement Plan invested the vast majority of its assets in the Diversified Fund – $5.82 billion out of $6.66 billion.[5] Thus, fifty basis points of underperformance annually between May 2007 and May 2014 translates into a loss of over $100 million. This underperformance is largely due to the massive allocations to hedge funds and private equity, almost $2.5 billion as of the end of 2014.

15. Additionally, the Administrative Committee, which is responsible for making disclosures to the participants in the Plans, failed to adequately disclose to participants the risks, fees and expenses associated with investment in hedge funds and private equity. Based on the disclosures provided to Plaintiff pursuant to his request for information, participants were given virtually no information about these investments. Even the information disclosed in filings with the Department of Labor discloses merely the name of

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

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

the hedge fund or private equity investment, the costs and last year's value. Virtually nothing about the strategy, the risks, the fees or anything about underlying investments was disclosed in anything that Defendants provided to or made available to participants.

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

II. JURISDICTION AND VENUE

17. This Court has exclusive and subject matter jurisdiction over this action under ERISA § 502(e)(1), 29 U.S.C. § 1132(e)(1), and 28 U.S.C. § 1331 because it is an action under 29U.S.C. §§ 1132(a)(2) and 1132(a)(3).

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

19. Intradistrict Assignment. Assignment to the San Jose Division is appropriate because Intel is

headquartered in Santa Clara County, where much of the complained of conduct occurred.

III. PARTIES

A. Plaintiff

20. Plaintiff Christopher M. Sulyma is a former employee of Intel Corporation and is a resident of New Mexico. Sulyma worked for Intel from June 2010 until September 2012. During his employment with Intel Sulyma was a participant, within the meaning of ERISA § 3(7), 29 U.S.C. § 1002(7), in the Intel Retirement Plan (n/k/a the Intel Retirement Contribution Plan) and a participant in the Intel 401(k) Savings Plan. As a result of his two years of employment, Sulyma partially vested in his account balance in the Retirement Plan. His account in the Retirement Plan was invested in the Diversified Fund. Sulyma was fully vested in his account in the 401(k) Plan. His account in the 401(k) Plan was invested entirely in the Intel 2045 TDP. As such, Sulyma participated in the Intel Retirement Plan and the Intel 401(k) Savings Plan during the relevant period.

B. Defendants

1. Intel Finance Committee Defendants

21. The Finance Committee of the Intel Corporation Board of Directors ("Finance Committee") is a named fiduciary with respect to the management and control of the Plans' assets pursuant to ERISA § 402(a), 29 U.S.C. § 1102(a). It is responsible for appointing, monitoring, and removing the Members of the Intel Retirement Plans Investment Policy Committee ("Investment Committee") and the Intel Retirement Plans Administrative Committee ("Administrative Committee") pursuant to Section 13(b) of the Plan Document

for each of the Plans. Section 13(b) authorizes the Finance Committee to remove any member of the Administrative or the Investment Committees at will or "with or without cause" and the power to appoint any successor member. The Finance Committee also advises the Board on capital structure decisions, which includes the issuance of debt and equity securities, banking arrangements, such as the investment of corporate cash; and management of the corporate debt structure. The Finance Committee is comprised of Members of the Intel Board of Directors.

22. Charlene Barshefsky has been a member of the Finance Committee continuously since 2007 and has served as the Chair of the Finance Committee since 2009. She has been a Member of Intel's Board of Directors since 2004. Ms. Barshefsky is currently a Partner of the law firm Wilmer Cutler Pickering Hale and Dorr LLP, where she is the Chair of the International Trade, Investment and Market Access Practice Group. She serves on the Boards of Directors of American Express Company, The Estée Lauder Companies Inc., and Starwood Hotels & Resorts Worldwide, Inc.

23. Susan L. Decker was a Member of the Finance Committee from 2009 to 2011. She has served on Intel's Board of Directors since 2004. Ms. Decker was the CFO of Yahoo!, Inc. from 2000 to 2007, and then President from June 2007 to April 2009. She has been a Director and Member of the Audit Committee for Costco Wholesale Corp. since 2004. She serves as a Director and Member of the Governance, Compensation & Nominating Committee, and Member of the Audit Committee of Berkshire Hathaway, Inc. since 2007. Ms. Decker was a Director and Member of the Audit and Compensation Committees of Pixar Inc.

from 2004 to 2006. Ms. Decker lives in San Francisco, California.

24. John J. Donahoe has been a Member of the Finance Committee from 2009 to the Present. He has served on Intel's Board of Directors since 2009. He has been the Chairman of the Board of Directors of PayPal Holdings, Inc., located in San Jose, California since July 2015. He is a Member of the Advisory Board and Director of eVolution Global Partners, LLC, a global venture capital firm that specializes in early stage investments within the information technology and media sectors. Mr. Donahoe was President and CEO of eBay from March 2008 to July 2015. Since 1982, he worked as Worldwide Managing Director of Bain & Company, a global management consulting firm, becoming the firm's President and Chief Executive Officer ("CEO") in 1999 to 2006. Mr. Donahoe lives in Portola Valley, California.

25. Reed E. Hundt has been a Member of the Finance Committee from 2010 to the Present. Mr. Hundt has served on Intel's Board of Directors since 2001. He has been an advisor to the private equity firm Blackstone Group since 2010. He is also a Principal at REH Advisors, a business advisory firm. Mr. Hundt practiced law at Latham & Watkins LLP from 1975 to 1993.

26. James D. Plummer has been a Member of the Finance Committee from 2006 to the Present. He has served on Intel's Board of Directors since 2005. He is also a Professor and the Dean of the School of Engineering at Stanford University in Stanford, California. Mr. Plummer lives in Portola Valley, California.

27. Frank D. Yeary has been a Member of the Finance Committee from 2009 to the Present. Mr.

Yeary has served on Intel's Board of Directors since 2009. Mr. Yeary is an international investment banker. Prior to 2004, he served as the global head of the Technology, Media and Telecom investment banking practice at Salomon Smith Barney. He served at Citigroup as the Global Head of Mergers and Acquisitions from 2004 to July 2008. Mr. Yeary serves as an Executive Chairman of CamberView Partners, which describes itself as a "boutique advisory firm that provides public companies with the advice and expertise they need to succeed with their institutional investors." CamberView Partners is located in San Francisco, California. Mr. Yeary serves as a member of the Executive Council at Cohesive Capital Partners, a co-investment firm that makes "direct investments alongside high quality private equity sponsors that are leading the transactions."[6] According to his LinkedIn Profile, Frank D. Yeary lives in the San Francisco Bay Area.

28. Defendants Charlene Barshefsky, Susan L. Decker, John J. Donahoe, Reed E. Hundt, James D. Plummer, and Frank D. Yeary are collectively, referred to the the "Finance Committee Defendants." At all relevant times, the Finance Committee and the Finance Committee Defendants were fiduciaries within the meaning of ERISA § 3(21)(A), 29 U.S.C. § 1002(21)(A) as a result of their membership on the Committee and because they each exercised discretionary authority or discretionary control respecting management of the Plans and/or exercised authority or control respecting management or distribution of the Plans' assets,

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[6] *Why CamberView*, CamberView Partners, http://www.camberview.com/why-camberview/ (last visited October 15, 2015).

and/or had discretionary authority or discretionary responsibility in the administration of the Plans.

2. Investment Committee Defendants

29. The Investment Committee is a named fiduciary for the Plans pursuant to ERISA § 402(a), 29 U.S.C. § 1102(a), and Section 13(a) of the Plans with respect to the management and control of the Plans' assets. Pursuant to Section 13(a) of the Plans, the Investment Committee and its members have responsibility for asset management. It designates and evaluates the designated investment alternatives offered to participants in the Plans. It manages and controls the Plans' assets. The Investment Committee also has the authority to appoint and remove the Trustees for the Plans, as well as to appoint and remove one or more investment managers for the Plans.

30. Christopher Geczy has been a Member of the Investment Committee from 2014 to the Present. He is the Founder, CEO and Chief Investment Officer of Forefront Analytics, where he oversees investment decision-making. Mr. Geczy acts as an editor of the Journal of Alternative Investments and serves on the Advisory Board of the Journal of Wealth Management. Mr. Geczy worked for the Board of Governors of the Federal Reserve System's Division of Research and Statistics in Washington, D.C. He has served on the Economic Advisory Board of NASDAQ. Mr. Geczy is a founding board member of the Mid-Atlantic Hedge Fund Association and former Chairman.

31. Ravi Jacob has been a Member of the Investment Committee from at least January of 2010, to the Present. Mr. Jacob has been a Corporate Vice President and the Treasurer of Intel since 2005. As Treasurer, Mr. Jacob manages Intel's cash and

investments, capital markets activity, currency and other financial risks, credit and collections, retirement assets, and insurance. Mr. Jacob lives in the San Francisco Bay Area.

32. Nanci S. Palmintere was a Member of the Investment Committee from since at least October 2009 through 2010. Ms. Palmintere was the Vice President of Finance and Enterprise Services and Director of Global Tax and Trade for Intel Corporation until she retired in 2011. She was responsible for all tax, export licensing, and customs planning and compliance, all negotiations with the IRS, state and local tax authorities, and foreign tax authorities. According to Ms. Palmintere's LinkedIn Profile, she is an international consultant, who works with high technology clients and financial organizations invested in the high technology sector. Prior to her employment at Intel, Ms. Palmintere held positions at the law firm of Ruffo, Ferrari and McNeil (now Pillsbury Winthrop), and in the tax practice of Coopers and Lybrand (now PriceWaterhouseCoopers).

33. David S. Pottruck has served as the Chairman of the Investment Committee from at least 2009, to the Present. He has been a Member of Intel's Board of Directors since 1998. Mr. Pottruck is the Co-Chairman of HighTower Advisors, LLC a wealth management firm and CEO and Chairman of Red-Eagle Adventures, both of which are located in San Francisco. He served in various high- level executive positions at Charles Schwab Corporation from 1984 to 2004. According to his LinkedIn Profile, David S. Pottruck lives in the San Francisco Bay Area.

34. Arvind Sodhani was a Member of the Investment Committee from at least October 2009 to 2016. Mr. Sodhani had been an Executive Vice President of

Intel since 2007. He was also the President of Intel Capital since 2007. Mr. Sodhani oversaw Intel's internal new business incubation, external investments, and mergers and acquisitions. He served as a Senior Vice President of Intel Corporation from 2005 to 2007. Mr. Sodhani joined Intel-Europe in 1981 as Assistant Treasurer and was promoted to Assistant Treasurer of Intel in 1984. He was subsequently promoted to Treasurer in 1988. He served as Treasurer and Vice President from 1990-2005. In 2005, he was promoted to Senior Vice President. During his tenure at Intel, Mr. Sodhani was a Board Member of the NASDAQ Stock Market, Inc. and a Non-Industry Director of Nasdaq OMX Group from 1997to 2007.

35. Richard Taylor was a Member of the Investment Committee from at least October 2009 to 2016. He is the Senior Vice President and Director of Human Resources at Intel. He oversees all of the human resource policies and programs for the company worldwide. Mr. Taylor joined Intel in 1986 as an Audit Manager in Europe. From a period of 1989 to 1997, he held various positions at Intel, such as United Kingdom Finance Manager, European Controller, Controller Mobile Computing Group and Director of Operations-Europe. Mr. Taylor was promoted in 1998 to Corporate Controller, and in 1999 his duties were expanded to include delivery of worldwide employee services.

36. Defendants Christopher Geczy, Ravi Jacob, Nanci S. Palmintere, David S. Pottruck, Arvind Sodhani, Richard Taylor are collectively referred to as the "Investment Committee Defendants." At all relevant times, the Investment Committee and the Investment Committee Defendants were fiduciaries within the meaning of ERISA § 3(21)(A), 29 U.S.C.

§ 1002(21)(A) as a result of their membership on the Committee and because they each exercised discretionary authority or discretionary control respecting management of the Plans and/or exercised authority or control respecting management or distribution of the Plans' assets, and/or had discretionary authority or discretionary responsibility in the administration of the Plans.

3. Administrative Committee Defendants

37. The Administrative Committee is a named fiduciary with respect to the operation and administration of the Plans (except with respect to management or control of the Plans' assets) under ERISA § 402(a), 29 U.S.C. § 1102(a), and Section 13(a) of the Plan Document of each of the Plans. Pursuant to Section 13(e), the Administrative Committee was and is responsible for preparing and furnishing to participants a general explanation of the Plans and all other information required to be furnished to participants under federal law or the Plans, including disclosures regarding designated investment alternatives.

38. Terra Castaldi has been a Member of the Administrative Committee from 2015 to the Present. She has been a Senior Director in the Benefits Tax and Legal Department of Intel since 2005. Prior to joining Intel, she was a Partner at Morgan, Lewis & Bockius LLP. According to her Linked-In Profile, Terra Castaldi lives in the San Francisco Bay Area.

39. Ronald D. Dickel was a Member of the Administrative Committee from 2010 to 2015. He has been the Vice President of Finance and the Director of Global Tax and Trade at Intel since 2010. He is responsible for all tax planning and compliance. Mr. Dickel joined Intel in 2010 as a Vice President and a

Director. Mr. Dickel is currently the Chairperson of the R&D Tax Credit Coalition. He is a Director and the Chair of The Tax Council's Nominations Committee. He has been a Director of Altera Corporation since 2015. Prior to his employment at Intel, Mr. Dickel was a Tax Associate at the law firm of Skadden, Arps, Slate, Meagher & Flom LLP.

40. Tiffany Doon Silva has been a Member of the Administrative Committee from 2015 to the Present. She is an attorney in the legal department at Intel. According to her LinkedIn Profile, her practice consists of corporate law, corporate finance and securities. Prior to joining Intel, Ms. Silva was an Attorney at Gibson, Dunn & Crutcher LLP from 1995 to1999. According to her LinkedIn Profile, Tiffany Doon Silva lives in the San Francisco Bay Area.

41. Tami Graham has been a Member of the Administrative Committee from 2015 to the Present. Ms. Graham is the Director of Global Benefits Design at Intel's Worldwide Compensation and Benefits Group. She was formerly a member of Intel's HR Legal Group as a legal advisor for the design and administration of Intel's compensation and benefit programs.

42. Cary Klafter was a Member of the Administrative Committee from at least 2009 to 2015. Mr. Klafter was the Corporate Vice President of Legal and Corporate Affairs of Intel from 1996 to 2015. He was elected to serve as the Corporate Secretary in 2003. He oversaw legal activities for Intel's financial matters, including Securities and Exchange Commision filings, investments, mergers and acquisitions and investor relations. As Intel's Corporate Secretary, he was responsible for corporate governance and Board of Directors' activities. He was Co-Chair of Intel's Ethics and Compliance Oversight Committee. Prior to joining Intel in

1996, Mr. Klafter was an Associate and Partner with Morrison & Foerster LLP, a law firm, from 1972 to 1996. According to his LinkedIn Profile, Cary Klafter lives in the San Francisco Bay Area.

43. Stuart Odell has been a Member of the Administrative Committee from 2015 to the Present. Mr. Odell serves as a Director of Retirement Investments and is the Assistant Treasurer in the Treasury Department of Intel. Mr. Odell and his investment team at Intel are responsible for oversight and management of Intel's $10 billion in qualified and nonqualified retirement plan assets. According to his LinkedIn Profile, Stuart Odell lives in the San Francisco Bay Area.

44. Defendants Terra Castaldi, Ronald Dickel, Ravi Jacob, Tami Graham, Cary Klafter, Stuart Odell, Nanci Palmintere, David Pottruck, Tiffany Doon Silva, and Richard Taylor are collectively referred to as the "Administrative Committee Defendants." At all relevant times, the Administrative Committee and the Administrative Committee Defendants were fiduciaries within the meaning of ERISA § 3(21)(A), 29 U.S.C. § 1002(21)(A) as a result of their membership on the Committee and because they each exercised discretionary authority or discretionary control respecting management of the Plans and/or exercised authority or control respecting management or distribution of the Plans' assets, and/or had discretionary authority or discretionary responsibility in the administration of the Plans.

4. Nominal Defendants

45. The Intel Corporation 401(k) Savings Plan (the "401(k) Plan") is a defined contribution plan or individual account plan within the meaning of ERISA § 3(34),

29 U.S.C. § 1002(34). The written instrument of the 401(k) Plan within the meaning of ERISA § 402 was titled Intel 401(k) Savings Plan (As Amended and Restated Effective January 1, 2014). The Plan Sponsor of the 401(k) Plan within the meaning of ERISA § 3(16)(B) is Intel Corporation. The Plan Administrator of the 401(k) Plan within the meaning of ERISA § 3(16)(A) is the Intel Retirement Plans Administrative Committee.

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

47. The Plans are "employee pension benefit plans" within the meaning of ERISA § 3(2)(A), 29 U.S.C. § 1002(2)(A).

C. Relevant Non-Parties

48. Intel Corporation. Intel Corporation is a multinational technology company headquartered in Santa Clara, California and is one of the world's largest and highest-valued semiconductor chip makers, based on revenue. According to Intel's 2014 Annual Report, Intel had over 106,000 employees worldwide as of December 29, 2014 with approximately 51% of those employees located in the United States. In the United

States, Intel employs significant numbers of people in California, Colorado, Massachusetts, Arizona, New Mexico, Oregon, Texas, Washington and Utah.

49. The Intel Minimum Pension Plan. The Intel Minimum Pension Plan, formerly known as the Intel Defined Benefit Pension Plan (the "DB Plan"), is a defined benefit plan or individual account plan within the meaning of ERISA § 3(35), 29 U.S.C. § 1002(35). The DB Plan and the Retirement Plan operate as what is known as a "floor offset" arrangement, whereby the DB Plan provides the floor and benefits to be paid are offset to the extent that benefits under the Retirement Plan are greater than those provided by the DB Plan. The Plan Sponsor of the DB Plan within the meaning of ERISA § 3(16)(B) is Intel Corporation.

50. State Street Bank and Trust Company, Trustee ("State Street"). State Street is a trust company organized under the laws of the Commonwealth of Massachusetts. Effective January 1, 2010, State Street became the trustee for the Plans and the Master Trust, and thereafter held all of the assets of the Master Trust directly. State Street holds and invests the assets of the Plans, and thus is a fiduciary with respect to the Plans.

IV. CLASS ALLEGATIONS

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

- All participants in the Intel Retirement Contribution Plan and the Intel 401(k) Savings Plan, whose accounts were invested pursuant to an Intel Target Date Portfolio from 2011 to the present (the "Target Date Class").

- All participants in the Intel Retirement Contribution Plan and the Intel 401(k) Savings Plan, whose accounts were invested in, respectively, the Intel Global Diversified Fund and the Intel 401(k) Global Diversified Fund from 2009 to the present (the "Diversified Fund Class").

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

A. Numerosity and Impracticability of Joinder

53. Joinder of all members of the Classes would be impracticable based on the number and geographic diversity of the members of the Classes. Based on the most recent Form 5500 filed with the Department of Labor for 2014, the 401(k) Plan had 63,518 participants and/or beneficiaries. Most of these participants had their Plan investments in or were defaulted to an Intel TDP, which necessarily included hedge funds and private equity. Based on the most recent Form 5500 filed with the Department of Labor for 2014, the Retirement Plan had 50,718 participants and/or beneficiaries. The Diversified Fund was the only available investment for the vast majority of Retirement Plan participants during the Diversified Fund Period. According to Intel's website, it has locations in at least the following states: Arizona, California, Colorado, the District of Columbia, Idaho, Illinois, Kentucky, Massachusetts, Minnesota, New Hampshire, New Jersey, New Mexico, North Carolina, Oregon, Pennsylvania, South Carolina, Texas, Virginia, Washington and Wisconsin. As such, the members of the Classes are also geographically dispersed.

54. The Target Date Class satisfies the numerosity requirement because it is composed of thousands of persons, in numerous locations. The 401(k) Plan had billions of dollars in participant accounts allocated under the Intel TDPs, meaning that tens of thousands of participants must have had their accounts invested according to an asset allocation strategy set by the Intel TDPs and necessarily held interests in the Hedge and Private Equity Funds. During the Target Date Class Period (2011 to the present) many participants were defaulted into an Intel TDP. The number of Class members is so large that joinder of all its members is impracticable.

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

B. Commonality

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

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

B. Whether the Investment Committee's fiduciary duties included selecting and managing the Plans' assets, monitoring their investment performance over time and making appropriate adjustments accordingly;

C. Whether the Investment Committee selected and managed the underlying funds to which the Intel TDPs and the Diversified Fund allocated the Plans' assets.

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

A. Whether the Investment Committee breached its fiduciary duties to the Plans and their participants in constructing and managing the Intel TDPs including by failing to give appropriate consideration to facts and circumstances relevant to the investment course of action it adopted and implemented;

B. Whether the Intel TDP asset allocation models chosen by the Investment Committee for the Plans deviate and deviated from prevailing standards for target date funds;

C. Whether the Investment Committee prudently selected and managed the underlying funds to which the Intel TDPs allocated the Plans' assets;

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

E. Whether the Administrative Committee breached its fiduciary duties to the Plans and their participants by failing to make adequate disclosures about the Intel TDPs and the Investment Funds.

58. Common questions of law and fact with respect to the Diversified Fund Class include:

A. Whether the Investment Committee breached its fiduciary duties to the Plans and their participants in constructing and managing the Diversified Fund;

B. Whether the asset allocation model chosen by the Investment Committee for the Diversified Fund deviates and deviated from prevailing standards for balanced funds;

C. Whether the Investment Committee Defendants prudently selected and managed the underlying funds to which the Diversified Fund allocated the Plans' assets;

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

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

C. Typicality

59. Plaintiff's claims are typical of the claims of the Classes because his claims arise from the same event, practice and/or course of conduct as other members of the Classes. Plaintiff's claims challenge whether the fiduciaries of the Intel Plans acted consistently with their fiduciary duties and whether their breaches caused losses or otherwise harmed the Plans and their participants. These are claims common to and typical

of other Class members. Moreover, these claims seek recovery on behalf of the Plans.

1. Target Date Class

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

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

2. Diversified Fund Class

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

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

D. Adequacy

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

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

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

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

E. Rule 23(b)(1)

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

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

F. Rule 23(b)(2)

70. The requirements of Rule 23(b)(2) are met in this action. Defendants have applied the same or substantially similar investment policies and investment options in the Plans that cover all members of the Classes. The breaches alleged against Defendants with respect to the Target Date Class and the Diversified Fund Class relate to policies that applied to, respectively, all members of the Target Date Class and the Diversified Fund Class. As such, Defendants have acted or refused to act on grounds generally applicable to the Class as a whole.

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

G. Rule 23(b)(3)

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

remedies and relief will likewise predominate over individual issues.

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

74. Plaintiff and his counsel are not aware of any other lawsuit, other than *Lo v. Intel Corp.*, No. 5:16-cv-00522 (N.D. Cal.), which the Court consolidated with this action, filed by any member of the Classes concerning this controversy pending in any other court.

75. This District is the most desirable forum for concentration of this litigation because: (1) Intel is headquartered in this District; (2) a number of the actions challenged by this Complaint took place in this District, chiefly, on information and belief, Investment Committee and Administrative Committee meetings; (3) the Plans are administered in or near this District; (4) many of the employees of the company are located in or near this District; and (5) many of the employees of Intel named as Defendants can be found in this District.

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

V. FACTUAL ALLEGATIONS

A. The Plans

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

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

79. The Intel 401(k) Plan was amended and restated effective January 1, 2011. Among other changes, the 2011 amendments added Employer Contribution

Accounts generally for employees who commenced employment on or after January 1, 2011. The 401(k) Plan was restated effective January 1, 2014. During the relevant period, the 401(k) Plan was maintained pursuant to the Intel 401(k) Savings Plan Effective January 1, 2006, and subsequently, pursuant to the Intel 401(k) Savings Plan Effective January 1, 2011. The 401(k) Plan was again amended and restated effective January 1, 2014 ("401(k) Plan Document").

1. Intel Retirement Plan

Participation

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

Contributions

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

Vesting

82. Section 8 of the Retirement Plan Document sets forth the Vesting and Forfeiture terms of the Plan.

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

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

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

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

84. Throughout the Diversified Fund Class Period until January 1, 2015, the participants in the

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

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

2. Intel 401(k) Plan

Participation

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

Contributions

87. Section 4(a) of the 401(k) Plan Document provides that an Eligible Employee (i) may elect to have his or her taxable compensation reduced and corresponding Pre-Tax Deferrals contributed to the Plan up to the maximum percentage established by the Company; (ii) who is automatically enrolled in the

Plan shall be deemed to have elected to make Pre-Tax Deferrals in an amount equal to 3% to 6% of the regular pay portion of his or her earnings absent an affirmative election otherwise and/or (iii) may elect to have Roth Deferrals contributed to the Plan.

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

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

Vesting

90. Section 8 of the 401(k) Plan Document sets forth the Vesting and Forfeiture of the Plan. Pursuant to Section 8(a), Participants are 100% vested and nonfor-

feitable in their accounts in the Plan (other than their Retirement Contribution Accounts as explained below).

91. Pursuant to Section 8(a), Participants are 100% vested and nonforfeitable in their Retirement Contribution Account, representing the employer's contribution, in the Plan upon the occurrence of any of the following: (a) attainment of age 60; (b) death; (c) total and permanent disability; (d) job elimination; (e) termination of employment as a result of a divestiture. Section 8(c) of the 401(k) Plan Document provides the following vesting schedule for a Participant:

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

Investment of Plan Assets

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

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

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

B. Fiduciary Responsibility For Investment Of Assets

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

> (i) To appoint and remove, as it deems advisable, the Trustee;
>
> (ii) To appoint and remove, as it deems advisable, one or more investment managers pursuant to the provisions of the Trust Agreement, each of which (A) shall be (1) an investment adviser registered under the Investment Advisers Act of 1940; (2) a bank, as defined in the Investment Advisers Act of 1940; or (3) an insurance company qualified to manage, acquire, or dispose of qualified plan assets under the laws of more than one state; and (B) shall acknowledge in writing to the Investment Committee that such investment manager is a fiduciary with respect to the Plan;

(iii) To conduct periodic reviews of the performance, costs, and expenses of the Funds, the Trustee, investment managers, and outside service providers;

(iv) To establish and communicate to the Trustee and the investment managers from time to time its determination of the Plan's short- and long-term financial needs, so that the Trustee's and investment managers' investment decisions with regard to Trust Fund assets can be coordinated therewith; provided that such determination of the Plan's financial needs shall be consistent with the funding policies and methods adopted by the Company and in effect at the time of such determination;

(vii) To directly enter into and confirm any investment transaction or to direct the Trustee pursuant to the Trust to enter into or confirm any investment transaction; in each case the term "investment transaction" includes any investment permitted under the Trust, including, but not limited to, any investment in a partnership, limited liability company, unit investment trust, business development company, private equity fund, investment company (registered or otherwise) or other similar arrangement (whether publicly traded or otherwise) and, for all purposes under Section 13, to exercise all other fiduciary powers relating to the management of Plan assets.

96. Pursuant to Section 13(m) of both Plan Documents, the Administrative Committee and the Investment Committee were required to report to the

Finance Committee at least annually and provide information necessary or appropriate to permit the Finance Committee to review the continued prudence of its appointments of the members of both Committees.

C. The Plans' Assets

1. Master Trust Investment Funds

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

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

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

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

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

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

[8] The Commodities Fund was added in 2010.

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

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

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

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

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

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

99. Each fund within an Investment Fund buys, holds, and sells securities (or other assets) under the direction of an investment manager or investment advisor. At least until Alliance Bernstein was hired as Investment Manager in 2015, the Investment Committee selected the funds, investment managers, advisors, and securities for the Investment Funds.

100. The Investment Funds represent the various asset classes and investment strategies to which the asset allocation portfolios in the Plans, namely the Intel TDPs and the Diversified Fund, allocated the Plans' and participants' assets.

101. An asset allocation fund is a portfolio consisting of a diverse set of asset classes such as domestic and/or international equities and bonds. Asset allocation funds are often structured as "funds-of-funds," meaning that the portfolio invests in underlying funds

representing various asset classes rather than investing directly in securities representative of the asset classes.

102. Table 1 below lists, on December 31, 2011, respectively, the name of each Investment Fund, the total assets in the given Investment Fund, the 401(k) Plan's percentage ownership of the given Investment Fund, the dollar value of the 401(k) Plan's ownership of the given Investment Fund, the Retirement Plan's percentage ownership of the given Investment Fund, and the dollar value of the Retirement Plan's ownership of the given Investment Account.[9]

TABLE 1

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

103. The Plans' financial statements filed with the Forms 5500 with the Department of Labor reflect similar allocations in 2012 to 2014.

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

2. The Retirement Plan and the Diversified Fund

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

105. The Intel Diversified "Fund" is a portfolio invested in the Investment Funds. It is not a fund as such, but rather a set of portfolios that directs the assets of the Retirement Plan and the 401(k) Plan into the various Investment Funds. The Retirement Plan and 401(k) Plan own a percentage of each Investment Fund, as shown in Table 1, above.

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

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

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

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

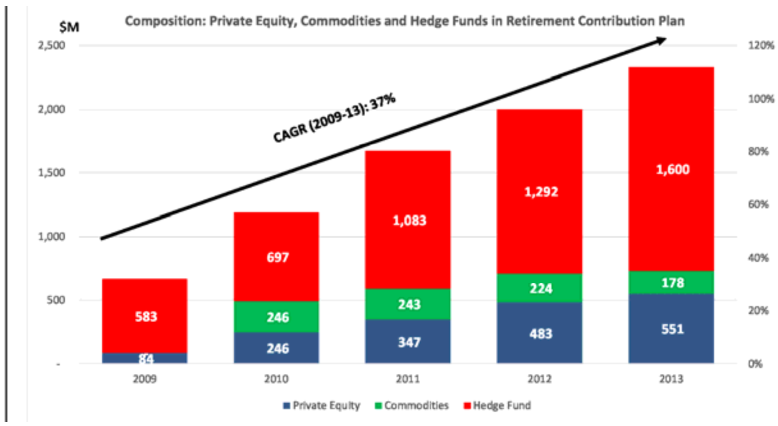
110. In 2010, the Diversified Fund's investment in private equity tripled from about $83 million to $245 million. In 2010, the Diversified Fund added an investment in commodities, about $245 million, and its investment in hedge funds increased from approximately $583 million in 2009 to approximately $697 million in 2010. By the end of the year, the Diversified Fund held about 22.23% of its assets in commodities, private equity, and hedge funds, or about $1.2 billion.

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

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

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

FIGURE 1



3. The Intel TDPs

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

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

116. The Intel TDPs offered in the Plans are not actual funds as such in the sense that the Plans' participants hold units or shares of a fund.

117. Instead, the Intel TDPs are managed as an asset allocation service. The Investment Committee

determined the allocations and selected the underlying Investment Funds to which the Intel TDPs allocate the Plans' and participants' assets, but there is no actual target date fund as a distinct entity. Rather, each participant is placed in a portfolio managed by the Investment Committee, which provides each such participant with a proportionate interest in the underlying Investment Funds, based on the allocation mandates of the Intel TDP set by the Investment Committee. Thus, the Intel TDPs are effectively an investment management service.

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

119. All the Intel TDPs offered in the Plans are invested in the same nine Investment Funds, and share the same glide path. A "glide path" is the formula by which monies in the target date fund are reallocated across asset classes as the fund "glides" toward the target date. The amount allocated to the Investment Funds vary however. As the target date approaches, the particular Intel TDP adopts a purportedly more conservative allocation. Stated differently, each Intel TDP has adopted the same allocation and reallocation model (*i.e.*, glide path) and invests in the same underlying Investment Funds, but the TDPs are simply on staggered start dates and end dates such that each TDP is five years ahead of the TDP behind it, and five years behind the TDP ahead of it on the glide path.

120. Prior to 2011, Defendants called the customized target date portfolios LifeStage Funds. In or around 2011, the Investment Committee restructured and renamed the portfolios, calling them Target Date Funds, and adding several additional target date portfolios.

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

122. As Bill Parish, an independently registered investment advisor, observed in Intel Q4 2013 Earnings – Time to Fix Pension Plan (January 16, 2014), Intel's 401(k) and Retirement Plans "have been infiltrated by hedge funds," commenting that Intel's decision to invest heavily in hedge funds amounted to "institutional gambling with employees['] assets."[10]

123. As The Oregonian newspaper reported on August 30, 2014 in *What's Inside Intel's retirement plans? Hedge funds. Lots of 'em*: "Intel's 401k-type plans are unusual in a couple of ways that aren't comforting to some investors and financial advisers. It's embarked, essentially, on an experiment with nearly $14 billion in worker retirement money for more than 63,000 participants." As this article observed, Intel decided to use "expensive, opaque and potentially risky hedge funds in its main 401k investment options[]"

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

and to "forc[e] company contributions into [hedge funds]."[11]

a. *The Investment Committee Adopted an Imprudent Allocation Model.*

124. Instead of adopting an asset allocation model consistent with prevailing standards adopted by investment professionals, the Investment Committee implemented an asset allocation strategy for the Intel TDPs that grossly over-weighted allocations to hedge funds, commodities, and international equities as compared to target date funds available in the marketplace.

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

TABLE 2

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

[11] Hunsberger, *supra* note 4.

126. By comparison, the Intel 2030 TDP had approximately 21% of assets allocated to hedge funds and 5% to commodities by 2014.[12] Peer group TDFs – or funds with a "target date" of 2030 – do not allocate any assets to hedge funds and very few peer TDFs have even small commodity stakes. Further, peer TDFs allocate 70% of equity assets to U.S. stocks and 30% to foreign; whereas, the Intel 2030 TDP allocates over 50% of equity investments to foreign stocks.

127. Figure 2 below compares the asset allocation of the 2030 Intel TDP to the average asset allocations of the eight professional investment management firms represented in Table 2.[13]

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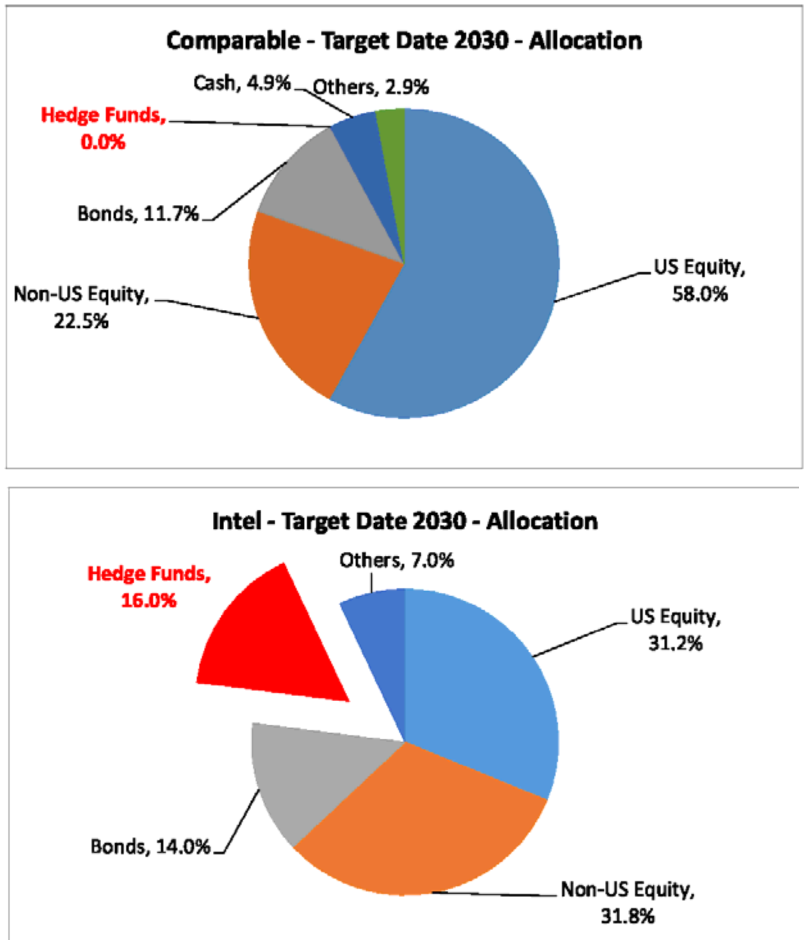
[12] *Target Date 2030 Fund*, Oregonian Live at 2 (March 31, 2014), http://media.oregonlive.com/finance/other/Target%20Date%202030%20Fund-1.pdf.

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

FIGURE 2



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

129. As of 2015, approximately $3.63 billion of the 401(k) Plan's assets are in the Intel TDPs.[14]

b. *The Intel TDPs Have Performed Poorly.*

130. As a result of the asset allocation and investment decisions, the Intel 2030 TDP underperformed peers by approximately 400 basis points (4%) in 2013.[15]

131. Because all twelve of the Intel TDPs share the same underlying investments and asset allocation model,[16] the Investment Committee's asset allocation and investment decisions have impacted the entire family of Intel TDPs in more or less the same fashion. Morningstar commented that the entire family of Intel TDPs has underperformed peers because of these allocation and investment decisions.[17]

132. Table 3[18] below compares the performance of the Intel TDPs to corresponding actively managed (the underlying funds are actively managed) target date funds offered by Fidelity Investments and passively managed (the underlying funds are index funds) target date funds offered by Vanguard Group.[19]

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[14] Robert Steyer, *supra* note 2.

[15] *Target Date 2030 Fund*, *supra* note 9. The same fact sheet also reports that the fund underperformed the 2030 category average by 223 basis points from March 2013 to March 2014.

[16] Intel Target Date Funds (Apr. 30, 2015).

[17] *Target Date 2030 Fund*, *supra* note 9.

[18] Incomplete data prevented comparison of all Intel TDPs to corresponding Fidelity and Vanguard TDFs. Nevertheless, the results are sufficiently uniform to conclude that similar excess fees and underperformance would have been found for the Intel Income, 2030, 2040, 2050 and 2055 TDPs.

[19] The sources for Table 3 are respectively: an Intel 401(k) Plan (15105) Investment Options Performance Update as of June 30,

TABLE 3[20]

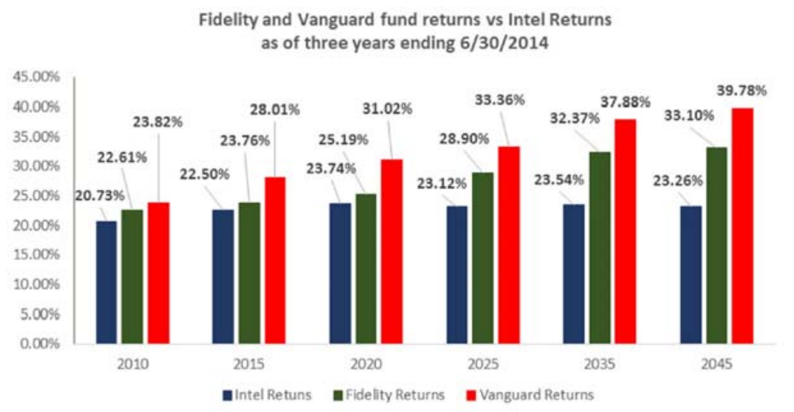
Investment Returns 7/1/2011 - 6/30/2014							
TD Year	Intel Ret	Fid Tkr	Fid Ret	Fid Ex	Van Tkr	Van Ret	Van Ex
2010	20.73%	FFKCX	22.61%	1.88%	VTENX	23.82%	3.09%
2015	22.50%	FKVFX	23.76%	1.26%	VTXVX	28.01%	5.51%
2020	23.74%	FFKDX	25.19%	1.44%	VTWNX	31.02%	7.27%
2025	23.12%	FKTWX	28.90%	5.78%	VTTVX	33.36%	10.24%
2035	23.54%	FKTHX	32.37%	8.84%	VTTHX	37.88%	14.34%
2045	23.26%	FFKGX	33.10%	9.84%	VTIVX	39.78%	16.52%

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

2014 for the investment performance of the Intel TDPs; and Yahoo Finance for the Fidelity and Vanguard funds (using the adjusted closing share price on the first and last day of the three-year period ending June 30, 2014).

[20] The columns represent, respectively, TDF year, 3-year return for Intel TDP, ticker for Fidelity TDF, 3-year return for Fidelity TDF, difference between Fidelity return and Intel return in absolute terms, ticker for Vanguard TDF, 3-year return for Vanguard TDF, and difference between Vanguard return and Intel return in absolute terms.

FIGURE 3



134. If the Investment Committee had simply selected widely-accepted index funds for the Intel TDPs or commercially available TDFs managed by Fidelity or Vanguard, as hundreds of other plan fiduciaries have done (approximately 70% of 401(k) TDF assets are invested in Fidelity and Vanguard TDFs, *see* Part V.C.8, *infra*), the 401(k) Plan and its participants would be far better off today. Consider Figure 4 which contrasts the growth of a hypothetical $500,000,000[21] investment in the 2045 Intel (in which Sulyma invested), Fidelity, and Vanguard funds from 2015 to 2045, assuming the average annual investment returns for the years ending June 30, 2014, remain constant.[22]

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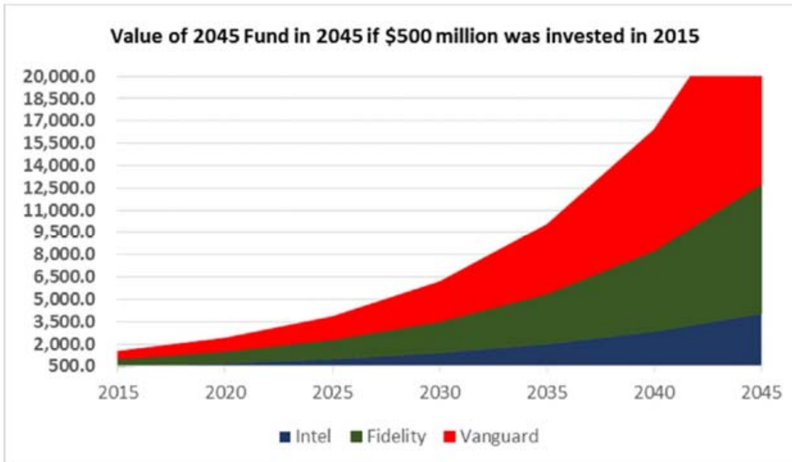
[21] A $500,000,000 hypothetical investment is consistent with the 401(k) Plan's actual investments given the estimated $3.5 billion managed through the Intel TDPs and the seven Intel TDPs represented here.

[22] Of course, the allocations for all three sets of TDFs will become more conservative over time, *i.e.*, assuming no change to the glide path and asset allocation, in 2045, the 2045 TDFs will be much like the 2015 TDFs are today. Thus, all three 2045 TDFs

FIGURE 4



135. Assuming a $500 million hypothetical investment in the Vanguard 2045 TDF to 2045 instead of the Intel 2045 TDP during the same period, the 401(k) Plan and its participants whose accounts were invested in the Intel 2045 TDP would have billions of dollars in additional retirement savings in 2045.

136. Even from July 1, 2011 to June 30, 2014, investing $500 million in the Vanguard 2045 TDF instead of the Intel 2045 TDP would have yielded hundreds of millions of dollars in additional retirement savings for the 401(k) Plan and its participants. A $500 million investment would have yielded, respectively, $355 million from the Vanguard fund and only

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are expected to earn increasingly lower returns over time. But, as shown in Table 3 and Figure 3, the Intel TDP underperforms every corresponding Vanguard and Fidelity TDF. Thus, although Figure 4 overstates the growth of *all* three of the covered TDFs, the large disparity in returns across the fund families coupled with compounding will result in substantially lower savings for investors in the Intel TDPs.

$116 million from the Intel TDP. The 2045 Intel TDP earned only one third of the 2045 Vanguard fund.

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

137. Before the Investment Committee changed the Intel TDP allocations in approximately 2011, the fees for the Intel TDPs ranged from 65 basis points to 71 basis points.[23]

138. Although the fees for the Intel TDPs were already substantially higher than index-based TDFs such as those offered by Vanguard, the increased allocation to hedge funds beginning in 2011 significantly increased the expenses of the Intel TDPs, almost doubling the range of fees to between 130 to 136 basis points. No explanation has been provided justifying or evidencing that the Investment Committee observed sufficiently rigorous, thorough and documented bases for incurring the significantly higher fees resulting from such exposure to high-fee hedge funds and private equity. To the contrary, investing in high-fee hedge funds and private equity caused the Intel TDPs to consistently and substantially underperform Vanguard index-based TDFs since 2011, as shown in Figures 3 and 4 above.

139. The Vanguard TDFs carry expense ratios of approximately 14-16 basis points. Table 4 compares the fees and expenses of the Intel TDPs to Vanguard's index-based TDF offerings.[24]

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

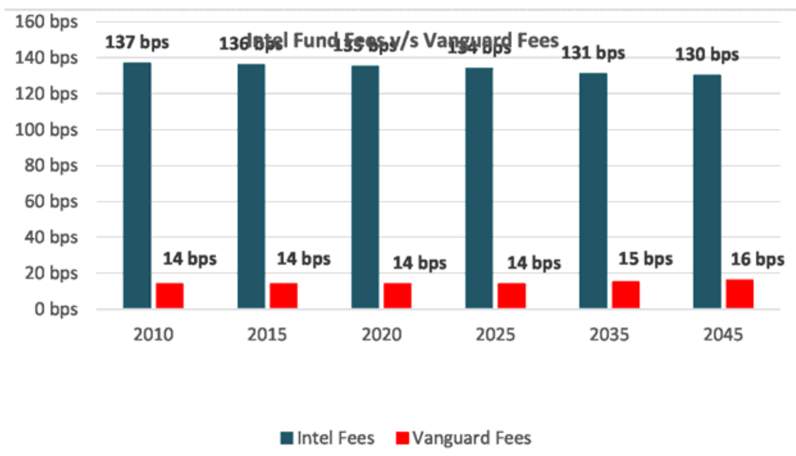
[24] The sources for Table 5 are an Intel Target Date Funds fact sheet dated April 15, 2015 and Vanguard's website.

TABLE 4

TD Year	Tkr	Van Fee	Int Fee	Int Ex Fee Abs	Int Ex Fee %
2010	VTENX	0.0014	0.0137	0.0123	879%
2015	VTXVX	0.0014	0.0136	0.0122	871%
2020	VTWNX	0.0014	0.0135	0.0121	864%
2025	VTTVX	0.0014	0.0134	0.012	857%
2035	VTTHX	0.0015	0.0131	0.0116	773%
2045	VTIVX	0.0016	0.013	0.0114	713%

140. Figure 5 illustrates the fee differences.

FIGURE 5



141. As *What's behind the changes to Intel's worker retirement plans,* commented, the Intel TDPs are rising in expenses in contrast to the general trend in the industry, which is lowering expenses.[25]

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[25] Brent Hunsberger, *What's behind the changes to Intel's worker retirement plans*, The Oregonian (May 2, 2015), http://www.oregonlive.com/finance/index.ssf/2015/05/whats_behind_the_changes_to_in.html.

4. The Intel TDPs Imprudently Invested in Hedge Funds

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

143. MPT posits that the power of combining securities and asset classes that have low correlations to each other can reduce risk, as measured by the volatility of a portfolio.

144. Brinson, Beebower and Hood studied the impacts of asset allocation on 91 pension funds over a 10 year period and found that 94% of differences in performance can be explained purely by the asset allocation and only 6% is explained by market timing and security selection.[26] This underscores that trying to achieve excess returns by timing the markets is a generally superfluous strategy when considering a large pool of assets over a long investment horizon covering many market cycles. Market timing and security selection tied to near-term cycles tend to wash out over time.

145. Many Hedge funds enable the manager to invest in near-term opportunities without adhering to a stated fund objective. By contrast, Mutual Funds regulated by the 1940 Act are obligated to state and adhere to their investment objectives. Mutual funds also have stringent fee disclosure requirements.

146. Most TDFs employ a sliding scale of equity, fixed income and cash allocations to provide substantial correlation benefits to market swings. Most off-

[26] Gary P. Brinson et al., *Determinants of Portfolio Performance*, 42 Financial Analysts Journal 133, 133-138 (1995).

the-shelf TDFs avoid any meaningful use of leverage (as leverage is strictly constrained in 1940 Act funds) and generally employ only minor use of derivatives, usually for proxy or liquidity needs (and typically in the fixed income allocation where bond liquidity is increasingly challenged). Thus, the portfolio manager of a 1940 Act-regulated Target Date Fund has strong guidance as to the exposures he or she will receive when incorporating standard, prospectus-driven mutual funds in a fund-of-fund lineup. Additionally, for index-based TDFs, computer programs dictate strict adherence to the given index and do not afford manager discretion to deviate from guidelines and strategies.

147. Hedge funds involved in event driven and directional bets are generally using either focused security selection or market timing strategies, while distressed (and/or stressed) and value-driven funds are generally security selection funds. Brinson, Beebower & Hood explain that these strategies do not make sense for a retirement investment.

148. Hedge funds have been traditionally limited to "accredited investors" who have over $200,000 in annual income and/or over $1,000,000 in net worth. The reason for limiting investment to those accredited investors is to restrict these investments to those who can afford to lose their invested principal.

149. The Intel Hedge Fund contained in the Intel TDPs purports to include 21 different hedge funds. Of those funds at least 6 are primarily deemed Multi-Strategy, 5 are deemed Directional, 5 involved Distressed (or Stressed) and 8 are Event Driven. Several list multiple strategies. Some of these represent the most potentially volatile of hedge fund strategies. Event driven strategies generally place bets on the chance that a particular market event – such as a

merger or a key interest rate change – takes place. If the event does not occur, or if the ramifications are not as impactful, then the leveraging and risk concentration employed will be for naught and potentially large losses can take place as a result. Distressed strategies tend to seek opportunities with either equity or debt in companies or other entities that are on the verge of a potentially calamitous event – such as a bankruptcy – thus driving the price of their securities down. The hedge fund managers bet the event will not happen and buy in. If the event does happen, the losses are usually deep and permanent. Conversely, if they "short" the event (i.e. a bet on the price of the securities going down) and it does not happen, losses can exceed even the invested principal.

150. A common feature of these strategies is that the managers often employ significant leverage through various means such as borrowing, shorting or the use of derivatives. For hedge funds that commit significant amounts of capital to sustain the collateral requirement through the cycle of the anticipated event, the funds are extremely illiquid. As a result, many hedge funds employ strict constraints around access to invested capital by their investors by requiring months of notice and reserving the right to deny such requests for redemptions at their discretion.

151. The impact or potential impact of the illiquidity of hedge funds on the scale invested in by the Plans is that if the hedge funds refuse to honor redemption requests, the Investment Committee will be forced to sell off other, more marketable investments (*i.e.*, publicly traded securities), thereby increasing the Plans' concentration in hedge funds. There is a significant risk that the lock-up of hedge fund investments will cause

selling in traditional securities and further harm the invested principal of the plan participants.

152. Hedge fund managers often move illiquid or impaired assets out of the main fund into a separate holding vehicle known as a "side pocket." Creating a side pocket is solely within the discretion of the hedge fund manager. As the Wall Street Journal reported as early as 2006, regulators and investors were becoming concerned about the abusive use of side pockets to mask underperformance and inflate manager performance fees.[27] Because side pockets are often used for illiquid investments, hedge fund managers impose onerous withdrawal constraints. In the wake of the 2008 financial crisis, the SEC instituted several enforcement proceedings against hedge fund managers for improper use of side pockets.[28]

153. As the vast majority of former employees will roll their 401(k) investments into an IRA (upon retirement or changing employers) or into a new employer's plan, portability and liquidity are important considerations in constructing and selecting a TDF. Because hedge funds are not liquid and not portable, the substantial allocation to hedge fund investments by the Investment Committee means that participants attempting to liquidate Intel TDP holdings were (and are) at significant risk of being forced to lock-in substantial

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

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

realized losses during a down or volatile market upon the need to liquidate their investments in the Plans.

5. Significant Investment in Hedge Funds and Private Equity Are Generally Not Suitable For Balanced Funds

154. Like TDFs, balanced funds in retirement plans need certain levels of liquidity, and volatility.

155. For these reasons, significant investments in hedge funds and private equity generally are not suitable for balanced funds. Few, if any, balanced fund portfolio managers invest in hedge funds and private equity.

6. Risks and Costs of Hedge Funds and Private Equity

156. Hedge funds and private equity funds are generally structured as investment partnerships. The investors are limited partners and the managers are general partners. Managers are typically paid under a "2 and 20" formula, meaning that the manager gets 2% of the assets under management and 20% of the profits generated by the fund's investments.

a. *Hedge Funds.*

157. A "hedge fund" pools investor assets to pursue a variety of active management strategies.

158. Hedge funds invest in many different types of assets. They "do not constitute an asset class but rather provide access to particular trading strategies that may be employed by specific fund managers."[29]

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

Hedge funds usually are classified according to their investment strategy.

(1) Valuation Risk.

159. Because the investment holdings and investment strategies of many hedge funds are often not well known, even to institutional investors like the Plans, it is difficult for the fund assets to be marked to market. The Government Accountability Office noted in 2011 that "[b]ecause many hedge funds may own [securities traded infrequently or in low volume] and derivatives whose valuation can be complex and subjective, a retirement plan official may not be able to obtain timely information on the value of assets owned by a hedge fund. Further, hedge fund managers may decline to disclose information on asset holdings and the net value of individual assets largely because the release of such information could compromise their trading strategy."[30]

(2) Investment Risk.

160. Hedge funds pose risks not found with traditional investments managed by registered investment companies. For example, registered investment companies are subject to strict leverage limits; whereas, hedge funds "can make relatively unrestricted use of leverage."[31] Leverage – essentially borrowed money – "can magnify profits, but can also magnify losses to the fund if the market goes against the fund's expectations."[32]

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

[31] *Id*. at 7.

[32] *Id*.

(3) Lack of Liquidity.

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

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

163. The hedge funds in Intel's Hedge Fund typically require at least thirty days' notice to receive or redeem capital.[33]

(4) High Fees.

164. The hedge funds in Intel's Hedge Fund (the Hedge Fund managed by Intel is a fund-of-hedge funds) charge incentive fees, and inclusion of hedge fund investments in the Plans' portfolios has increased fees.[34]

165. Even without an incentive fee, a two percent annual flat fee on assets under management is high and not justified in the defined contribution plan context. Such a fee is up to ten times higher than the average standard wholesale level fees for pension plan

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

[34] *Id.*

investments – for example, 2% versus 0.20%.[35] Indeed, one hedge fund industry expert has calculated that hedge fund managers collected 98% of the profits generated by hedge funds during the years 1998-2010.[36]

166. The high fees of hedge funds can have a significant negative impact on net investment returns. For example, under the typical two and twenty fee structure, a 12% return would be reduced to only 8% after deduction of fees.[37]

167. The Investment Committee purportedly chose to invest in hedge funds in an attempt to achieve at least three goals: to increase diversification of plan assets; to decrease the volatility of the plan's investment performance; and to enhance the plan's performance overall.[38]

168. For example, a number of hedge funds do not provide substantial risk reduction or risk diversification for pension plan assets because they are correlated to the equity market. According to data compiled by the hedge fund house AQR, the HFRI Fund Weighted Composite Index – a leading hedge fund industry index – was 0.93 correlated with equity markets, or nearly 100% correlated. Often, hedge funds provide insufficient plan visibility into the strategies of their

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[35] Bill Parish, *Intel Q4 2013 Earnings- Time to Fix Pension Plan,* Bill Parish- Parish & Company Registered Investment Advisor Blog (January 16, 2014) ,http://blog.billparish.com/2014/01/16/intelq4-2013-earnings-time-to-fix-pension-plan/.

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

[37] Borbjerg, *supra* note 24, at 8, n. 11.

[38] *401K Global Diversified Fund, supra* note 5, at 3.

investments to enable an investor to properly understand the risk profile of the investment.

(5) Lack of Transparency.

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

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

171. It is difficult for retirement plan fiduciaries to evaluate the performance of hedge funds, because of the variety of hedge fund strategies; the substantial rate of turnover of funds opening and closing; the selection bias created when new funds choose not to report returns until after they have a run of good years; and the survivorship bias created when closed funds simply disappear from hedge fund indices.[39]

[39] Haber, *supra* note 22, at 13.

(6) Operational Risks.

172. Retirement plans investing in hedge funds are also exposed to greater operational risks than presented by traditional investments. As the GAO Report explained, operational risk is the "risk of investment loss because of inadequate or failed internal processes, people, and systems, or problems with external service providers." "Operational problems can arise from a number of sources, including inexperienced operations personnel; inadequate internal controls; lack of compliance standards and enforcement; errors in analyzing, trading or recording positions; or outright fraud."[40]

173. Hedge funds are not registered with the SEC, and are subject to few regulatory controls. Unlike mutual funds and other registered investment companies in the United States, hedge funds may avoid the registration requirement imposed by the Investment Company Act.[41] As Mr. Dodd explained, the absence of such regulatory controls, coupled with the fact that many hedge funds make it difficult for their assets to be marked to market, make hedge fund investments "especially prone to financial fraud."

174. Hedge fund strategies are often very complex. A prudent fiduciary must be capable of understanding the strategy in order to evaluate whether it is appropriate for investment of retirement plan assets. "[P]articular care should be exercised in due diligence of hedge funds, because of the complex investment strategies they employ; the fact that hedge fund organizations are frequently young and small; their use of leverage and the associated risks; the possibilities of

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[40] Borbjerg, *supra* note 24, at 8.

[41] Haber, *supra* note 22.

concentrated exposure to market and counterparty risks, and the generally more lightly regulated nature of these organizations."[42] "The process of selecting and monitoring hedge fund investments requires additional resources and continuous support from experienced professionals, which may be substantially more expensive than those required to select and monitor traditional investments. Fiduciaries should understand the effort and costs that will be required, and should commit these resources prior to investing in hedge funds."[43]

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

b. *Private Equity.*

176. The term "private equity" refers to a form of alternative investment which uses pooled funds to invest in privately held companies. Investors are generally described as "limited partners."

177. Private equity advisors have been criticized for their valuation practices, such as using a valuation methodology that is different from the one that has been disclosed to investors or changing the valuation methodology from period to period without additional disclosure. Such valuation practices make it exceedingly difficult, if not impossible, to monitor manager

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

[43] *Id.* at 7.

performance and evaluate fees accurately where fees are tied to assets under management and therefore increase as valuations increase.

178. Private equity investments pose several challenges for retirement plans like the Intel Plans. The four largest TDF providers in the market, BlackRock, Fidelity, T. Rowe Price, and Vanguard, do not include private equity in their TDF funds.[44]

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

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

180. The private equity funds in Intel's Private Equity Fund charge incentive fees.

181. An examination of private equity firms by the SEC has found that many private equity managers charge hidden and inflated fees to investors in their funds. According to Andrew Bowden, Director of the SEC's Office of Compliance Inspections and Examinations ("OCIE"), the SEC identified "violations of law or material weaknesses in controls over 50% of the time" at private equity firms. This, according to Mr. Bowden,

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

is "a remarkable statistic."[45] The SEC's examination found that the most egregious violations were in the areas of fees, where the SEC found inadequate disclosures to investors. Examples of hidden or undisclosed fees include:

(a) Accelerated Monitoring Fees. Many private equity managers charge monitoring fees to the portfolio companies in the fund. These fees are charged at the portfolio company level, not the fund level, and, thus, are generally invisible to investors. Moreover, private equity managers often force monitoring agreements of ten years or more on the portfolio companies they control. When the portfolio company is sold before the monitoring agreement expires, the private equity manager accelerates the fees for the remaining years of the contract, even though the manager is no longer monitoring the portfolio company. Disclosure of this practice is virtually nonexistent.

(b) Operating Partners. Private equity managers often foist "operating partners" or consultants in which they have an interest or affiliation on portfolio companies without the knowledge of investors. The fees collected by the private equity managers via these arrangements are not disclosed to investors. As Mr. Bowden commented: "Many of these Operating Partners, however, are paid directly by portfolio companies or the funds without sufficient disclosure to investors. This effectively creates an additional

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

"back door" fee that many investors do not expect, especially since Operating Partners often look and act just like other adviser employees. They usually work exclusively for the manager; they have offices at the manager's offices; they invest in the manager's funds on the same terms as other employees; they have the title "partner"; and they appear both on the manager's website and marketing materials as full members of the team. Unlike the other employees of the adviser, however, often they are not paid by the adviser but instead are expensed to either the fund or to the portfolio companies that they advise."[46] Mr. Bowden continues: There are at least two problems with this. First, since these professionals are presented as full members of the adviser's team, investors often do not realize that they are paying for them a la carte, in addition to the management fee and carried interest. The adviser is able to generate a significant marketing benefit by presenting high-profile and capable operators as part of its team, but it is the investors who are unknowingly footing the bill for these resources. Second, most limited partnership agreements require that a fee generated by employees or affiliates of the adviser offset the management fee, in whole or in part. Operating Partners, however, are not usually treated as employees or affiliates of the manager, and the fees they receive therefore rarely offset management fees, even though in many cases the Operating Partners

[46] *Id.*

walk, talk, act, and look just like employees or affiliates."[47]

(c) Usurping Fee Discounts. Private equity firms leverage investor capital to obtain discounts on professional and vendor services for themselves, but cause their funds and portfolio companies to use the same professionals and vendors without any discounts.

(d) Charging undisclosed "administrative" or other fees not contemplated by the limited partnership agreement.

(e) Exceeding the limits set in the limited partnership agreement around transaction fees or charging transaction fees in cases not contemplated by the limited partnership agreement, such as recapitalizations.

(f) Hiring related-party service providers, who deliver services of questionable value.[48]

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

[47] *Id.*

[48] *Id.*

that include manager assets in calculating IRR is Apollo Global Management LLC.

183. The high fees of private equity funds can have a significant negative impact on net investment returns. For example, under the typical two and twenty fee structure, a 12% return would be reduced to only 8% after deduction of fees.[49]

(2) Valuation and Reporting.

184. The SEC has found deep problems in the way private equity conducts valuations of Portfolio Companies. Common valuation problems identified by the SEC include:[50]

(a) Advisers using a valuation methodology that is different from the one that has been disclosed to investors.

(b) Cherry-picking comparables or adding back inappropriate items to EBITDA — especially costs that are recurring and persist even after a strategic sale — if there are not rational reasons for the changes, and/or if there are not sufficient disclosures to alert investors.

(c) Changing the valuation methodology from period to period without additional disclosure — even if such actions fit into a broadly defined valuation policy — unless there's a logical purpose for the change. For instance, the SEC has observed advisers changing from using trailing comparables to using forward comparables, which resulted in higher interim values for certain struggling investments. While making such

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[49] GAO 11-901SP at 8, n.11.

[50] *Id.*

> changes is not wrong in and of itself, the change in valuation methodology should be consistent with the adviser's valuation policy and should be sufficiently disclosed to investors.

185. These valuation practices make it difficult, to monitor manager performance and evaluate fees accurately where fees are tied to assets under management and therefore increase as valuations increase.

7. The Intel Fiduciaries Failed to Conduct an Appropriate Investigation

186. Despite the gravity and variety of the risks inherent in investing defined contribution plan assets in hedge funds, fiduciaries of the Plans allocated substantial Plan assets to hedge fund investments—eventually almost $2.5 billion as of the end of 2014. Upon information and belief, the Intel fiduciaries did not properly conduct a prudent investigation, "failed to conduct a sufficiently rigorous, thorough and well-documented investigation before implementing such an unconventional, unduly cost and in many ways risky investment program."

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

187. According to Brent Hunsberger, *What's inside Intel's retirement plans? Hedge funds. Lots of 'em,*.[51] Steven Odell, Intel's Assistant Treasurer for retirement plan investments, and the Investment Committee members strongly believe that hedge funds can reduce

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[51] *What's inside Intel's retirement plans? Hedge funds. Lots of 'em.* (Aug. 30. 2014),

the ups and downs of traditional stock and bond markets.[52]

188. The Investment Committee supposedly included hedge funds in the Plans' asset allocation portfolios to increase diversification and reduce risk. But hedge funds should not be considered an independent asset class for purposes of diversification. Thus, it is a mistake to think of hedge funds as asset diversification. Instead, hedge funds are strategy diversification.

189. Mr. Odell also explained that he believes hedge funds have good risk-adjusted returns,[53] but conceded that the Plans' hedge fund portfolio did not meet expectations during the 2008 financial crisis—it lost 17% in 2008 as compared to a 5.2 percent gain in the Barclay's U.S. Aggregate Bond Index. This should have caused the Investment Committee to reconsider whether, to what extent and in what form to continue its investments in hedge funds.

190. Based on the Forms 5500 filed with the Department of Labor, the Investment Committee added hedge funds after 2008, raising the number of managers in the hedge fund portfolio from about 10 or 12 to 21 by 2011. Indeed, in 2009, the 401(k) Plan had less than one million dollars in hedge fund investments and the Retirement Plan had approximately $550 million. By the end of 2011, the 401(k) Plan held $680 million in hedge fund assets and the Retirement Plan held approximately $1 billion. In short, the Investment Committee doubled down with the Retirement

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[52] Hunsberger, *supra* note 4.

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

Plan and increased the 401(k) Plan's investment from under a million to over $680 million.

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

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

192. In addition to the Investment Committee's personal experience with hedge fund underperformance in 2008, numerous studies and reports published in the years before and after the 2008 financial crisis questioned the value of hedge funds. In light of its own experience and the wealth of data available to it, the Investment Committee knew or should have known during the Target Date and Diversified Fund Class Periods that hedge funds were, at the amount of the investment made by the Intel Plans, an imprudent investment for target date funds and balanced funds given the cost, performance and risk.

193. Unlike more traditional investment products, hedge funds typically charge both a management fee (typically 1-2% and sometimes more) based upon the amount of assets under management (the "Management Fee") and an annual performance fee (typically 20%) based on the success of the fund (the "Performance Fee").[54] Performance-based compensation arrangements with managers may create an incentive to make investments that are riskier or more speculative than would be the case if such arrangements were not in effect. In addition, because performance-based

[54] *The New Money Men*, The Economist (Feb. 17, 2005), http://www.economist.com/node/3666459.

compensation is calculated on a basis that may include unrealized appreciation of assets, compensation may be greater than if such compensation were based solely on realized gains.

194. By at least 2006, studies of the performance of alternative investments began to reveal that the returns produced by hedge funds – at least after 2000 – did not exceed the investment performance of index-tracking mutual funds (at least once fees were subtracted from performance). Reports of such studies were not buried in some obscure investment newsletter but were widely published in articles such as *Rolling in It: Why Investors should kick up a fuss about hedge-fund fees*, The Economist (Nov. 16, 2006), http://www.economist.com/node8173853 and *The New Money Men*, The Economist, Feb. 17, 2005 (citing studies). As a result, investors in hedge funds were taking greater risks and paying much higher fees for performance that could have been obtained for lower risk and lower fees.

195. As the Economist succinctly explained in *Rolling in It*, by November 2006, hedge fund managers were receiving "Alpha pay for beta performance." As Narayan Naik of the London Business School noted in that Economist article, "pension funds ha[d] been advised to move into hedge funds by consultants," but those consultants had relied on outdated data from the 1990s and biased data regarding performance and returns.[55]

196. As reported in a New York Times article, *How to Pay Millions and Lag Behind the Market* on October 19, 2013, many overseers of public pension funds,

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[55] *Rolling in It: Why Investors should kick up a fuss about hedge-fund fees*, The Economist (Nov. 16, 2006), http://www.economist.com/node8173853.

desperate to bolster returns and meet ballooning retiree obligations, have turned from traditional investments like stocks and bonds to hedge funds and private equity.[56]

197. In 2013, Benchmark Financial Services, a forensic firm hired by a Rhode Island council of the American Federation of State, County and Municipal Employees, issued a report[57] that concluded that the Rhode Island Pension system's $2 billion investment in high-cost and opaque alternative investments in hedge funds, private equity and venture capital had failed to outperform the pension plan's peer plans.[58]

198. As reported by *Reuters* on January 7, 2011, in *Hedge Funds Rise in 2010 but lag broader market*, both the Hennessee Group and Hedge Fund Research groups that track performance and asset flows, reported hedge funds gained approximately 10 percent in 2010, but lagged behind the average stock market indexes and fell short of the average stock mutual fund's returns.[59] As reported by Reuters, the S&P 500 index gained 12.8 percent and the average stock

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[56] Gretchen Morgenson, *How to Pay Millions and Lag Behind the Market,* The New York Times (October 19, 2013), http://www.nytimes.com/2013/10/20/business/how-to-pay-millions-and-lag-behind-the-market.html?_r=0.

[57] http://www.ricouncil94.org/Portals/0/Uploads/Documents/Rhode%20Island%20X.pdf.

[58] Benchmark Financial Services, *Rhode Island Public Pension Reform: Wall Street's License to Steal,* Rhode Island Council 94 (October 17, 2013), http://ricouncil94.org/portals/0/uploads/documents/rhode%20island%20x.pdf.

[59] Svea Herbst-Bayliss, *Hedge funds rise in 2010 but lag broader market,* Reuters (January 7, 2011), http://www.reuters.com/article/2011/01/07/us-hedgefunds-performance-idUSTRE7063QR20110107.

mutual fund rose 17.48 percent, according to data from Lipper Inc.

199. As reported in a 2012 Economist article, *Rich Managers, Poor Clients: A Devastating Analysis of Hedge Fund Returns* (citing Simon Lack, *The Hedge Fund Mirage: The Illusion of Big Money and Why It's Too Good to Be True*, (2012)) "since 1998, the effective return to hedge-fund clients has only been 2.1% a year, half the return they could have achieved by investing in boring old Treasury bills."[60]

200. Surveys conducted of pension funds (both public and private) showed that fewer than half the pension funds surveyed have investments in private equity and about one quarter have investments in hedge funds.[61] Among those pension plans that do invest in hedge funds and/or private equity, the investments generally represent a small share of the total plan assets. According to the GAO Report, one survey showed that "the average allocation to hedge funds among plans with such investments was about 4 percent in 2007" and "among plans with investments in private equity, the average was about 5 percent."[62]

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

> Although the majority of plans with investments in hedge funds or private equity have small allocations to these assets, a few plans

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[60] *Rich Managers, poor clients: A devastating analysis of hedge-fund returns,* The Economist: Buttonwood's notebook blog (January 7, 2012), http://www.economist.com/node/21542452.

[61] Borbjerg*, supra* note 24, at 13-19.

[62] *Id.* at 13.

> have relatively large allocations. . . . . Of the 62 plans that reported investments in hedge funds in 2007, 12 plans had allocations of 10 percent or more and, of those, 3 plans had allocations of 20 percent or more. The highest reported hedge fund allocation was 30 percent of total assets. Large allocations to private equity were even less common. A total of 106 surveyed plans reported investments in private equity in 2007, of which 11 plans had allocations of 10 percent or more and, of those, 1 plan had an allocation of about 20 percent.[63]

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

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

203. Hedge fund returns are self-reported. Many of the worst performing hedge funds do not report

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[63] *Id.* at 13-14.

returns for obvious reasons. And even successful hedge fund managers may choose only to report the returns of their most successful funds, but not the returns of poor-performers. This problem is described as membership bias.

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

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

206. The various hedge fund indices do not have common standards. Indices differ on the number of funds covered, inclusion criteria, strategy definitions, etc. They even account for membership and survivorship bias differently. For instance, while Tremont Capital Management segments funds into 9 strategies, Hedge Fund Research uses 20 strategies, and the Hennessee Group uses 23 strategies. Inclusion criteria range from minimum assets to proof of an audited statement. Such differences can result in significant variation in performance statistics. As such, even simple comparisons among hedge funds can be misleading.

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

208. In 2006, Vanguard published "Understanding Alternative Investments: A Primer on Hedge Fund Evaluation." Among other things, the author concluded: "Reported hedge fund returns contain significant biases that skew conventional mean-variance and regression analysis." The Vanguard Report observed that generally hedge funds do not mitigate market risk to the extent expected by investors.[64]

209. Hedge funds can be classified into two basic categories: non-directional and opportunistic. Opportunistic strategies generally seek to overweight or underweight exposure to systematic risk factors to exploit general market trends. Non-directional strategies are closest to the original intent of hedge funds, whereby long and short positions are established in securities that bear similar risk factor exposure or securities that don't have similar risk factors, (*e.g.*, long the companies bonds, short the equity). Consequently, security selection is critical.

210. Opportunistic strategies reveal similar mean returns, suggesting investors are exposed to greater than expected risk.[65]

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

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[64] Christopher B. Phillips, *Understanding Alternative Investments: A Primer on Hedge Fund Evaluation,* Vanguard Investment Counseling and Research. (2006), https://personal.vanguard.com/pdf/s554.pdf.

[65] *Id.* at 10.

212. Hedge fund use of leverage and derivatives can cause disproportionate movements in hedge funds returns as compared to underlying asset class returns. These non-linear movements can distort interpretation of mean and variance.

213. And event-driven, convertible arbitrage and fixed income arbitrage strategies have highly negatively skewed returns.[66]

214. "The implications of this are important, because even with [hedge fund] index returns largely self-reported and concentrated on those funds that do not fail, investors remain exposed to significant levels of extreme returns, particularly to the downside. Accounting for survivorship bias and self-reporting would likely increase the non-normality represented in hedge fund indexes. In sum, the experiences of individual and institutional investors probably differ greatly from what might be expected from index-level analysis, with investors exposed to greater probabilities of extreme returns."[67]

215. With respect to operational risk, financial experts were reporting as early as 2008 that operational risk associated with conflicts of interest within the fund and external to the fund can lead to reduced average annualized returns by 1.68%.[68]

216. With respect to actual investor experience, the authors of a study presented in 2009 and published in

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[66] *Id.* at 11.

[67] *Id.* at 11.

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

2011 concluded that "the real alpha of hedge fund investors is close to zero."[69] In other words, for all the active management and esoteric strategies employed by hedge fund managers, the hedge fund managers add little or no value. "[I]n absolute terms, the dollar-weighted returns [of hedge funds] are reliably lower than the return of the S&P 500 index, and are only marginally higher than the risk-free rate as of the end of 2008."[70] These authors cite to other studies finding small and sporadic alpha in hedge funds, and conclude that actual investor returns are 3 to 7 percent lower than reported hedge fund returns. They responded in 2009 that the actual risk-return profile of hedge fund investors is much worse than investors would expect from observing hedge fund indices.

217. In 2010, Vanguard published a report titled "Do hedge funds hedge? The experience of the Great Recession,"[71] that compared the performance of hedge funds to broad market indices and a 60/40 portfolio of equities and bonds from October 2007 through February 2010. During the first part of this period, October 2007 to February 2009, hedge fund strategies declined at about -2% to -1.3%, substantially better than the broader equity indices, but not much better than a 60/40 portfolio, which had monthly returns of -

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

[70] *Id.*

[71] Geetesh Bhardwaj, Ph.D., *Do hedge funds hedge? The experience of the GreatRecession,* Vanguard Research (2010), https://pressroom.vanguard.com/content/nonindexed/Do_hedge_funds_hedge_the_experience_of_th e_great_recession.pdf.

2.3% during the same period.[72] From March 2009 to February 2010, however, the 60/40 portfolio outperformed all hedge fund categories except one. And equity indices outperformed all hedge fund strategies substantially.[73] Moreover, the authors reported a high performance correlation between all hedge fund categories, except one, and a 60/40 portfolio. The monthly correlation of the fund-of-hedge-funds index (the Intel Hedge Fund is a fund-of-hedge funds) to a 60/40 portfolio was 0.67 during the period, raising serious questions about whether there was any hedging at all.[74]

218. Just as the Investment Committee was making huge bets on hedge funds with retirement savings, the Economist was reporting on the pitfalls of hedge funds.[75] Among other things, the Economist noted that hedge funds were performing poorly in volatile markets, "the very conditions in which hedge funds are meant to prosper." The Economist presented a line chart comparing hedge fund index returns with the S&P 500, which showed extremely high correlation in volatility and performance, thus prompting the caption "Unhedged?"

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

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[72] *Id.* at 3.

[73] *Id.*

[74] *Id.* at 3.

[75] *Many unhappy returns*, The Economist (Aug. 20, 2011), http://www.economist.com/node/21526326.

Committee significantly increased the Plans' investment in hedge funds.

220. Indeed, institutional investors were questioning the virtues of hedge fund investments just as the Investment Committee decided to substantially increase the Plans' investments in them. A survey of such investors revealed the following:

- 70% of institutional investors were demanding more transparency
- 80% of respondents reported a desire for better transparency into valuation methodologies
- Whereas the 2008 respondents ranked poor performance as their #1 concern, by Q1 2010 they ranked "lack of transparency" and "liquidity risk" as their top concerns
- 72% of investors in hedge funds in 2010 were institutions, not individuals such as retirement plan participants, and the vast majority did so for short time horizons: 94% for 3 years; 52% for 6 years; and only 31% for 10 years or more
- Only 8% of hedge fund investors sought decreased volatility by investing in hedge funds, suggesting that 92% of investors were well aware that hedge funds would likely introduce more volatility
- Even amongst this institutional respondent base, nearly 50% allocated less than 10% to hedge funds.[76]

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[76] *Institutional Hedge Fund Investing Comes of Age,* SEI (2010), https://www.seic.com/IMS/SEI_2011HedgeFundWhitePaper_US.pdf.

221. More recently, hedge funds have continued to badly underperform and fail to provide downside market protections. As recently reported in the New York Times,[77] hedge fund investors suffered deep losses in 2015. Investors in prominent and lesser known hedge funds have seen all of 2015's gains wiped out, and are now in the red. Pershing Square Capitol Management lost 9.4%; Marcato International has lost 11.6%; Glenview Capital Management is down 13.5%. Because of continued poor performance, investors are withdrawing from hedge funds and causing many hedge funds to close. Preqin, which publishes quarterly reports on hedge fund performance, recently reported that the third quarter of 2015 was the worst quarter for hedge funds in several years, posting average losses in its benchmark of 4.08%.[78] Thus the Plans and their respective participants whose accounts were invested in Intel TDPs and the Diversified Fund continue to suffer substantial losses due to Defendants' breaches of fiduciary duty.

222. As a result of this underperformance, a prudent fiduciary would have, at the least, re-evaluated the selection of the investments in hedge funds and private equity, if not begun divesting.

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

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

[78] *The Preqin Quarterly Update*: *Hedge Funds, Q3 2015,* Preqin (2015), https://www.preqin.com/docs/quarterly/hf/Preqin-Quarterly-Hedge-Fund-Update-Q3-2015.pdf.

223. As of April 30, 2015, Intel hired AllianceBernstein to manage its two asset allocation portfolios, namely the Intel TDPs and the Diversified Fund, which had previously been managed by the Investment Committee. As observed by Cordant Wealth, in Intel's Target Date Funds: Do They Hit the Mark?, according to Morningstar's target date fund research, AllianceBernstein target date funds "have some of the highest fees in the industry and poor past performance."[79] As reported by the Wall Street Journal in *Target Date 401(k)s Get a Taste of Hedge Funds*, on September 11, 2015, AllianceBernstein is one of the few mutual fund providers that actually include hedge funds in their target date funds. But, as the Wall Street Journal article observed, only the "smaller players" like AllianceBernstein who "are seeking to 'differentiate themselves and find a place in the market'" have added "hedge-fund-like 'alternative' mutual funds."[80] In contrast, "Fidelity Investments, Vanguard Group and T. Rowe Price Group, Inc., which manage more than 70% of the assets in target-date mutual funds, haven't embraced hedge-fund-like investments."[81] According to the Wall Street Journal article, even those smaller players, who invest some target date fund money in hedge funds invest 3% or less of their funds' assets in these alternative investments.

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[79] Isaac Presley, *Intel's Target Date Funds: Do They Hit the Mark*, Cordant Wealth Partners: The Cordant Blog (May 18, 2015), https://cordantwealth.com/intels-target-date-funds-do-they-hit-the-target/.

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

[81] *Id.*

224. In 2011 401(k) plans collectively had invested \$270 billion in TDFs.[82] Approximately 75% of TDF assets in 2011 were managed by Fidelity, Vanguard, and T. Rowe Price.[83] Thus in 2011, plan fiduciaries for the overwhelming majority of retirement plan assets in TDFs selected providers that did not include hedge funds in their TDFs.[84] The Intel 401(k) Plan and its participants would have been better served had the Investment Committee acted consistently with the prevailing standard of care for 401(k) plan fiduciaries with respect to the selection of TDFs.

225. Shortly after the Investment Committee hired AllianceBernstein to manage the Intel TDPs, AllianceBernstein announced that it was closing its own target date fund offerings after years of poor performance and failure to attract investors.[85] According to Morningstar, AllianceBernstein's entire TDF family held little over \$1 billion in total assets in 2015.[86] Yet, the Investment Committee handed AllianceBernstein over \$3 billion in 401(k) TDP assets to manage.

226. Morningstar reported that AllianceBertnstein's "long-term risk-adjusted returns rank among the target-date industry's worst."[87] Figure 6 compares the

[82] Investment Company Institute Factbook, at 127 (2012).

[83] Morningstar 2012 Target-Date Series Research Paper, at 27 (July 1, 2012).

[84] Given the small market share of those providers that include hedge funds in TDFs, the percent of 401(k) plan assets in TDFs without hedge funds is well over 90%.

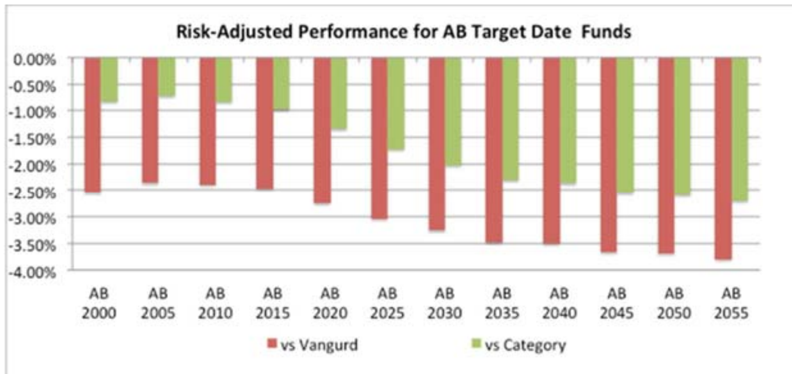
[85] Morningstar AB Retirement Strategy Target-Date Fund Series Report (June 30, 2015).

[86] *Id.*

[87] *Id.*

risk-adjusted returns of the AllianceBernstein TDFs to Vanguard's TDFs and the entire category.

FIGURE 6



227. Further, of the three components that Morningstar evaluates to attribute TDF performance, AllianceBernstein ranked last in "Security Selection" of 45 fund families.[88] This means AllianceBernstein was the worst TDF provider of 45 providers covered by Morningstar at picking funds or securities for a TDF fund which is exactly what the Investment Committee hired AllianceBernstein to do for the Intel TDPs. Based on the foregoing and upon information and belief, the Investment Committee did not engage in a prudent process in selecting AlliancBernstein. Instead, the Investment Committee appears to have hired AllianceBernstein because it was one of the handful of tiny TDF managers that used hedge funds.

[88] Morningstar 2014 Target-Date Series Research Paper, at 27 (July 1, 2014).

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

228. According to applicable regulations, 29 C.F.R. § 2550-404a-5(a), "Fiduciary requirements for disclosure in participant-directed individual account plans" (the "Disclosure Regulation"), the administrator of a participant-directed retirement plan must disclose several types of information to participants in such a plan, both prior to the initial investment and also on an ongoing basis, if there are material changes to the plan's investment options.

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

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

a) An explanation of any specified limitations on investment instructions under the terms of the plan, including any restrictions on transfer to or from a designated investment alternative;

b) An identification of any designated investment alternatives offered under the plan;

c) An identification of any designated investment managers;

d) An explanation of any fees and expenses for general plan administrative services which may be charged against individual accounts of participants and which are not reflected in the total annual operating expenses of any designated investment alternative and the dollar amount of such fees and expenses that are actually charged to an individual account, on a quarterly basis;

e) The name of each designated investment alternative and the type or category of investment; performance and benchmark data for such investment; detailed fee and expense information such as expense ratios; the internet web site address containing information about the designated investment alternative.

29 C.F.R. § 2550-404a-5(c)-(d).

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

232. Based on the documents provided to Plaintiff, the Administrative Committee Defendants failed to disclose the required information regarding the Hedge Fund, the Commodities Fund, or the Private Equity Fund.

233. These failures to disclose left the majority of participants in the Plans unaware regarding the true content and character of their retirement savings,

because investment in Intel TDPs was the primary investment options for Intel's 401(k) Plan participants and the Diversified Fund was the primary investment option for Retirement Plan participants. Even if participants were provided some information that the TDPs and Diversified Fund included investments in hedge funds and private equity, the plan fiduciaries failed to provide participants with adequate and sufficient information, so that they could make informed intelligent decisions about whether investing in these particular hedge funds and private equity funds was prudent.

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

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

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

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

VI. CLAIMS FOR RELIEF

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

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

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

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

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

242. As a result of the Investment Committee's allocation of assets to alternative investments, the Intel TDPs have all underperformed their peer funds during the Target Date Class Period. For example, as Morningstar observed with respect to the 2030 Intel TDP: "the fund has some vital differences from its Morningstar Target Date 2026-2030 category peers. For one the fund invests 21% of its assets in a wide mix of hedge fund strategies and has a 5% allocation to commodities, whereas none of its peers own hedge funds and only a few have small commodity stakes. Moreover, the fund's equity allocation favors foreign stocks over U.S. stocks, whereas its typical competitor invests 70% in domestic stocks and 30% overseas."[89] The substantial divergence from peer group allocations means that the Intel 2035 TDP underperformed the peer group by 400 basis points in 2013 alone.

243. According to Morningstar, the entire suite of Intel TDPs "have lagged their respective peers amid other market rallies, such as in 2012 and 2009." As a result of the investments and allocations made by the Investment Committee, Morningstar observed that the Intel 2030 TDP is "less likely to keep pace with competitors amid stock market booms."[90] As the Intel TDPs all share the same asset allocation model and

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[89] Morningstar Report on *Target Date 2030 Fund*, Oregonian Live at 2 (Mar. 31, 2014), http://media.oregonlive.com/finance/other/Target%20Date%202030%20Fund-1.pdf.

[90] *Id.*

the same underlying Investment Accounts, all of the Intel TDPs over-allocate the accounts of participants in the 401(k) Plan and the Retirement Plan to alternative investments and similarly underperformed.

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

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

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

from their investment decisions with respect to the Intel TDPs.

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

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

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

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

250. Consistent with their obligations under ERISA § 404(a)(1)(A) and (B), the Administrative Committee Defendants were required to ensure that participants

"are made aware of their rights and responsibilities with respect to the investment of assets held in, or contributed to, their accounts and are provided sufficient information regarding the plan, including fees and expenses, and regarding designated investment alternatives, including fees and expenses thereto, to make informed decisions with regard to the management of their individual accounts." 29 C.F.R. § 2550-404a-5(a).

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

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

b) Identify the Hedge Fund and the Private Equity Fund as designated investment alternatives offered under the plan;

c) Identify designated investment managers for the Hedge Fund and the Private Equity Fund;

d) Provide an explanation of any fees and expenses for general plan administrative services which may be charged against individual accounts of participants and which are not reflected in the total annual operating expenses of designated investment alternatives like the Hedge Fund and the Private Equity Fund and the dollar amount of such fees and expenses that are actually charged to an individual account, on a quarterly basis, for investment in such funds;

e) Provide the name of designated investment alternatives like the Hedge Fund and the Private Equity Fund and the type or category of investment; performance and benchmark data for each such investment; detailed fee and expense information such as expense ratios; the internet web site address containing information about such designated investment alternative.

See 29 C.F.R. § 2550-404a-5(c)-(d).

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

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

254. As a result of the Administrative Committee Defendants' breaches of their fiduciary duty, Plaintiff and participants in the Plans have suffered financial

losses through the loss of return that would have been earned on prudent investment of the Plans' assets.

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

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

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

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

258. At the end of 2008, the Diversified Fund held approximately 5.28% of its assets, about $243 million, in hedge fund and private equity investments. A year later, the Fund allocated 16.52% of its assets to hedge funds and private equity. In the following year, the Investment Committee increased the Diversified Fund's allocations to hedge funds and private equity and added allocations to commodities, resulting in

22.23% of fund assets, approximately $1.2 billion, allocated to these alternative investments. By the end of 2013, the Investment Committee had caused the Diversified Fund to allocate 36.71%, $2.33 billion, to such alternative investments.

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

260. Based on the statements of Stuart Odell, the Investment Committee Defendants did not understand and failed to give appropriate consideration to these risks, or disregarded such risks, when they selected and maintained the asset allocation for the Diversified Fund.

261. Through the foregoing conduct, the Investment Committee Defendants have (a) failed to act solely in the interest of the participants and beneficiaries of the Plans for the exclusive purpose of providing them benefits, in violation of ERISA § 404(a)(1)(A), 29 U.S.C. § 1104(a)(1)(A), and (b) failed to act with the care, skill, prudence and diligence under the circumstances then prevailing that a prudent man acting in a like capacity and familiar with such matters would use in the conduct of an enterprise of a like character and with like aims, in violation of ERISA § 404(a)(1)(B), 29 U.S.C. § 1104(a)(1)(B). Thus the Investment Committee Defendants breached their fiduciary duties to the Plans and

their participants and beneficiaries and are liable to restore all losses to the Plans resulting from their investment decisions with respect to the Diversified Fund.

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

Count IV
(Violations of ERISA § 404(a)(1)(B) by the Administrative Committee in Failing to Provide Disclosures to Participants Regarding Designated Investment Alternatives on Behalf of the Diversified Fund Class)

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

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

265. Consistent with their obligations under ERISA § 404(a)(1)(A) and (B), the Administrative Committee

Defendants were required to ensure that participants "are made aware of their rights and responsibilities with respect to the investment of assets held in, or contributed to, their accounts and are provided sufficient information regarding the plan, including fees and expenses, and regarding designated investment alternatives, including fees and expenses thereto, to make informed decisions with regard to the management of their individual accounts." 29 C.F.R. § 2550-404a-5(a).

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

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

b) Identify the Hedge Fund and the Private Equity Fund as designated investment alternatives offered under the plan;

c) Identify designated investment managers for the Hedge Fund and the Private Equity Fund;

d) Provide an explanation of any fees and expenses for general plan administrative services which may be charged against individual accounts of participants and which are not reflected in the total annual operating expenses of designated investment alternatives like the Hedge Fund and the Private Equity Fund and the dollar amount of such fees and expenses that are actually charged to an individual account, on a quarterly basis, for investment in such funds;

e) Provide the name of designated investment alternatives like the Hedge Fund and the Private Equity Fund and the type or category of investment; performance and benchmark data for each such investment; detailed fee and expense information such as expense ratios; the internet web site address containing information about such designated investment alternative.

See 29 C.F.R. § 2550-404a-5(c)-(d).

267. The Administrative Committee failed to adequately disclose to participants and beneficiaries in the Plans information regarding risks, fees and expenses associated with such hedge funds and private equity funds. Although the Administrative Committee disclosed information regarding the allocation strategy of the Diversified Fund as the designated investment alternative of the Plans, it failed to provide the required disclosure for the Hedge Fund and Private Equity Fund in which the Plans invested pursuant to the allocation models for the Diversified Fund. Among other things, the Administrative Committee failed to provide adequate disclosures about: (1) the arrangements between the Plans and the hedge and private equity fund managers in the Hedge Fund and Private Equity Fund, respectively, including the fees and expenses and the investment strategies and holdings for each fund; and (2) the identity of the private equity and hedge fund firms and individual managers.

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

Count V

(Breach of Fiduciary Duty Under ERISA § 404 for Failure to Monitor Other Fiduciaries of the Plans, Against the Finance Committee Defendants)

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

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

271. Under ERISA, a fiduciary charged with the authority to select and remove other fiduciaries or who, as a practical matter, in fact appoints other fiduciaries, has an ongoing duty to monitor the performance of those persons whom the fiduciary is empowered to remove. An appointing fiduciary therefore must, at reasonable intervals, ensure that the fiduciary it has appointed is acting in compliance with the terms of the applicable plan, acting in accordance with ERISA and applicable law, and satisfying the needs of the plan.

272. Pursuant to Section 13 of the Plans, the Finance Committee Defendants were responsible for the appointment and removal, and for periodically monitoring the

performance, of the Investment Committee Defendants and the Administrative Committee Defendants.

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

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

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

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

274. By failing to properly monitor the performance of the Finance Committee Defendants, the Board of Directors (a) failed to act solely in the interest of the participants and beneficiaries of the Plans for the exclusive purpose of providing them benefits, in violation of ERISA § 404(a)(1)(A), 29 U.S.C. § 1104(a)(1)(A),

and (b) failed to act with the care, skill, prudence and diligence under the circumstances then prevailing that a prudent man acting in a like capacity and familiar with such matters would use in the conduct of an enterprise of a like character and with like aims, in violation of ERISA § 404(a)(1)(B), 29 U.S.C. § 1104(a)(1)(B).

275. As a result of their breaches, the Finance Committee Defendants caused the Plans to suffer losses, through the payment of excessive fees for active investment in alternatives like hedge funds and private equity, and through loss of investment return that would have been gained through prudent investment of the Plans' assets.

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

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

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

> (1) he participates knowingly in or knowingly undertakes to conceal an act or omission of such other fiduciary knowing such act or omission is a breach;
>
> (2) by his failure to comply with ERISA § 404(a)(1) in the administration of his specific responsibilities which give rise to his status as a fiduciary, he has enabled such other fiduciary to commit a breach; or

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

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

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

280. Each member of the Investment Committee knew that the Plans were invested heavily in alternative investments such as the Hedge Fund Portfolio, the Commodities Fund, and the Alternative Investments Fund in the Intel Master Trust, because the Investment Committee created this asset allocation strategy.

281. The Finance Committee Defendants also knew that the Administrative Committee did not disclose to participants the information required in the Disclosure Regulations, particularly regarding such designated investment alternatives as the Hedge Fund Portfolio, the Commodities Fund, and the Alternative Investments

Fund in the Intel Master Trust, because pursuant to Section 13(m) of the Plan Documents, the Administrative Committee was responsible for reporting not less than annually to the Finance Committee about its actions.

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

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

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

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

286. As such, each member of the Administrative Committee is liable for the breaches by the other

Administrative Committee Defendants pursuant to ERISA § 405(a)(1) and (2).

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

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

VII. ENTITLEMENT TO RELIEF

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

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

VIII. PRAYER FOR RELIEF

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

A. A declaration that the Defendants breached their fiduciary duties under ERISA;

B. An order compelling each fiduciary found to have breached his/her/its fiduciary duties to the Plans to jointly and severally restore all losses to the Plans that resulted from the breaches of fiduciary duty, or by virtue of liability pursuant to ERISA § 405;

C. An order requiring (a) the disgorgement of profit made by any Defendant, (b) a declaration of a constructive trust over any assets received by any breaching fiduciary in connection with his/her/its breach of fiduciary duties or violations of ERISA, (c) an order requiring the Plans to divest themselves of investments in hedge funds and commodity funds, or (d) any other appropriate equitable monetary relief, whichever is in the best interest of the Plans;

D. Ordering, pursuant to ERISA § 206(d)(4), 29 U.S.C. § 1056(d)(4), that any amount to be paid to or necessary to satisfy any breaching fiduciary's liability can be satisfied, in whole or in part, by attaching their accounts in or benefits from the Plans;

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

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

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

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

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

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

Dated: April 26, 2016

Respectfully submitted,

/s/ Joseph Creitz

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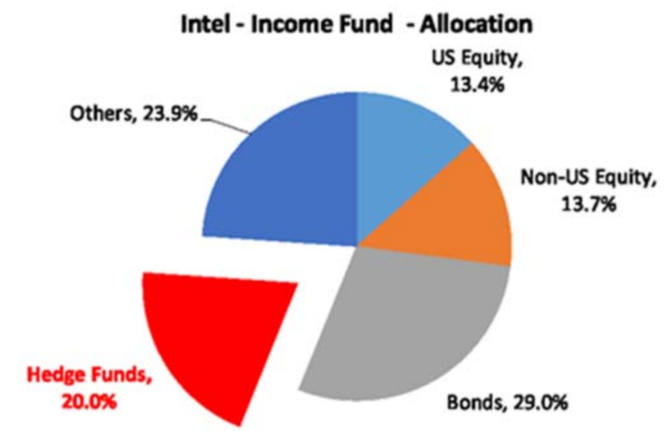
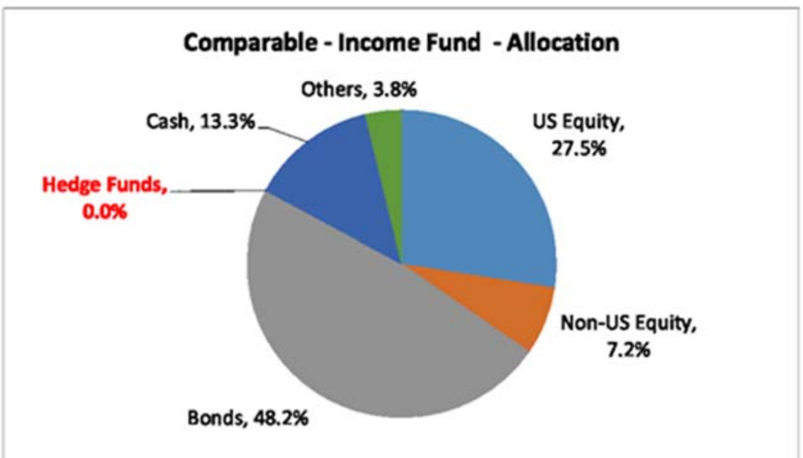
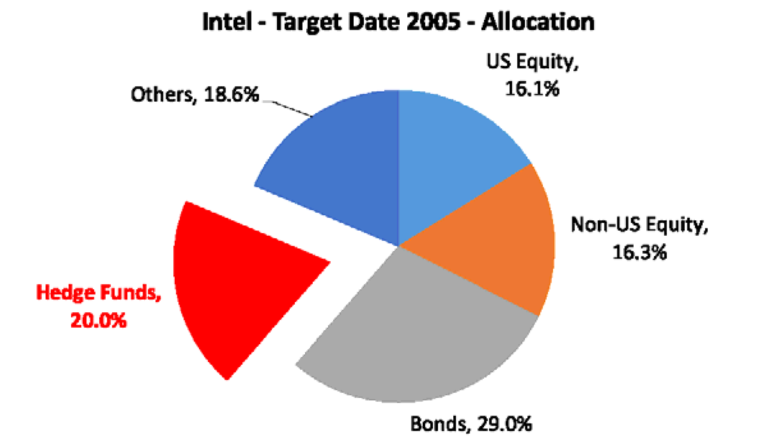
EXHIBIT A
TO
CONSOLIDATED COMPLAINT
Case No: 5:15-cv-04977-NC
Case No. 5:16-cv-00522

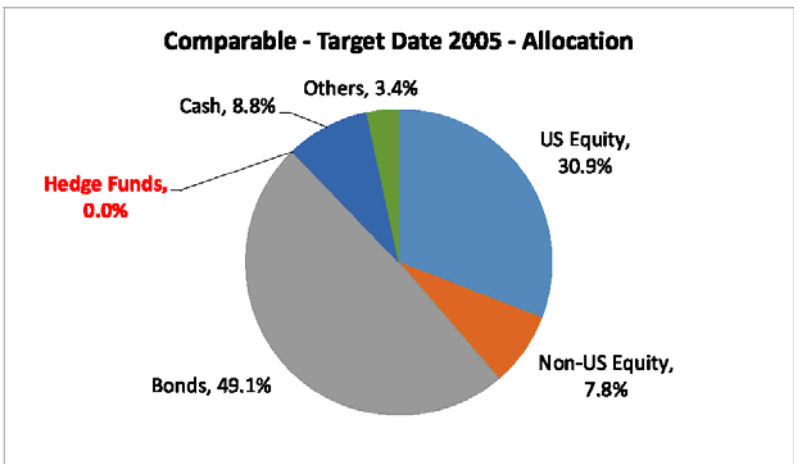
Income Fund:



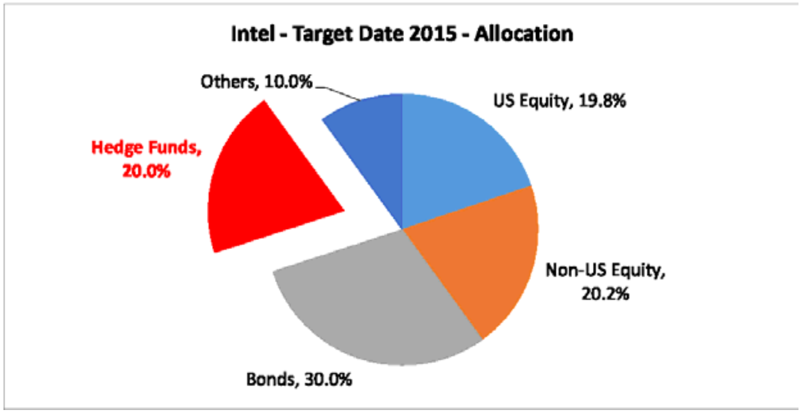


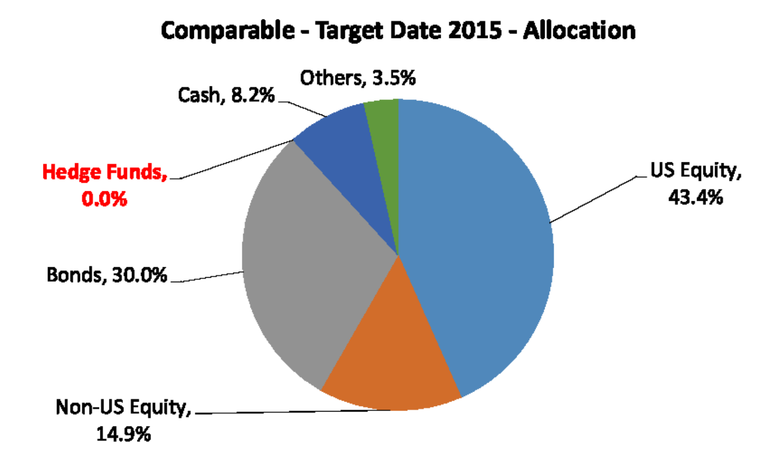
Target Date Fund – 2005



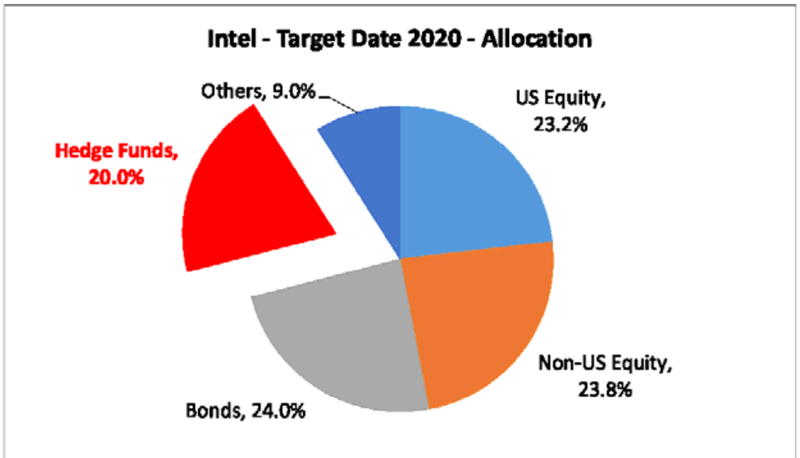


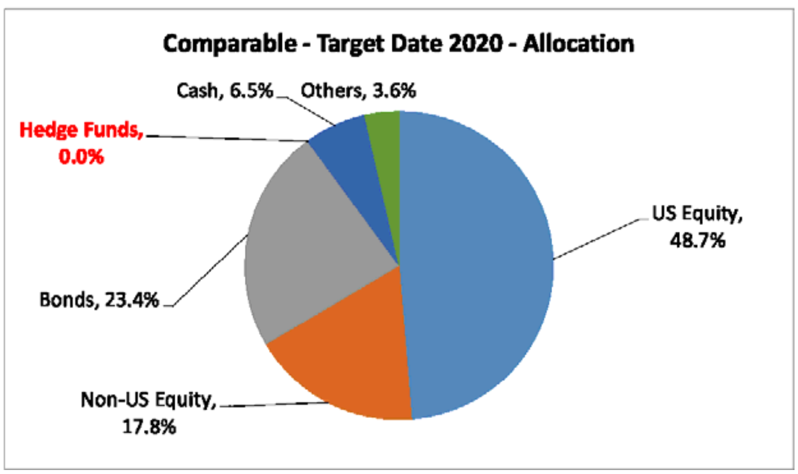
Target Date Fund – 2015



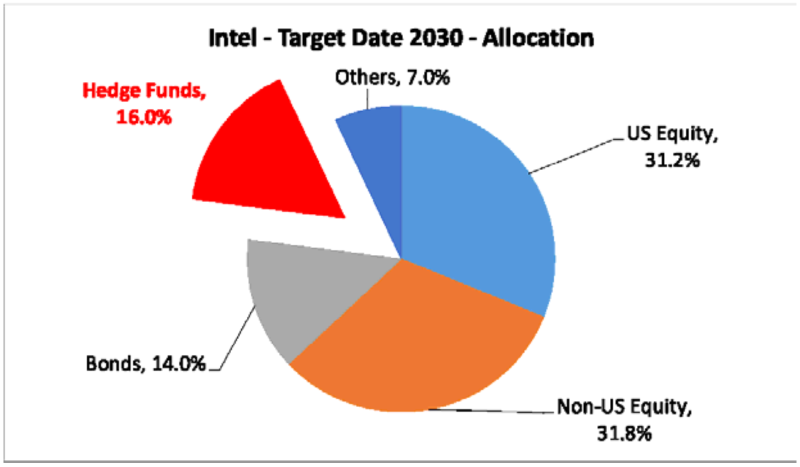


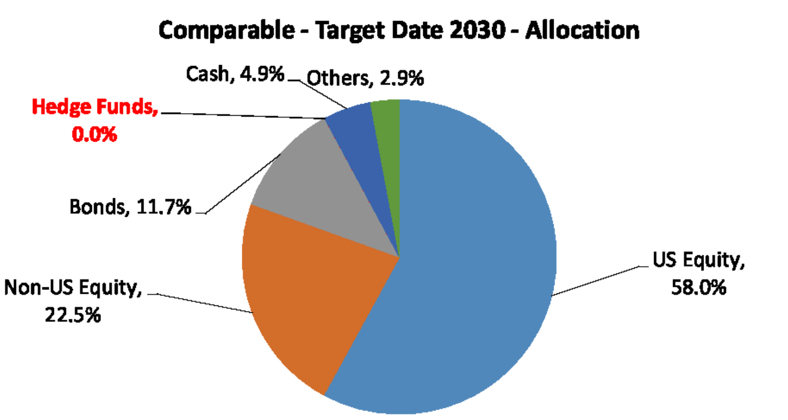
Target Date Fund – 2020



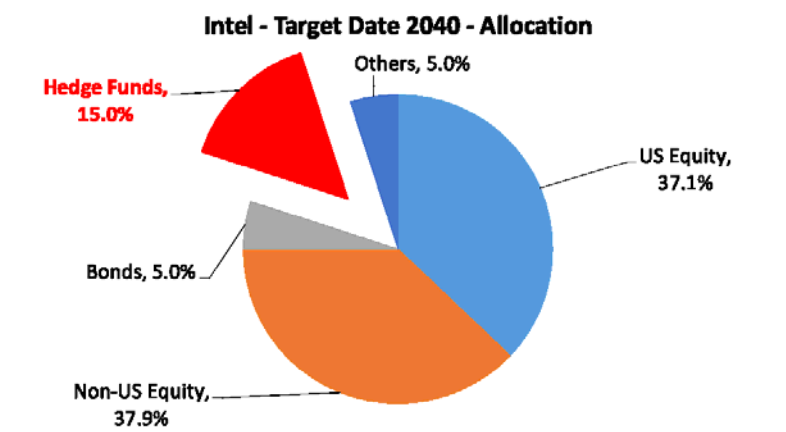


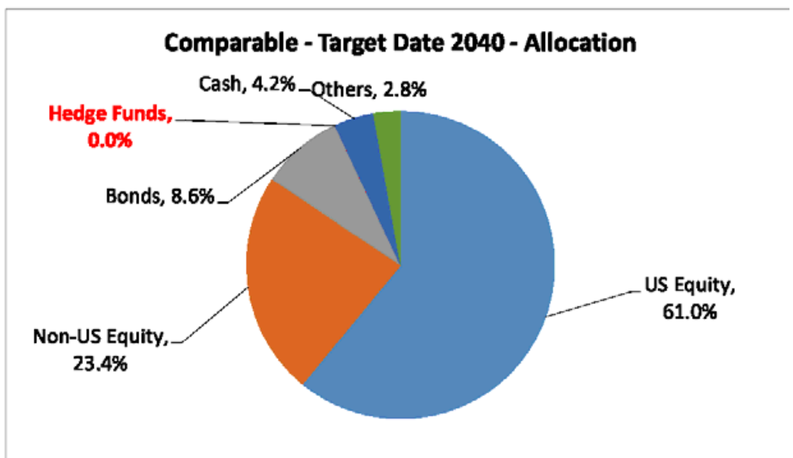
Target Date Fund – 2030



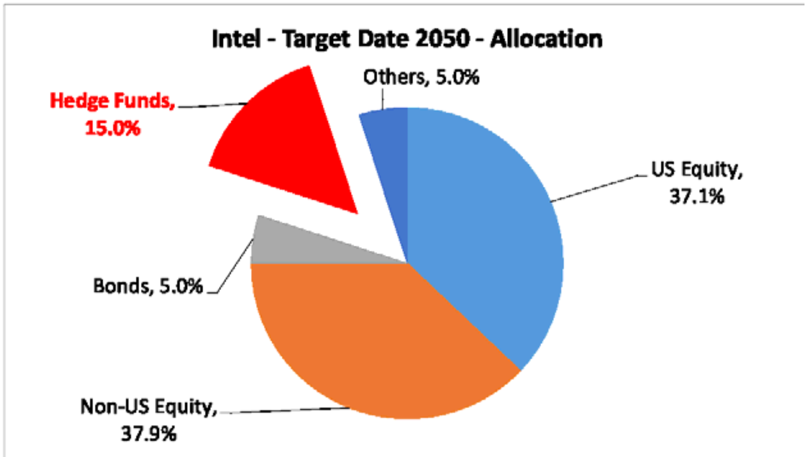


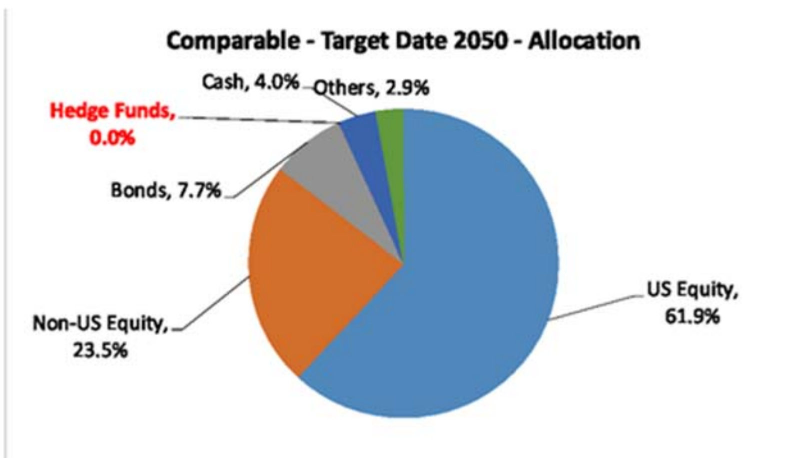
Target Date Fund – 2040





Target Date Fund – 2050





From: Services and Benefits Comms
Sent: Tuesday, July 12, 2011 3:41 PM
Subject: Get ready for 401(k) investment changes

intel

U.S. Retirement
Make smart choices: *Meet a bright future.*

Get ready for 401(k) investment changes

Over the next two months, Intel will make changes to the 401(k) savings plan. These changes are designed to help you move forward toward a comfortable retirement. The changes include:

- A new way to help you save more,
- An investment restart, and
- A new investment structure.

Intel will provide you with free financial counseling, a personalized retirement snapshot, roadshows and seminars to help you learn about the changes and decide what actions you may want to take.

Detailed information on the changes and the election process is available now on the new Retire at Intel website, your central resource for retirement information.

Free financial counseling

Intel has partnered with The Ayco Company to provide financial counseling services at no cost to you. This independent, third-party counseling is confidential.

Call the Ayco AnswerLine® at 866-325-0075 to speak with a counselor. Or, go to the Ayco website for information on how to set up an appointment, although no appointment is necessary.

Ayco can help you:

- Understand the 401(k) Savings Plan changes
- Assess your savings and set a retirement savings goal
- Understand the Target Date Funds
- Determine an investment strategy and review your current investment mix*

* Ayco offers education and guidance on the funds in the 401(k) Savings Plan, but they cannot recommend or select investments for you.

Why make the changes?

Overall, 75% of our U.S. employees are not adequately prepared to retire when they want. This is because:

- 20% are not saving at all,
- 50% are not saving enough, and
- 75% are not appropriately diversified.

We can change these numbers for the better. There are no cost savings for Intel in making the changes. Our only goal is to help our employees.

Additional resources

- If you have questions about the changes, call the Fidelity Service Center at 888-401-7377 or an Ayco counselor at 866-325-0075.
- Attend onsite retirement roadshows and seminars:
  - WW30: Dupont
  - WW31: Hudson and SC
  - WW33: Austin and Folsom

- WW34: AZ and NM
- WW35: OR and SC

Watch for an email with more details.

New way to save more

We are making a new saving feature available. You'll now have the option to apply one savings rate to your base pay and a separate savings rate to:

- ECBP, EB and ICAP bonuses
- Vacation/personal absence cash out (available to nonexempt employees)
- Commission pay

If you want to change your savings rate for this ECBP payout, you have until July 20 at 1 p.m. PT to make your election at Fidelity NetBenefits. Click here for instructions. You can change your elections at any time during the year.

Investment restart

Intel is doing an investment restart with your 401(k) investments, so you can focus on which investment choices are right for you based on your investment approach.

You can make your choice during a special election period from July 11 through Sept. 9, 2011. If you don't make an election, Intel will default your investments into the Target Date Funds.

New investment structure

After the special election period, the 401(k) plan will offer different ways to achieve a mix of investments that meets your needs. You can use one or a combination of these approaches.

- If you want professionals to invest, monitor, and rebalance your investments so that you don't have to, Target Date Funds give you an easy way to get a diversified portfolio within a single fund, based on your age.
- If you want to be in control of building your own mix of funds from choices overseen by Intel, Core Funds offer a broad range of 13 investment choices, including several popular mutual funds currently offered in the plan.
- If you prefer a wide choice of funds because you actively research, review, trade, and rebalance your portfolio, Fidelity BrokerageLink® offers the widest choice of funds from 4,500 Fidelity and non-Fidelity mutual funds and exchange traded funds (ETFs).
  - Over 1,600 of these mutual funds and 25 ETFs have no transaction fees. You can find these funds on the Fidelity site.

Personalized retirement snapshot

Watch for the 2011 Retirement Decision Guide that should arrive at your home soon. The package includes a personalized statement (for employees hired before Jan. 1, 2011) showing your current account balance, projected savings at retirement*, current investment allocation, and what actions you may want to take based on the changes.

**For employees hired in 2010 or employees on a leave of absence who didn't get a full years' pay: The savings projections provided will not show the intended outcome for whether you are on track to meet your savings goal. This is because the data used your actual 2010 pay in the calculation, which in this situation is not a* *full year of pay. You can go to the new Retire at Intel website and use the Retirement Readiness Calculator to determine whether you are on track.*

From: Services and Benefits Comms
Sent: Monday, August 22, 2011 1:32 PM
Subject: Retirement seminars now available virtually

intel

U.S. Retirement
Make smart choices: *Meet a bright future*.

Retirement seminars now available virtually

The Retirement Roadshows have concluded at all major U.S. sites and we had tremendous participation. To ensure that all our employees have an opportunity to participate in a retirement roadshow event, we have added twenty virtual retirement seminars.

The seminars, led by The Ayco Group, provide an overview of the changes to the 401(k) Savings Plan and the decisions you need to make, and provide basic retirement education.

The special election period closes on Sept. 9, 2011. Mark your calendars and plan to attend.

Resources

- Learn more at www.retireatintel.com
- Ayco counselors offer financial counseling services at no cost to you. There's no appointment necessary, just call 866-325-0075.
- The Fidelity Service Center can assist you with your investment elections. Call 888-401-7377 or go to NetBenefits.

Virtual Retirement Seminars		
Date	Time	Reminder
Aug. 23	10 a.m. - 11:30 a.m.	Add to Calendar
	12:30 p.m. – 2 p.m.	Add to Calendar
	2:30 p.m. – 4 p.m.	Add to Calendar
	4:30 p.m. – 6 p.m.	Add to Calendar
Aug. 25	6 a.m. – 7:30 a.m.	Add to Calendar
	8 a.m. – 9:30 a.m.	Add to Calendar
	10:30 a.m. – 12 p.m.	Add to Calendar
	12:30 p.m. – 2 p.m.	Add to Calendar
Aug. 29	1 p.m. – 2:30 p.m.	Add to Calendar
	3 p.m. – 4:30 p.m.	Add to Calendar
	6 p.m. – 7:30 p.m.	Add to Calendar
	8 p.m. – 9:30 p.m.	Add to Calendar
Aug. 31	7 a.m. – 8:30 a.m.	Add to Calendar
	9:30 a.m. – 11 a.m.	Add to Calendar
	11:30 a.m. – 1 p.m.	Add to Calendar
	1:30 p.m. – 3 p.m.	Add to Calendar
Sep. 6	8:30 a.m. – 10 a.m.	Add to Calendar
	11 a.m. – 12:30 p.m.	Add to Calendar
	1:30 p.m. – 3 p.m.	Add to Calendar
	3:30 p.m. – 5 p.m.	Add to Calendar

From: Services and Benefits Comms
Sent: Tuesday, September 6, 2011 8:56 AM
Subject: Make your 401(k) elections by Sept. 9 at 1 p.m. PT

intel

U.S. Retirement
Make smart choices: *Meet a bright future*

The special election period for the 401(k) Savings Plan will end soon. You have until 1 p.m. (Pacific) on Friday, Sept. 9 to make your investment elections. If you don't take any action, on Sept. 30 your current funds (with some exceptions) will be automatically invested in a Target Date Fund for you.

Sept. 9 deadline

By this deadline you can elect to:

- Take advantage of an in-kind transfer, which allows you to keep most of your existing mutual fund balances and transfer them into a BrokerageLink account without selling out of the fund.
- Keep the funds you currently hold that will be part of the new Core Fund lineup.

See these detailed instructions on how to make these elections - page 3 includes a list of the new Core Funds.

Sept. 16 application deadline

Don't forget that if you open a BrokerageLink account, Fidelity needs to receive your application in the mail by Sept. 16. If you miss this deadline, any in-kind transfers you made by Sept. 9 will be voided.

Call Fidelity

Call the Fidelity Service Center at 888-401-7377 to make your investment elections. Representatives are available this week from 5:30 a.m. - 9 p.m. (Pacific).

What to expect next

Information is available on what will happen after Sept.9, so you know what to expect next.

Resources

- Go to your account on NetBenefits to check your recent transactions.
- Go to the Retire at Intel website for detailed information, including fund fact sheets.
- Call Ayco at 866-325-0075 for free financial counseling assistance.

How Target Date Funds work

- A Target Date Fund provides you with an investment strategy that works best for you at any given point in your life, because they are diversified and automatically rebalanced over time.
- As each year passes, professional fund managers adjust the mix within each Target Date Fund, reducing risk and volatility as the target retirement date approaches, without you having to take any action.
- The current mix for each Target Date Fund, historical performance information, and how it will change over time can be found in the quarterly fund fact sheets.

Target Date Funds were chosen as the default funds because they are widely considered one of the smartest choices for 401(k) investors.

From: Fidelity Retirement Services and Intel Financial Benefits <BenefitsCenter@Fidelity.com>
Sent: Tuesday, November 22, 2011 11:52 PM
To: CHRISTOPHER M SULYMA
Subject: Important Information Regarding the Intel 401(k) Savings Plan

Dear Intel 401(k) Savings Plan Participant,

You are receiving this notice because your contributions are currently being invested in, or you have a balance in, one of the Target Date Funds, the Plan's designated default fund. Under the Plan, any contributions for which you do not provide investment direction will be invested in the Plan's designated fund. To view the complete plan notice including a description and fee information regarding this fund, click here and select Annual QDIA Notice. You will need to log on to NetBenefits® and then open the document QDIA Notice.

To obtain information about other plan investment options, please log onto NetBenefits® at www.401k.com or call the Fidelity Service Center at 1-888-401-7377 to speak to a representative. You may also make changes to your investment elections for future contributions and/or exchange all or a portion of your existing balance into other options available under the Plan via NetBenefits® or by phone. We encourage you to review your investment mix and deferral percentage and update as appropriate.

Privacy Policy Terms of Use

Before investing in any mutual fund, please carefully consider the investment objectives, risks, charges and expenses. For this and other information, call or write Fidelity for a free prospectus, or if available a summary prospectus. Read it carefully before you invest.

Keep in mind that investing involves risk. The value of your investment will fluctuate over time and you may gain or lose money.

The investment options available through the plan reserve the right to modify or withdraw the exchange privilege.

Unless otherwise noted, transaction requests confirmed after the close of the market, normally 4 p.m. Eastern time, or on weekends or holidays, will receive the next available closing prices.

The Plan is intended to be a participant-directed plan as described in Section 404(c) of ERISA, which means that fiduciaries of the Plan are ordinarily relieved of liability for any losses that are the direct and necessary result of investment instructions given by a participant or beneficiary.

To request a print copy of this information, please call the number listed above to speak to a representative.

The information in this e-mail is intended solely for the attention and use of the named addressee. This message or any part thereof must not be disclosed, copied, distributed or retained by any person without authorization from the addressee.

Please do not respond to this e-mail. This mailbox is not monitored and you will not receive a response.

Fidelity Brokerage Services LLC, Member NYSE, SIPC, 900 Salem Street, Smithfield, RI 02917

531043.5.2

Your workplace benefits account is currently set to send e-mails of the following type: Notifications. To change this e-mail setting click: Stop receiving e-mails of this type. Note: You will be required to log in to NetBenefits.

Reference ID: 9216792626

From: Fidelity Retirement Services and Intel Financial Benefits <BenefitsCenter@Fidelity.com>
Sent: Thursday, May 10, 2012 1:12 PM
To: CHRISTOPHER M SULYMA
Subject: Important information about your pension benefit statement

Make the most of NetBenefits®

Dear CHRISTOPHER M SULYMA,

We are sending you this message to remind you that you can:

- Review your accrued pension benefit estimate virtually anytime at the Fidelity NetBenefits® Web site, www.netbenefits.com. Click on your pension plan to be directed to the Pension Summary page.
- Obtain important information from your Pension Summary page, such as your accrued benefit, vesting percentage or the earliest date on which your pension benefit will vest
- Change the way statements are delivered to you by visiting "Mail Preferences" under the "Your Profile" tab

No action is required on your part. This notice is being sent to you as a requirement of the Pension Protection Act of 2006, which requires an annual notice to let you know your accrued pension benefit is available for your review.

If you are unable to view your accrued pension benefit at NetBenefits, you may call the Fidelity Service Center at 1-888-401-7377 to obtain a free copy of your statement.

Sincerely,

Fidelity Service Center

Please do not reply to this message by email. This mailbox is not monitored and you will not receive a response. For answers to questions or to receive more information, please visit www.netbenefits.com call the phone number above.

The information in this e-mail is intended solely for the attention and use of the named addressee. This message or any part thereof must not be disclosed, copied, distributed or retained by any person without authorization from the addressee.

Fidelity Employer Services Company, Inc.
82 Devonshire Street, Boston, MA 02109

Reference ID: 10581286220

From: Fidelity Retirement Services and Intel Financial Benefits <BenefitsCenter@Fidelity.com>
Sent: Saturday, July 14, 2012 1:26 PM
To: CHRISTOPHER M SULYMA
Subject: Important Plan Information

INTEL 401(k) Savings Plan

Dear CHRISTOPHER M SULYMA,

INTEL CORPORATION maintains the Plan referenced above. Federal law requires certain plan and investment-related information be provided to you either because you have an account in the Plan or are eligible to participate.

To assist with meeting these disclosure requirements, INTEL CORPORATION has directed Fidelity Investments, a Plan service provider, to collect, consolidate and provide you with this information.

To access this now, go here. Once you log in, you'll find this information in the Important Plan Information section.* If you would like a paper version, please contact Fidelity at the number provided in the Notice.

Sincerely,

INTEL CORPORATION

*If this is your first time logging on to netbenefits, you will need to register and set up a username and password to access your account. If you already have a username and password for a Fidelity site (including NetBenefits® from a previous employer), you do not need to register again.

Privacy Policy Terms of Use

Fidelity Brokerage Services LLC, member NYSE, SIPC, 900 Salem Street, Smithfield, RI 0291 7

579703.3.0

Your employer has provided Fidelity with this work-related e-mail address and has arranged for you to receive this communication. Your employer may continue to send employment or benefit information to this address.

Reference ID: 11102669477

From:	Fidelity Retirement Services and Intel Financial Benefits <BenefitsCenter@Fidelity.com>
Sent:	Thursday, August 30, 2012 10:39 PM
To:	CHRISTOPHER M SULYMA
Subject:	Important Plan Information

INTEL Retirement Contribution Plan

Dear CHRISTOPHER M SULYMA,

INTEL CORPORATION maintains the Plan referenced above. Federal law requires certain plan and investment-related information be provided to you either because you have an account in the Plan or are eligible to participate.

To assist with meeting these disclosure requirements, INTEL CORPORATION has directed Fidelity Investments, a Plan service provider, to collect, consolidate and provide you with this information.

To access this now, go here. Once you log in, you'll find this information in the Important Plan Information section.* If you would like a paper version, please contact Fidelity at the number provided in the Notice.

Sincerely,

INTEL CORPORATION

*If this is your first time logging on to netbenefits, you will need to register and set up a username and password to access your account. If you already have a username and password for a Fidelity site (including NetBenefits® from a previous employer), you do not need to register again.

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Your employer has provided Fidelity with this work-related e-mail address and has arranged for you to receive this communication. Your employer may continue to send employment or benefit information to this address.

Reference ID: 11525608784

Retirement Q&A
07-11-11

INVESTMENT CHANGES

1. Can I invest in Target Date Funds, Core Funds, and open a BrokerageLink account?

Yes, while each path is designed to meet the majority's needs, you have the flexibility to "mix and match" your investment choices from each path. Free Ayco financial counseling is available through the end of the year in order to help you formulate your investment strategy.

2. Will the Sept. 9 deadline be extended for employees on sabbatical or LOA during the July 11 through Sept. 9 election period?

No. The 401(k) plan is governed by strict IRS rules and we cannot make exceptions. The education and election process has been designed for employees to handle from home, without requiring access to VPN, an Intel PC or Intel office.

3. Will the investment changes financially benefit Intel or Fidelity?

Intel gets no benefit from these changes other than to help you plan for retirement. Intel is not saving any money or making any money by implementing these changes. It's the right thing to do. In additionFidelity is not expected to make more money following the implementation of these changes than they currently earn as the supplier to the Intel 401(k) plan.

4. What will happen to my current investments between Sept. 9 and Sept. 30?

Your current investments will remain invested at all times—there is no time that they will be "out of the market." Also, you can still make exchanges during this period. However, Sept. 9 is the deadline to make certain changes if you don't want the default to apply. So, it's important that you understand the timing of the elections you make because the investment default will apply on Sept. 30.

For example, if you make an in-kind transfer through BrokerageLink and then after Sept. 9 you make a different fund choice, the in-kind transfer will be canceled and your new fund choice will remain in effect only until Sept. 30. On Sept. 30, the Target Date Fund default investment will apply to the new fund you have chosen.

5. Where will my future contributions be invested?

It depends on what elections you make for your current investments and/or what funds you are currently invested in. Generally, future contributions will be invested in a Target Date Fund unless you choose otherwise.

- If you are invested in the Intel Stock Fund and/or the Stable Value Fund, your future contributions will continue in these funds as directed.
- If you are already invested in the Target Date Funds, you don't have to make an election for future contributions. However, if you are age 45 or younger, your future contributions may be redirected to one of the three new Target Date Funds that is more appropriate for you age.
- If you make an election to keep your Core Funds, the election will also apply to your future contributions.

- If you elect to invest through BrokerageLink, you must make a separate election for future payroll contributions into the same funds.

6. Given that the Target Date funds take the work out of asset allocation and rebalancing, is there an additional charge for this benefit?

No, the only fee is the standard expense ratio charged on every fund - there are no additional fees for the additional benefit of rebalancing. Check the Morningstar fact sheets for the expense ratios on each Target Date Fund.

7. Are the current LifeStage Funds and the new Target Date Funds the same funds?

The investment strategy and underlying asset allocation has been changed, along with the name of the funds (please consult the Morningstar fact sheets for more information). The biggest change to the asset allocation has been a wider allocation across stocks, bonds, commodities, and currency. This includes the use of hedge funds, which make up about 25% of the new allocation. In these hedge funds, investment managers can be more opportunistic and make decisions that are uncorrelated to the broader markets. The LifeStage Funds will be called the Target Date Funds to better conform with industry naming conventions. As they reach their target date (your retirement date at age 65) the funds become more conservative in their investment mix, reducing their overall risk. Target Date Funds will be available in 5-year increments beginning with the Target Date Income Fund for participants 8 or more years into retirement, and ending with the 2050 Fund.

8. Why are some funds not impacted by the “restart” action which defaults investments into Target Date Funds?

The Intel Stock Fund will not be moved to a Target Date Fund due to tax reasons, and the Stable Value Fund will not be impacted because it is a principal protection fund and a standard offering in 401(k) plans.

9. Why was the decision made to reduce the overall number of funds available in the 401(k) line-up?

The consensus among peer companies offering a 401(k) plan, industry and academic studies is that too much choice is actually detrimental to building a well diversified portfolio and typically leads to inaction by participants, resulting in a lack of retirement readiness. In benchmarking against tech and non-tech peers, we found that the number of mutual fund choices in Intel’s 401(k) plan was on average more than three times that of our peers.

The decision to reduce the overall number of funds is about simplifying the investment decision process for participants, while retaining ample choice to build well diversified portfolios if they choose not to invest in the Target Date Funds. The new investment structure will make it easier for employees to choose the right investment approach by focusing on asset allocation and diversification, while offering more funds within BrokerageLink for those who want it.

10. If my mutual funds are no longer available, will I have to pay a higher fee in BrokerageLink to continue to invest in these funds?

It will depend on the specific fund. Some will incur higher fees, which include transaction fees and higher expense ratios, to continue to invest. Others will not. For those funds with higher fees, there are a variety of other comparable funds within BrokerageLink that have no transaction fees and/or lower expense ratios. Currently, there are more than 1,600 funds that are classified as 'no transaction fee' funds.

Before you make your fund elections through BrokerageLink, it's your responsibility to understand all of the applicable fees and other requirements associated with investing through this account. You can find more information at Fidelity.com, and in the BrokerageLink fact sheet and BrokerageLink commission schedule. Fidelity Representatives can also answer your questions.

11. Will I be able to see my new investment elections in BrokerageLink on Oct. 3?

Intel's new investment structure will be implemented effective Oct. 3. However, due to processing time required to complete the transfer/investment of mutual funds in BrokerageLink, you will be able to see your BrokerageLink account online starting Oct. 6. Prior to Oct. 6, you may see only partial fund balances.

12. Can I visit my local Fidelity branch to make my investment elections or submit my application for a BrokerageLink account?

No. Your local Fidelity Representatives can provide investment guidance, but they are not able to help you submit your 401(k) investment elections or accept your BrokerageLink application.

13. Can my personal financial planner access my account to make my elections for me?

Fidelity cannot give access to a third party to make elections on your behalf. However, you can work with your financial planner to determine what action to take. Financial planners at Ayco are knowledgeable about the changes to the Intel 401(k) Savings Plan. They will have access to your 401(k) account information and can provide helpful information, but you must make the elections with Fidelity.

14. Why is the SERPLUS Plan investment line-up (for higher grade employees) remaining the same?

For technical reasons related to how the hypothetical funds are accounted for in the Plan, Intel is not able to make BrokerageLink available in the SERPLUS Plan. It is possible that the SERPLUS Plan investment line-up will be streamlined in the future. However, this potential change is not part of the current 401(k) investment changes.

GENERAL RETIREMENT AND INVESTMENT

1. Can I apply a different savings rate to my other bonus pay (e.g., Factory Excellence Bonus)?

No. Bonuses must be considered “eligible pay” for the purpose of the 401(k) Savings Plan in order for you to apply the new savings feature. This includes only EB, ECBP, ICAP, and EOIP. All other bonus types are not eligible at this time.

2. Does Intel offer a 401(k) match option?

No, Intel offers an annual discretionary contribution towards your retirement savings through the Retirement Contribution Plan (formerly called the Profit Sharing Plan). Eligible employees get this contribution regardless of whether they participate in the 401(k) Savings Plan.

3. What is the Intel Investment Policy Committee (IPC)?

The IPC oversees all of Intel's retirement plans, including the 401(k) Savings Plan portfolio (the Target Date Funds and Core Funds). The committee's responsibilities include determining the investment choices available under the plan, management of Intel's proprietary funds, and overall investment policy decisions for the Retirement Contribution and Minimum Pension Plans.

4. Who manages the investment strategy for the Target Date Funds?

Under the guidance of the IPC, an internal staff of seven investment professionals work with several outside investment consulting specialists to develop the investment strategy for the Target Date Funds and some of the Core Funds (non mutual fund choices), including the underlying manager selection.

More specifically, for the asset mix of the Target Date Funds as well as some manager selections within the Target Date and Core Funds, the internal investment team works with Callan Associates, an investment consulting specialist. For the hedge fund allocation which represents 25% of the Target Date Fund allocation, the internal investment team utilizes Albourne Associates, a hedge fund consulting specialist. The internal team continually monitors the Target Date Funds and its underlying investments, and rebalances the funds on a periodic basis.

5. How has the Profit Sharing Fund performed and how is it positioned to perform going forward?

The objective of the Profit Sharing Fund, renamed the Global Diversified Fund, is to provide optimal, long-term, risk adjusted returns – performance that seeks the highest return for the amount of risk taken.

The longer term (5 and 10 year) performance of the Global Diversified Fund is in line with how the equity markets performed over that period, as the fund was passively invested in the S&P500 for about half that decade (2000-2004). Since 2005, the asset allocation shifted to provide greater diversification, first through the addition of fixed income, international and small cap stocks and more recently through increased investment into alternatives, particularly hedge funds which today represent 25% of the asset allocation. Although the diversification strategy is designed to capture much of an equity market rally as it is still predominately growth oriented, we do anticipate that the fund may lag when equity markets rally significantly (e.g., the March through Dec. 2009 rally and most recently the Sept. through Dec. 2010 rally). Conversely, and more importantly, when the markets drop significantly, the expectation is that the Global Diversified Fund should not experience the same level of loss.

Over the long run, we would expect that protecting against large losses, while giving up some of the upside when the market rallies, will result in an overall better outcome for participants. While we were pleased with the overall performance of the Global Diversified Fund in 2009 (+18.3%) and 2010 (+10.4%), it did lag the S&P500 which was +26.5% in 2009 and +15.1% in 2010. However, the volatility of the Global Diversified Fund over those periods was approximately half that of the S&P500. On a risk-adjusted basis, the fund has performed within our expectations. Over the long run, the performance objective of the fund is to deliver about a 5% real (inflation adjusted) rate of return. The current asset allocation today is broadly diversified and is approximately 25% hedge funds, 20% global fixed income, 45% global equities, 10% other (commodities, real estate, private equity, distressed debt).

6. How do Intel's Target Date Funds perform compared to similar funds and against other benchmarks?

Generally, the Target Date Funds have done well as measured against a peer group of retail target date funds (as shown on the April 30 Morningstar fact sheets). The Income, 2005, 2010, 2015 funds have outperformed their peer group over 1, 3, 5 year periods. The 2025, 2035, 2045 funds have lagged the peer group due primarily to the run up in the stock market in the second half of 2009 and 2010. The corresponding retail funds have a substantial weight in domestic equity funds, which experienced the large rally.

However, these retail funds have underperformed Intel's Target Date funds in May and June 2011 due to market uncertainty. The funds seek to outperform over a full 8-10 year market cycle, which we believe is the appropriate time period to measure the value of the funds in growing your savings while protecting against large losses. In March 2011, we made changes to the asset mix to increase hedge fund allocation from 10% to 25%, which further enhances the funds' ability to perform in the widest variety of economic environments. Refer to the simulated returns on page 1 of the Morningstar fact sheets to see how the funds would have performed over a historic full market cycle.

7. If I am age 50+ am I allowed to move out of the Profit Sharing Fund (now called Global Diversified Fund) into a Target Date Fund

Yes, employees who are age 50 or older have the option to move their balances out of the Global

Diversified Fund into a Target Date Fund or Stable Value Fund within the Intel Retirement Contribution Plan (formerly the Profit Sharing Plan).

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

Case No. 5:15-cv-04977-NC

CHRISTOPHER M. SULYMA,

Plaintiff,

vs.

INTEL CORPORATION INVESTMENT POLICY COMMITTEE, *et al.*,

Defendants,

and

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

Nominal Defendants.

(CONFIDENTIAL PORTION REDACTED)
Videotaped Deposition of
CHRISTOPHER MICHAEL SULYMA
Washington, D.C.
Monday, October 3, 2016
9:39 a.m.

Pages: 1 - 157

Reported by: Dana C. Ryan, RPR, CRR

* * *

MR. ACHORN: Lawrence Achorn, Intel Corporation.

THE VIDEOGRAPHER: Will the reporter please swear in the witness?

CHRISTOPHER MICHAEL SULYMA,
having been duly sworn, testified as follows:

EXAMINATION BY COUNSEL FOR THE
DEFENDANTS BY MR. BUCKLEY:

Q Mr. Sulyma, will you please state your full name?

A Christopher Michael Sulyma.

Q And what is your home address?

A 6808 Sirocco Place, Northwest, Albuquerque, New Mexico 87114.

Q How long have you lived there?

A Six years.

Q Just going back to the time when you were employed by Intel, what was your home address at that time?

A 7125 Triana Place – that's T-R-I-A-N-A – Triana Place, Northwest, Albuquerque, New Mexico 87114.

Q When did you begin living there?

A In 2010.

Q And you joined Intel in June 2010, so

at the time you joined Intel, were you living there?

A Yes. I – I moved to New Mexico to join Intel, and that's when I started living at that current residence – or that – at that previous residence.

Q And can you tell me the month in which you moved from that residence to your current residence at Sirocco?

A Yes. It was February of 2011.

Q Okay. Thank you.

What is your date of birth?

A. [redacted].

Q And could you summarize your educational background beginning with college?

A Sure.

I have an undergraduate degree in physics; and I have a master's degree in physics; I also have a Ph.D. in physics from Clarkson University.

Q What year did you earn your Ph.D.?

A In 2010.

Q I assume that was the spring, the commencement –

A It was May. And then I moved, you know, almost a month after.

Q Okay. And do you recall the exact date when you commenced your employment at Intel?

A You mean when I left?

Q No, when you commenced your employmentat Intel.

A Is that starting –

Q Starting –

A – "commenced"?

Q – date. I'm sorry.

A Yeah. Sorry. It was early June. I don't know the specific. I think it's the 2nd, but I'm not positive.

Q I've seen a record that indicates it was – was June 1, 2010.

A That sounds accurate.

Q And I also have seen some information indicating that your last day there was September 2nd, 2012.

A That's correct.

Q Would that – that would accord with your recollection?

* * *

realized the high-volume manufacturing wasn't a good fit for me, coming from a research background.

Q Okay. Can you just tell me the names of your subsequent employers and the periods of your employment?

A Sure. Yeah.

After I left Intel in 2012, I worked for a small start-up company called Qynergy Corporation. I worked for them for a year and a half, and then I moved to SolAero Technology [verbatim] Corporation, which is my current employer. All in the Albuquerque area.

Q Can you tell me your job titles at each of those?

A Sure.

At Qynergy Corporation, I was a physicist. Currently, at SolAero Technology [verbatim], I'm a principal engineer, R&D.

Q Thanks.

When you joined Intel in – in June 2010, did you at that time become invested in one of the Intel retirement plans?

A Yes.

Q Was that the 401(k) savings plan?

A It was.

Q And, specifically, did you invest in the Target Date Fund for 2045?

A I did, yes.

Q Did you – when you arrived at Intel in June 2010, did you initiate an account with NetBenefits?

A I did. I'm not sure how long after I started working, but it was within the first couple of months I – I established an online account with them.

Q And did you understand that was a Web site that was maintained by Fidelity?

A Yes.

Q Which was a service provider for the Intel 401(k) savings plan?

A Yes.

Q Okay. Okay. I'm going to show you a document that was provided by Fidelity. We're going to mark it as Sulyma Deposition Exhibit Number 1, and I'm going to hand you a copy –

(Sulyma Deposition Exhibit 1 was marked for identification and attached to the transcript.)

BY MR. BUCKLEY:

* * *

A I did not. It was a last-minute thing, and it was kind of at the day, so I didn't have any time to take any files from it.

Q Did you print out any records that were on the computer when you were leaving?

A I don't think so.

Q Okay. Exhibit Number 1, the clickstream history, indicates that during the period of your employment at Intel, you logged in to NetBenefits approximately 68 times.

Would that be consistent with your recollection of the frequency of your visiting the site?

A I could see that being possible.

Q Okay. And it also indicates that there were over – or were approximately 1,024 separate clicks during that time period.

Would that be also in accord with your recollection?

A I really don't remember how many clicks I made.

Q Did you frequently go in and click –

A I –

Q – different items on –

A – clicked –

* * *

Q Okay. Mr. Sulyma, this is one of the fund fact sheets that was available – made available to you on NetBenefits – this would have been the document that would have had the performance history of the 2045 fund.

Is it correct that you reviewed this document to check its performance before deciding to invest in the 2045 fund?

A Back in 2010, I don't think that I reviewed this document.

Q Okay. Can you explain to me, then, why

the clickstream history indicates that you went to the link relating to the performance details of the fund before you made your investment choice?

MR. BARTON: Let him finish.

BY MR. BUCKLEY:

Q Go ahead.

MR. BARTON: Objection to form; foundation.

BY MR. BUCKLEY:

Q Go ahead.

A I don't remember looking at this back in 2010.

Q That's not my question to you.

It indicates here in the clickstream history that you reviewed the performance details at the same time you were making your investment choice of the 2045 fund, so Exhibit 29 contains those performance details.

Isn't it likely that you reviewed this document before deciding to invest in the 2045 fund?

MR. BARTON: Objection to form –

BY MR. BUCKLEY:

Q You can answer.

MR. BARTON: – asked – asked and answered; improper characterization of the document.

BY MR. BUCKLEY:

Q You can answer.

A I believe that the click indication

says that that material was accessed.

Q All right. And looking at Exhibit 29, let me draw your attention to what's called Investment Strategy.

Right here (indicating). The document in front of you.

A I see those – those words.

Q Okay. Let me just read the second sentence under Investment Strategy in regard to the 2045 fund. It says, quote, The target asset allocation of this fund is 20 percent global bond funds and short-term investments, 65 percent domestic and international equity funds, 10 percent hedge funds and 5 percent commodities, end quote.

Do you see that?

A I see that.

Q That was information that was made available to you, that is, the information that the fund included investments in hedge funds; correct?

MR. BARTON: Objection: form; no foundation.

BY MR. BUCKLEY:

Q You can answer.

A I – I'm not sure if this was available to me.

Q Well –

A I don't remember reviewing this.

Q The question isn't whether you remember it. This – this is – I'm – I'm indicating to you that this is the fund fact sheet for 2045 that is for the period ending March 31, 2010, so it would have been the fund fact sheet available on Exhibit 8, Sulyma Deposition Exhibit 9, Sulyma Deposition Exhibit 10, Sulyma Deposition Exhibit 11, Sulyma Deposition Exhibit 12, Sulyma Deposition Exhibit 13 and Sulyma Deposition Exhibit 14 were marked for identification and attached to the transcript.)

MR. BARTON: I assume you have copies for me, too.

MR. BUCKLEY: Yes. We'll be nice.

BY MR. BUCKLEY:

Q Okay. Mr. Sulyma, I'm just going to review what these documents are for the record, and if you would just kindly follow along with me.

So Exhibit 4 is the account statement for the period ending September 30, 2010. Exhibit 5 is the account statement for the quarter ending December 31, 2010. Exhibit 6 is the account statement for the quarter ending March 31, 2011. Exhibit Number 7 is the account statement for the quarter ending June 30, 2011. Exhibit 8 is the account statement for the quarter ending September 30, 2011.

Exhibit 9 is the account statement for the quarter ending December 31, 2011. Exhibit 10 is the account statement for the quarter ending March 31, 2012. Exhibit 11 is the account statement for the quarter ending June 30, 2012. Exhibit 12 is the account statement for the quarter ending September 30, 2012. Exhibit 13 is the account statement for the quarter ending December 31, 2012. Exhibit 14 is the account statement for the quarter ending March 31, 2013.

Did you follow me in my review of those exhibits?

A Yes, I did.

Q Okay. You reviewed each of these account statements; correct?

A I don't think so.

MR. BARTON: Objection.

BY MR. BUCKLEY:

Q Well, we reviewed earlier that according to Fidelity, you logged in to NetBenefits 68 times during your employment and you made over a thousand separate clicks.

Didn't you look at your account statement?

MR. BARTON: Objection to form; misstates the evidence.

You can answer.

BY MR. BUCKLEY:

Q Go ahead.

A I primarily looked at the numbers at the top. I didn't read the fine details.

Q The numbers at the top of the account statement?

A The – the values of the account, yes.

Q Did you purposely make a point of not reading the rest of the account statement?

A No.

Q Were you trying to avoid informing yourself about any aspects of your investment?

A No.

Q Would you agree that all these account statements are information that was made available to you?

A That sounds reasonable.

Q At a certain point in time, you became invested as well in the Intel Retirement Contribution Plan and specifically the Global Diversified Fund; is that correct?

A Yes.

Q I'm going to ask you to turn to Exhibit Number 10, the account statement for the period ending March 31, 2012.

Do you have that in front of you?

A I do.

Q Does that indicate that as of that time, that is, March 31, 2012, you were invested in both the 401(k) savings plan and the Global Diversified plan, which was part of the Intel Retirement Contribution Plan?

A That's what it says here, yes.

Q Did you understand that you did not have any right to direct your investments under the Intel Retirement Contribution Plan?

A No, I actually didn't, no.

Q You weren't aware that you had no right to direct your investments under that plan?

A I didn't, no.

Q Okay. You were aware you had a right to direct your investments under the 401(k) savings plan; correct?

A Yes.

Q And it's also correct that you never made any election choice with respect to the Intel Retirement Contribution Plan; correct?

A Can you repeat that?

Q Isn't it correct that you never made any affirmative election choice with respect to the Intel Retirement Contribution Plan?

A I don't think so.

Q And your holdings in the Intel Retirement Contribution Plan were through the company and the plan fiduciary specifically, rather, were invested in the Global Diversified Fund; correct?

A I wasn't aware of that at the time.

Q Well, you were aware that your holdings in the Intel Retirement Contribution Plan were invested in the Global Diversified Fund, were you not?

A I wasn't – didn't fully understand that at the time.

Q Isn't that what the account statement before you states?

I'm looking, again, and referring to Exhibit Number 10. It says that you're invested in the Global Diversified Fund.

A It doesn't say that. It says Retirement Contribution Plan.

Q All right. If you'll turn to page 2 of the document, again, referring to Exhibit 10. You'll see two general headings. One is Target Date Funds.

Do you see that?

A I do.

Q And then beneath that there's a heading of Retirement Contribution.

Do you see that?

A I do.

Q And then beneath that do you see that there's a specific reference to Global Diversified?

A I do see that now, yes.

Q Okay. So isn't it correct that you were informed that your holdings in the Retirement Contribution Plan were invested in the Global Diversified Fund? Correct?

A I agree it was disclosed in the statement.

Q And you were never given any investment choice with regard to that investment; correct? MR. BARTON: Objection to the form; asked and answered.

THE WITNESS: I wasn't aware of that at the time. I – I don't know.

BY MR. BUCKLEY:

Q You had no recollection of ever being given a choice as to how those funds were to be invested; correct?

A I do –

MR. BARTON: Objection to form; asked and answered.

BY MR. BUCKLEY:

Q You can answer.

A I do not recall.

Q Now, under the 401(k) savings plan, you were able to change the contribution amount you made to that plan; correct?

A For the 401(k) plan?

Q Yes.

A I believe that I was entitled to choose amongst a couple options.

Q I'm asking with respect to the contribution amount.

You had the ability to change the contribution amount you made to that plan; correct?

A That's correct.

Q And, in fact, you did change your contribution amount a number of times; correct?

A Yes.

Q Let me show you what we're now going to mark as Exhibits 15 through 25.

(Sulyma Deposition Exhibit 15, Sulyma

* * *

Q All right. Let's go to another series of exhibits, then. We're going to look at the fund fact sheets for the Target Date Fund 2045 between March 31, 2010 and September 30, 2012. And these are Exhibits 29 through 39.

I've already shown you Exhibit Number 29. Now I'm going to show you the remainder of those exhibits and identify them for the record as well.

(Sulyma Deposition Exhibit 30, Sulyma Deposition Exhibit 31, Sulyma Deposition Exhibit 32, Sulyma Deposition Exhibit 33, Sulyma Deposition Exhibit 34, Sulyma Deposition Exhibit 35, Sulyma Deposition Exhibit 36, Sulyma Deposition Exhibit 37, Sulyma Deposition Exhibit 38 and Sulyma Deposition Exhibit 39 were marked for identification and attached to the transcript.)

(Sotto voce discussion.)

BY MR. BUCKLEY:

Q I'll hand you these. We're getting copies for your counsel.

(Sotto voce discussion.)

BY MR. BUCKLEY:

Q So let me identify these for the record. I've already identified Exhibit Number 29 as the fund fact sheet for the 2045 fund as of March 31, 2010.

So the remaining are as follows: Exhibit 30 is the fund fact sheet for the 2045 fund as of the quarter ending June 30, 2010. Exhibit 31 is the fund fact sheet for the 2045 fund as of the quarter ending September 30, 2010. Exhibit Number 32 is the fund fact sheet for the 2045 fund as of the quarter ending December 31, 2010.

Exhibit Number 33 is the fund fact sheet for the 2045 fund for the quarter ending March 31, 2011. Exhibit 34 is the fund fact sheet for the 2045 fund for the quarter ending June 30, 2011. Exhibit 35 is the fund fact sheet for the 2045 fund for the quarter ending September 30, 2011. Exhibit 36 is the fund fact sheet for the 2045 fund for the quarter ending September 31, 2011.

Exhibit 37 is the fund fact sheet for the 2045 fund for the quarter ending March 31, 2012. Exhibit 38 is the fund fact sheet for the 2045 fund for the quarter ending June 30, 2012. Exhibit 39 is the fund fact sheet for the 2045 fund for the quarter ending September 30, 2012. Did you see each of those exhibits, Mr. Sulyma?

A I followed along, yes.

Q During your period of employment at Intel, you saw one or more of these fund fact sheets; correct?

A I don’t think I did.

Q What do you mean you don’t think you did?

A I don’t believe that I saw this level of detail for these investments.

Q Well, you reviewed before information that was made available to you on NetBenefits, including the fund fact sheets –

MR. BARTON: Objection to form: vague as to time.

BY MR. BUCKLEY:

Q – so I think we agreed earlier it’s possible that you reviewed the fund fact sheets.

MR. BARTON: Objection; calls for –

BY MR. BUCKLEY:

Q Isn’t that correct?

A It seems like they were available on NetBenefits.

Q Okay. And you certainly reviewed them, or at least you reviewed the one for the quarter ending March 31, 2010, before you made your investment choice to invest in the 2045 fund; correct?

MR. BARTON: Objection to form; asked and answered.

BY MR. BUCKLEY:

Q You can answer.

A I don’t think that I saw this level of detail.

Q Well, you already had the click history, indicating that you looked at the performance details before you made your investment choice; correct?

MR. BARTON: Objection to form; asked and answered; improper impeachment; no foundation.

BY MR. BUCKLEY:

Q Go ahead. You can answer.

A I am aware that the – the click sheet says that that link was clicked on.

Q Okay. Thank you.

I want to ask you about a few of these fund fact sheets. Let's begin with Exhibit 34, which is the fund fact sheet for the 2045 fund for hedge funds and 5 percent commodities, end quote. Do you see that?

A I see those words, yes.

Q Do you see on the right-hand side of the page, Target Date Allocation as of June 30, 2011, there's a graph and it indicates one sleeve of investments for hedge funds?

Do you see that?

A Yes.

Q It indicates the proportion or percentage of such investments; correct?

A I understand that, yes.

Q Looking now at the left-hand column of this page, page 2 of 5 of Exhibit 34, you'll see there's a Morningstar Analyst Report.

Are you familiar with Morningstar?

A Not before yesterday.

Q What happened yesterday?

A I met with my counsel.

Q Had you ever heard of Morningstar before?

A I hadn't, no.

Q Let's look at the Morningstar Analyst Report. Let's go to the end of the first column, about five items up from the bottom, the quote, quote, To further reduce equity and market risk, the fund is also investing more heavily in hedge funds. Strategies, including distressed-debt investing and statistical arbitrage, have been chosen for their ability to deliver returns that are uncorrelated with traditional stocks and bonds, end quote.

Then looking at the last paragraph of that same column, it reads as follows, quote, The above changes should help to diversify sources of return and risk for investors, resulting in better risk-adjusted performance over the long term [sic]. That said, it doesn't come free of charge, including activity – sorry, including actively run strategies into the mix, especially dynamic hedge funds, will mean higher expense ratios, unquote.

Do you see that?

A I see those words, yes.

Q And you see, also, on the right-hand side of that column, it says, Portfolio Analysis, and there's a table that indicates that alternative investments were 29.64 percent of the allocation as of June 30th, 2011.

Do you see that?

A That's what it says here, yes.

Q Again, this was all information that was made available to you through NetBenefits?

MR. BARTON: Objection to form; no foundation.

BY MR. BUCKLEY:

Q You can answer.

A If you say so, but, again, I wouldn't have understood this back at that time.

Q Okay.

A I barely understand it today, and so this – this wouldn't have made much sense even if I did see it.

Q Dr. Sulyma, you have a Ph.D. in physics; correct?

A That's correct.

Q Let's be realistic.

You're well capable of understanding a chart, are you not?

A Yeah, I understand this chart up here.

Q And you're pretty good at math, aren't you?

A Uh-huh.

Q Does "uh-huh" mean yes?

A Yes. That's correct.

* * *

graph?

A I think so. I don't have much experience with, you know, financial analysis, but I believe I can interpret to some extent.

Q You're – you're very good at math, aren't you?

MR. BARTON: Objection to form; asked and answered.

BY MR. BUCKLEY:

Q You have to be to be a Ph.D. in physics.

A Sure. But math has a lot of different fields of study in it. Economics and statistics may be very different than spatial mathematics or Kepler mathematics or mechanical or electrochemical.

There's many different types of mathematics, and this is not one that I'm very familiar or comfortable with.

Q I mean, if someone tells you that 25 percent of your fund is investment – invested in hedge funds, you can comprehend, can't you, that 25 percent of your assets are invested in hedge funds?

A Yes, that would make sense –

Q Okay. Sure.

A – even though I don't really know what a hedge fund is.

Q All right. Let's look at the fund fact sheets for the Global Diversified Fund, which we're going to mark as Exhibits 40 to 46.

(Sulyma Deposition Exhibit 40, Sulyma Deposition Exhibit 41, Sulyma Deposition Exhibit 42, Sulyma Deposition Exhibit 43, Sulyma Deposition Exhibit 44, Sulyma Deposition Exhibit 45 and Sulyma Deposition Exhibit 46 were marked for identification and attached to the transcript.)

BY MR. BUCKLEY:

Q I'll hand you those.

MR. BARTON: Did we skip 39?

MR. BUCKLEY: I hope not.

MR. BARTON: I thought the last Target Date Fund was 38.

MR. BUCKLEY: I didn't mean it to be, so if I –

MR. BARTON: So, then, we're – we're starting with 39?

MR. BUCKLEY: Let me just – no.

Let me just pause and ask if you can

* * *

A Yes.

Q Looking in the middle of the page, you'll see there's a table called Alternative Fund Composition, and it says that – that for a hedge fund composite as of the relevant date, with regard to the Alternative Fund Composition, that hedge funds were 65.86 percent of the Alternative Fund Composition.

Do you see that?

A That's what it says here.

Q Do you comprehend that statement?

A Not fully.

Q Well, do you understand that there were a certain segment of investments that were allocated to alternatives based on this document?

A I –

MR. BARTON: Object to the form; vague.

THE WITNESS: I don't know what "alternatives" refer to.

BY MR. BUCKLEY:

Q Okay. That's not something you understand?

A No.

Q All right. Let's turn to page 3 of 5.

There's Investment Overview from Intel.

Looking at the middle column – there are three columns. Looking at the middle column and the first full paragraph, it reads, quote, The fund invests globally to both traditional and alternative asset classes.

Accordingly, the current target asset allocation of the Global Diversified Fund is comprised of 35 percent global equity (long only) 25 percent hedge funds, 25 percent global fixed-income (bonds), 10 percent real estate (e.g., commodities, real estate, and natural resource-focused private equity) and 5 percent private equity, end quote.

Reading that, you comprehend that the fund was invested 25 percent in hedge funds?

A (Witness reviews document.)

No, I don’t fully understand that.

Q So you say you don’t understand – you read that and you don’t understand that 25 percent of the allocation was to hedge funds?

A Correct. If it just said – if all it said was 25 percent allocated to hedge funds, I would understand it, but there’s too much other language in there that I don’t understand the full statement.

Q It says there’s 5 percent allocated to private equity.

Do you understand that 5 percent was allocated to private equity?

A If you say so.

Q Do you have a different understanding or –

A I don’t have much full understanding.

Q Reading this document, the paragraph I just called your attention to –

A Uh-huh.

Q – what percentage was allocated to private equity?

A I see a 5 percent next to “private equity” –

Q Okay.

A – but I don’t know if that’s the whole story.

Q Well, that’s what you were being told, 5 percent was allocated to private equity; correct?

MR. BARTON: Objection to form.

THE WITNESS: If you say so.

BY MR. BUCKLEY:

Q Well, I’m asking what you understand.

MR. BARTON: Object to form.

BY MR. BUCKLEY:

Q I’m testing your comprehension –

A You’re asking what I understand –

Q – as a Ph.D. in physics, if you understand that.

A If you’re asking what I understand based on this paragraph, I don’t understand it.

Q You see there is also a Historical

Profit Sharing Allocation chart. You see there’s an entry referencing hedge funds.

Do you see that on that page?

A I do see that.

Q I’m going to ask you to look at Exhibit Number 45. This is the fund fact sheet for Global Diversified Fund for the period ending June 30, 2012.

Do you see that?

A I do. I have Exhibit 45 in front of me.

Q Looking at the middle of the page, you see a table called Portfolio Analysis?

A I see that.

Q And you see there are various categories, including Alternative Investments. Do you see that?

* * *

A I don't comprehend, but I realize –

I – I do see the numbers next to that particular value there. I don't know if that's the full story or not.

Q Whether that's the full story, do you understand that this is indicating that 35.36 percent of the portfolio is allocated to alternative investments?

A I see that the number 35.36 is next to Alternative Investments for Exhibit 45.

Q Okay. And do you see right beneath that it says, Alternative Fund Composition, where the document is telling you what the alternatives consist of, and it's indicating that all those alternatives, 65.20 percent was hedge fund composites?

Do you see that?

A I see those words, yeah.

Q Do you understand what that means?

A No, I don't. I don't understand what hedge funds are.

Q Well, whether – whether or not you understand what hedge funds are, do you understand that of the alternatives, 65 percent – 65.20 percent of the alternatives consisted of

A Okay.

Q You with me?

A I – I see that on the page, yes.

Q Okay. Good.

Now, there will be evidence that you actually clicked on one of these Add to Calendar links to sign up for these virtual roadshows.

Do you recall that?

A I don't recall that.

MR. BARTON: Objection to form. The question is unclear.

BY MR. BUCKLEY:

Q I'm telling you there's evidence that you actually clicked on one of these links to sign up for a virtual seminar.

Do you recall doing that?

A I don't recall doing that.

Q Okay. Do you recall attending one?

A No, I definitely don't recall attending one.

Q Do you have any explanation for why if you clicked on the link indicating that you were going to attend such a seminar that you failed to do so?

MR. BARTON: Objection to form; no foundation.

BY MR. BUCKLEY:

Q You can answer.

A Well, one of the possibilities was one of the reasons I – I left Intel was my workload was kind of out of control, and so just because I signed up for something like a 401(k) seminar doesn't mean I would have had time to attend it.

Q This is in 2011. You didn't leave until September 2012.

It was a year before that; right?

A Uh-huh.

Q So you're – you're speculating as to why you didn't attend the roadshow you signed up for?

A I'm giving a possible explanation; although, I – I honestly don't remember even if I clicked on the link.

Q And looking again at this exhibit, on the right-hand corner, there's a box called Resources, and it says, Learn more at retirement at – I'm sorry, learn more at www.retireatintel.com.

Does that refresh your recollection that your attention was called to that site? Exhibit 48 was the QDIA notice – excuse me, 47 and 48, Exhibits 47 and 48, Exhibit 47 was the QDIA notice email, and Exhibit 48 was the QDIA notice. And I said they were attached. That's incorrect.

The – Exhibit 47 was the email giving notification of the QDIA report, and then there was a link that you had to go through to get to Exhibit 48, which was the QDIA notice itself.

I just want to correct that because I said something that was incorrect.

It doesn't change, I don't think, any of the answers. You still don't recall clicking any link to get to the formal QDIA information in Exhibit 48; correct?

A Correct. I don't recall clicking that link.

Q Okay. Thanks.

So going back to 55 and 56, I identified Exhibit 55 for the record, and it's, again, contacts the Intel 401(k) savings plan and it's indicating that federal law requires certain plan investment-related information to be provided to you either because you have an account in the plan or otherwise eligible to participate.

And it indicates further, To access this information [sic] now, you can go to this link called, Here, unquote – quote/unquote, and then the information is contained in the section on Important Plan Information.

So Exhibit 56, which is entitled Intel 401(k) Savings Plan, Important Plan And Investment-Related Information, Including The Plan's Investment Options, Performance, History, Fees And Expenses. That's Exhibit 56.

Do you recall receiving Exhibit 55, which is addressed to you?

A I don't specifically remember, no.

Q And do you have any basis for denying you received it?

A I have no evidence saying I did not receive this document.

Q And looking at Exhibit 56, do you recall clicking a link and viewing this document, the 401(k) Intel Savings Plan information document?

A It does not look familiar.

Q Okay. We'll take up two other exhibits now.

(Sulyma Deposition Exhibit 57 and Sulyma Deposition Exhibit 58 were marked for identification and attached to the transcript.)

BY MR. BUCKLEY:

Q I'm going to hand you Exhibits 57 and 58. Exhibit 57 is an email from Fidelity Retirement

Services and Intel Financial Benefits dated August 30, 2012, addressed to Christopher Sulyma. The subject is, Important Plan Information.

And this is with regard to the Intel Retirement Contribution Plan, and here, again, it indicates that federal law requires that you receive certain plan and investment-related information because you have an account with the plan or – or are eligible to participate and that that information could be obtained by clicking on a link called, Here, quote/unquote.

And then Exhibit 58 is a document titled Intel Retirement Contribution Plan, Important Plan And Investment-Related Information, Including The Plan's Investment Options, Performance History, Fees And Expenses.

Do you recall receiving Exhibit 57?

A I don't recall receiving either of these two exhibits, 57 or 58.

And, to note, the August 30th, when I would have received this, is about two days before my separation date. So it's possible that I might have received the email and not seen it because I was in the process of separating.

Q I think I have your last date as September 2nd, 2012.

A And this is addressed August 30th, 2012.

Q Right. So still during the period of your employment; right?

A Yeah, yeah, two days before I left.

Q Do you have any basis for denying that you received this email?

A I do not have any evidence saying I did not receive this email; although, I may not have noticed I received the email because it was so close to my separation date. I got a lot of emails.

(Sulyma Deposition Exhibit 26, Sulyma Deposition Exhibit 27 and Sulyma Deposition Exhibit 28 were marked for identification and attached to the transcript.)

BY MR. BUCKLEY:

Q Let me hand you what we've marked as Exhibits 26, 27 and 28.

MR. BARTON: I'm sorry. What's the numbers of these?

MR. BUCKLEY: Twenty-six, 27 and 28.

MR. BARTON: Twenty-six, 27 and 28.

BY MR. BUCKLEY:

Q So Exhibit 26 is a 2010 summary plan description that covers the Intel Corporation 401(k) savings plan, the Intel profit-sharing plan and the Intel defined benefit pension plan, dated, again, January 2010.

Do you recall seeing this document before?

A Not before yesterday.

Q Do you recall receiving it from Intel at the time you became employed by Intel in June 2010?

A No, I don't remember seeing it –

Q Okay.

A – in 2010.

Q Do you have any basis for denying that you received a hard copy of this document at the time you became employed by Intel?

A I mean, I don't have any evidence saying that, you know, it might have been in my mailbox or dropped on my desk or it might have been attempted to be delivered, but I don't remember receiving anything.

Q But do you affirmatively have a recollection or basis for saying you never got this document?

A I – I don't remember receiving the document.

Q But do you have a basis for denying you received it?

A I don't have any evidence that states I did not receive it.

Q Look at Exhibit 27, which is the 2011 summary plan description, again, for the 401(k) savings plan and other plans dated January 2011.

Do you recall seeing this document before?

A I do not.

Q Do you have any basis for denying that this was made available to you?

A I don't have any evidence saying it was not made available to me, but if I did receive something like this, I probably not would have read it cover to cover. It's quite a lengthy document.

Q Looking at Exhibit Number 28, which is the 2012 summary plan description covering the 401(k) savings plan, retirement contribution plan, the minimum pension plan, dated January 2012.

Do you recall receiving this document?

A I do not.

Q Do you have any basis for denying that this document was made available to you or given to you?

A I have no evidence saying it was not given to me.

Q Turn to what's Bates stamped lower right-hand corner 93 of the document. And the document itself on its numbering system identifies this page as 18.11 dated January 1, 2012. And on that page there is a section called Target Date Funds.

Do you see that?

A I see it today.

Q Immediately under the heading Target Date Funds, drawing your attention to the second sentence of the first full paragraph, it states, quote, Each fund offers a broadly diversified mix of domestic and international stocks and bonds and includes investments not typically available to

Q – seen –

A I – I –

Q – today, do you have any –

A To –

Q – doubt –

A – be accurate –

Q – that that's not –

MR. BARTON: Don't talk over each other.

BY MR. BUCKLEY:

Q Based on all the documents you've seen today, do you have any doubt that hedge funds were included in the plan?

MR. BARTON: Objection to form; no foundation.

THE WITNESS: As of today, I – I do believe hedge funds were in the plan.

BY MR. BUCKLEY:

Q Okay. Fine.

Now, I direct your attention to the indented bullet point on the 401(k) Global Diversified Fund. It states as follows, that this fund, quote, is a balanced investment fund composed – comprised of domestic and international equity, global bond and short-term investments, hedge funds, private equity, real estate assets, in parenthesis, (e.g., commodities, real estate and natural resource-focused private equity), period.

This fund replicates the asset allocation mix of the Global Diversified Fund in the Retirement Contribution Plan, end quote.

Do you understand that to mean that the Global Diversified Fund, in which you were invested, included hedge funds and private equity as investments?

A Today, I understand that.

Q Through your counsel, you've identified two individuals who claim to have relevant knowledge of the matters in the complaint, and they are a Mr. Barr (phonetic) and Mr. Ulmstead (phonetic).

Have you ever spoken to either individual?

A No, I haven't.

Q Do you know who they are?

A No, I don't.

Q So you left Intel, as we discussed, in September of 2012, and you filed this lawsuit in October 2015; correct?

THE VIDEOGRAPHER: Off the record at 12:19 p.m.

(Recess – 12:19 p.m.)

(After recess – 12:31 p.m.)

THE VIDEOGRAPHER: We're going back on the record at 12:31 p.m.

MR. BUCKLEY: Okay. So I have no further questions at this time, and we reserve our rights to reopen the deposition if your lawsuit survives our pending motion to dismiss based on summary judgment and so forth.

So I have nothing further.

MR. BARTON: Okay. I'm going to ask some follow-up questions.

EXAMINATION BY COUNSEL FOR THE PLAINTIFF

BY MR. BARTON:

Q Mr. Sulyma, will you take a look at Exhibit Number 1?

A Number 1, okay.

Q It's all the way down to your right.

Prior to today, have you ever seen Exhibit Number 1 before?

A No.

Q Do you have any – other than what defendants' counsel has represented to you as to what Exhibit Number 1 is, do you have any personal knowledge as to what Exhibit Number 1 is –

A No.

Q – or purports to be?

A No.

Q Take a look at Exhibit Number 3. Those are your account statements. You'll see on Exhibit

Number 3, series 3 – it's 3 through 15 are your account statements.

A Including 15?

Q It's anything that's your account statements.

A Okay. Got up to 14.

Q Okay, 14. Three through 14.

Do you see anything on your account statements that indicates that the Target Date Funds are invested in hedge funds?

A (Witness reviews documents.)

Sorry. Give me a minute.

After looking through the entire Exhibit 3, I don't see anything about hedge funds.

Q And did you see anything about private equity?

A I did not.

Q You see on the first page of each of your account statements there's an Your Asset Allocation.

Do you see that?

A I see that.

Q And what does that read?

A It reads stock 63 percent, bonds 16 percent, short-term 21 percent.

Q Your – do you know whether or not short-term includes hedge funds or private equity?

A I have no idea.

Q Do you know whether or not hedge funds or private equity would be considered a short-term investment?

A I don't know that.

Q Take a look at Exhibit Number 34, which is the fact fund sheets, about the Target Date 2045 Fund.

Do you have that in front of you?

A I do.

Q And you see up at the top there's a – top right-hand side says, Over- – Overall Morningstar rating?

Do you see that?

A I do.

Q And then there's a Morningstar Return.

Do you see that?

A I do.

Q And what does the Morningstar Return read?

A It says, High.

Q Do you have an understanding what that means?

A It sounds good.

Q How about onto the right-hand side? It says, Morningstar Risk.

Do you see what that says?

A I do.

Q And what does that say?

A It says, Low.

Q And what does that convey to you?

A It sounds like it's a low-risk investment. I'm not 100 percent sure, but it sounds pretty good, too.

Q Now, on that same document, defense counsel read into the record on the second page, which is FIDELITY_SULYMA145 – he read, I believe, the last paragraph on the left-hand side.

Do you see that?

A I do.

Q And the second sentence in, there's a reference to dynamic hedge funds. Do you see that?

A I see the words "dynamic hedge funds."

Q Do you understand the word "dynamic"?

A Yes.

Q Do you understand the word "hedge"?

A Yes.

Q Do you understand the word "fund"?

A I do.

Q Do you know what a dynamic hedge fund is?

A No.

Q Did you in 2010, '11 and '12?

A No.

Q Prior to him reading that today, have you ever heard that term before, "dynamic hedge fund"?

A No, I don't think so.

Q In 2010, 2011 and 2012, did you know what a hedge fund was?

A No.

Q In 2010, '11 or '12, did you have any understanding of whether a 25 percent investment is an appropriate allocation for a target hedge fund?

A I'm not a financial expert, so I didn't see anything wrong with that.

Q And in 2010 or '11 or '12, did you have any understanding of what private equity meant?

A No.

Q Okay. Prior to being involved in this lawsuit, had you ever heard of private equity before?

A I hadn't.

Q Take a look at Number 41. It's a fund fact sheet for the Global Diversified Fund.

A Okay. I've got Exhibit 41.

Q And on this – what is it? – the third page, defendants' counsel pointed you to the middle paragraph that stated that 5 percent of the fund was in private equity. Do you see that?

A I see those words on the page.

Q And if you look down below, are you able to – and there's categories of Global Equity, Real Estate, Real Assets. Do you see that?

A I see those headings.

Q Are you able to determine where 5 percent of private equity goes or is categorized below?

A I don't fully understand these terms, but I don't see anywhere where it indicates 5 percent private equity.

Q Do you see something under Global Equity, it lists Hedge Funds and then Private Equity/Venture Capital?

A I don't see any of those words.

Q Do you see down on the left, Allocation –

A Oh, yes.

Q – By Asset Class and there's Global Equity, and underneath that, it says – underneath Hedge Funds, it says Private Equity/Venture Capital.

Do you see that?

A The text is a bit fuzzy, but I do see that, yes.

Q Do you see a percentage allocation of 1.8 percent?

A In the second column, percentage, it does say 1.8.

Q Do you know why it only says 1.8 versus 5 percent?

A I have no idea.

Q And defense counsel also showed you Exhibits 15 through 25 that were various emails about your changing your contribution in 2011. Do you remember that?

A I have those exhibits in front of me.

Q Do you have any idea why there weren't any changes in 2000- – any emails reflecting changes in 2010, when you would obviously have initiated investment?

A I – I don't understand why there's no emails from there. I just see what's in front of me.

Q And throughout the day, defense counsel asked you whether or not you had any information – or strike – any evidence as to whether or not – that you didn't receive certain documents.

Remember that?

A Yes.

Q If you had received documents in the mail, do you believe you would have kept those documents – about your retirement –

MR. BUCKLEY: Objection.

BY MR. BARTON:

Q – plan?

MR. BUCKLEY: Objection: foundation.

MR. BARTON: I'll reask the question.

BY MR. BARTON:

Q For information – with res- – do you have a practice with respect to retaining or discarding information that you receive about your investments – that you receive in the mail?

A Yeah. Everything I receive in the mail typically goes into kind of a big pile in the corner of my loft area. It's probably not the best filing structure, but it all gets in – in a set there.

Q In all the stuff that you saw here today, all the documents you were shown, do you see any indication of whether investing in hedge funds or private equity was unusual for target date funds?

A Not in any of this documentation, no.

Q Do you know whether hedge funds is an actual asset class?

A I don't know what an asset class is, so I'm not sure.

Q If you take a look at what is 26, 27, 28, those are the summary plan descriptions, or SPDs.

A I have Exhibits 28, 27 and 26.

Q If you would look at the 2012 SPD, which is Exhibit 28, and look at the page which defendants' counsel referred to you, which is FIDELITY_SULYMA 93.

If you look – there are two bullet points that defendants' counsel referred you to, the Target Date Income Fund and the 401(k) Global Diversified Fund.

Do you see that?

A I do.

Q And then there is a paragraph underneath that.

Do you see that?

A Yeah, there's two paragraphs underneath.

Q And the paragraph immediately underneath, there's a second sentence there. Do you see that?

A Starts, With no?

Q Correct.

A Yes.

Q Can you read that into the record?

A With no marketing costs and other savings, they generally have lower management expenses and fees than mutual funds.

Q And the "they" there, do you understand that to be referring to the target date funds?

A From the –

MR. BUCKLEY: Let's not – let's not lead too much.

BY MR. BARTON:

Q What do you understand the "they" to refer to in that sentence?

A Based on the – the previous sentence, the target date funds.

Q Knowing what you now know today, do you believe that to be a true statement?

A No.

MR. BUCKLEY: Is this –

BY MR. BARTON:

Q Let's take a look at the summary plan description in 2010 and 2000- – well, let's take a look at 2010. And let's take a look on page – what's Bates stamped FIDELITY_SULYMA 9 through 10. It's at the bottom of 9 and the top of 10.

And do you see any reference under the part that's listed as LifeStage Funds to hedge funds?

A (Witness reviews document.)

I don't see any mention of hedge funds in that paragraph – or in that section.

Q Let's take a look now at the 2011 summary plan description on FIDELITY_SULYMA 156, also under LifeStage Funds.

Tell me if you see any reference there to hedge funds or private equity.

A (Witness reviews document.)

I don't see any mention of hedge funds or private equity in that section.

Q In 2010, '11 or '12, do you believe you had an understanding of what an appropriate level of performance for a Target Date Fund would have been?

A No. Especially being my first 401(k) plan, I – I didn't have any idea.

Q Did you have an understanding in 2010, '11 or '12 in terms of what an appropriate asset mix would have been for a Target Date Fund?

A No, not at that time.

Q Did you have an understanding in 2010, '11 or '12 in terms of what would have been an appropriate level of fees or expenses to be charging for a Target Date Fund the size of one of the Intel funds?

A Both at that time period and now, I don't have a good idea of what an appropriate assessment of fees would be.

MR. BARTON: I have nothing further.

MR. BUCKLEY: I have nothing.

THE VIDEOGRAPHER: We are going off the record at 12:47 p.m.

(Signature having not been waived, the Videotaped Deposition of CHRISTOPHER MICHAEL SULYMA ended at 12:47 p.m.)

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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

Case No: 15-cv-04977-NC

CHRISTOPHER M. SULYMA,
and all others similarly situated,

Plaintiff,

v.

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

Defendants,

and

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

Nominal Defendants.

DECLARATION OF CHRISTOPHER M. SULYMA IN OPPOSITION TO DEFENDANTS' MOTION FOR SUMMARY JUDGMENT

I, Christopher M. Sulyma, hereby declare under penalty of perjury of the laws of the United States as follows:

1. I am the Plaintiff in the above-caption litigation and I submit this declaration in support of Plaintiff's Opposition to Defendants' Motion for Summary Judgment.

2. I was employed by Intel immediately after completing graduate school in May 2011. I began work at Intel in June 2010. Shortly after I was employed by Intel I became a participant in the Intel 401(k) Plan. During my employment, I was also a participant in the Retirement Contribution Plan.

3. I have been married to my wife, Rebecca, since October 2008. During the time that I was employed at Intel, she was my beneficiary for the Intel retirement plans.

4. Prior to the time that I became a participant in the Intel retirement plans, I had never been a participant in any other retirement plan nor did I have any other retirement savings. As I had been a student until I was employed by Intel, I also had no significant investments. At least during the time that I was employed by Intel and participated in the Intel retirement plans, I would not consider myself financially sophisticated.

5. Until the time that I contacted my counsel in this litigation, I was unaware that the monies that I had invested through the Intel retirement plans had been invested in hedge funds or private equity. I do not recall seeing any documents during my employment at Intel that alerted me to the fact that my retirement monies were significantly invested in hedge funds or private equity.

6. During the time that I was employed at Intel, I did not know whether investments in hedge funds

or private was an unusual investment for target date funds.

7. During the time that I was employed at Intel, I did not know what an appropriate allocation of assets would have been for a target date fund or a diversified fund.

8. During the time that I was employed at Intel, I did not know what an appropriate fee or expense ratio was for a retirement plan the size of Intels' plans or for funds such as the target date fund or a diversified fund.

9. Prior to the time that this litigation was filed, and in order to investigate whether there were any potential claims, I submitted a request for plan documents to the Intel Retirement Plans Administrative Committee on January 14, 2015. A true and correct copy of this request is attached as Exhibit X.

10. I received no response to my plan document request within thirty days of receipt, as required by ERISA. After Defendants failed to respond to my request, I sent a follow-up letter on March 3, 2015, a true and correct copy of which is attached as Exhibit Y.

11. In response to my follow-up letter, I received an email from Theo Lacy, identified a Program Manager, Intel Global Retirement Benefits Office/ Human Resources, in April 2015 who provided me with a number of documents from the Plan Administrator of the Intel Plans. A true and correct copy of the list of documents provided by the Plan Administrator is attached as Exhibit Z. provided all of the documents that I received from the Plan

Administrator (as well as any prior disclosures that I had received) to my attorneys.

12. Between the time that I initially contacted my attorneys and the time that the Complaint was filed, I was aware that my attorneys were working with several experts to assist the in analyzing the facts, determining whether the investments made by the Intel plans were appropriate for retirement plans generally, target date funds and whether expressed purposes and strategies employed made sense and the implementation were consistent with the objectives. I was also aware that my attorneys retained experts to help them analyze whether the fees or expenses charged were appropriate or were excessive and whether the same strategies and goals could have been achieved for less cost and less risk.

13. Prior to the time that the initial complaint was filed, I reviewed at least one if not more than one draft of the complaint. Nearly all of the factual information contained in the complaint was information that I was not aware of during the time that I was employed at Intel.

The foregoing is true to the best of my knowledge and belief.

Executed on November 15, 2016 in Albuquerque, NM.

/s/ Christopher M. Sulyma
Christopher M. Sulyma