

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Karen L. Handorf (*Pro Hac Vice* forthcoming)
Michelle C. Yau (*Pro Hac Vice* forthcoming)
COHEN MILSTEIN SELLERS & TOLL PLLC
1100 New York Ave. NW • Fifth Floor
Washington, DC 20005
Telephone: (202) 408-4600
Fax: (202) 408-4699

Todd Jackson (Cal. Bar No. 202598)
Nina Wasow (Cal. Bar No. 242047)
FEINBERG, JACKSON, WORTHMAN &
WASOW, LLP
383 4th Street • Suite 201
Oakland, CA 94607
Telephone: (510) 269-7998
Fax: (510) 269-7994

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION**

Charles Baird, individually, and on behalf of
all others similarly situated, and on behalf of
the BlackRock Retirement Savings Plan,

Plaintiffs,

vs.

BlackRock Institutional Trust Company,
N.A.; BlackRock, Inc.; The BlackRock, Inc.
Retirement Committee; Jason Herman, named
Plan Sponsor; John and Jane Does 1-40,
Members of the BlackRock Retirement
Committee; The Administrative Committee of
the Retirement Committee; John and Jane
Does 1-20, Members of the Administrative
Committee of the Retirement Committee; The
Investment Committee of the Retirement
Committee; John and Jane Does 21-40,
Members of the Investment Committee of the
Retirement Committee; each an individual,
and John and Jane Does 41-60, each an
individual,

Defendants.

CLASS ACTION COMPLAINT

I. NATURE OF THE ACTION

1
2
3 1. This is a civil enforcement action brought pursuant to the Employee Retirement
4 Income Security Act of 1974, as amended, (“ERISA”), 29 U.S.C. § 1132(a)(2) & (a)(3), for
5 violations of ERISA’s fiduciary duty and prohibited transactions provisions. It is brought as a class
6 action by Charles Baird, who is a participant in the BlackRock Retirement Savings Plan (the
7 “BlackRock Plan” or the “Plan”), on behalf of the Plan and all similarly situated Plan participants
8 and beneficiaries (henceforth, collectively, “participants”), and all predecessor plans.
9

10 2. This suit is about corporate self-dealing at the expense of a company’s own
11 retirement plan. Defendants include BlackRock, Inc. (“BlackRock” or the “Company”), BlackRock
12 Institutional Trust Company, N.A., the Retirement Committee appointed by the Company and its
13 individual members (collectively referred to as the “Retirement Committee Defendants”), and the
14 two sub-committees of the Retirement Committee: (1) the Investment Committee of the Retirement
15 Committee and its individual members (collectively referred to as the “Investment Committee
16 Defendants”), and (2) the Administrative Committee of the Retirement Committee and its individual
17 members (collectively referred to as the “Administrative Committee Defendants”). The Retirement
18 Committee Defendants, Investment Committee Defendants, Administrative Committee Defendants,
19 and BlackRock, Inc. (collectively the “Fiduciary Defendants”) are all Plan fiduciaries who are
20 required by ERISA to act prudently, solely in the interest of the Plan’s participants, and to prevent
21 the Plan from engaging in prohibited transactions when acting with respect to the Plan.
22

23 3. The Plan is a defined contribution pension plan as defined under ERISA and is
24 subject to the provisions of ERISA. The Plan provides for retirement income for BlackRock
25 employees and former employees. That retirement income depends on contributions made on behalf
26
27

1 of each employee by his or her employer, deferrals of employee compensation and employer
2 matching contributions, and on the performance of investment options net of fees and expenses.

3 4. Fees and expenses (both direct and indirect) are determined by the fund options
4 selected and maintained by the fiduciaries of the Plan.

5 5. BlackRock is the sponsor of the Plan. BlackRock operates various investment-related
6 businesses, including investment banking, brokerage, and investment management. BlackRock is by
7 far the world's largest asset manager, with \$5.1 trillion in assets under management. The Plan has
8 approximately \$1.56 billion in assets and approximately 9,700 participants. Combined with
9 BlackRock's investment sophistication, the Plan has enormous leverage to demand and receive
10 superior investment products and services.

11 6. The Fiduciary Defendants were and are obligated to act for the exclusive benefit of
12 participants and beneficiaries and ensure that plan expenses are reasonable. These duties are the
13 "highest known to law" and must be performed with "an eye single to the interests of the participants
14 and beneficiaries." *Donovan v. Bierwirth*, 680 F.2d 263, 271, 272 n.8 (2d Cir. 1982); *Herman v.*
15 *NationsBank Trust*, 126 F.3d 1354, 1361 (11th Cir. 1997).

16 7. The Fiduciary Defendants failed to honor these duties. Instead of using BlackRock's
17 sophistication and the Plan's bargaining power to benefit participants and beneficiaries, BlackRock
18 selected and retained high-cost and poor-performing investment options, with excessive layers of
19 hidden fees that are not included in the fund expense ratios.

20 8. Almost all of the fund options offered to BlackRock employees and participants are
21 funds affiliated with BlackRock, Inc., meaning managed and/or maintained by a subsidiary of
22 BlackRock, Inc., such as BlackRock Institutional Trust Company, N.A. or BlackRock Advisors,
23 LLC (collectively referred to as the "BlackRock Affiliated Funds" or "BlackRock Proprietary
24 Funds").

1 9. The continued investment of the Plan's assets in the BlackRock Affiliated Funds
2 and/or BlackRock Proprietary Funds is expressly prohibited by ERISA. ERISA § 406, 29 U.S.C.
3 1106.

4 10. As a result of the Fiduciary Defendants' disloyal and imprudent monitoring, several
5 BlackRock Proprietary Funds that would have been removed by a prudent and loyal fiduciary
6 remained in the Plan during the Class Period (April 5, 2011 through judgment in this case).

7 11. BlackRock is a recognized leader in the investments and financial services fields.
8 Each year, thousands of BlackRock employees and former employees invested \$125 million, on
9 average, in the Plan.

10 12. Plan participants were subjected to higher hidden fees through excessive fund
11 layering, where one BlackRock fund invests in a rabbit hole of other BlackRock funds. In this
12 layering scheme, each BlackRock fund charges additional fees to employee investors and those
13 unnecessary layers of fees cannibalize the returns of the employee.

14 13. In total, 21 of the BlackRock Proprietary Funds offered to employees through the
15 Plan funnel the employees' retirement assets into other BlackRock funds, which charge additional
16 fees (not reported in the expense ratio), thereby eroding the participants' returns.

17 14. In some cases, a single BlackRock fund is funneled into as many as an additional 27
18 BlackRock Proprietary Funds.

19 15. It is thus not surprising that the majority of the BlackRock Proprietary Funds in the
20 Plan performed worse than their respective benchmarks and other comparable non-proprietary funds
21 with similar investment strategies.

22 16. The fees charged by the BlackRock Proprietary Funds in the Plan (most of which
23 were hidden in excessive fund layering) were higher than the fees charged by comparative funds
24 with like assets and similar investment strategies.

1 17. BlackRock funds also underperformed comparative funds despite high fees. For
2 example, despite charging a 500% - 871% premium, BlackRock's Low Duration Bond Fund has
3 underperformed Vanguard's alternative over ten, five, three, and one year horizons.

4 18. The Fiduciary Defendants failed to remove and replace the BlackRock Proprietary
5 Funds despite the fact that the continued investment of Plan assets in such funds constituted
6 violations of ERISA's duties of prudence, loyalty and constituted self-dealing and prohibited
7 transactions.

8 19. In particular, the \$509 million in retirement assets that employees and participants
9 invested in BlackRock's LifePath Funds were imprudent and disloyal investments because each of
10 the BlackRock LifePath Funds invests in 27 other BlackRock Funds, creating excessive fee layering
11 that cannibalizes the employees' investment returns.

12 20. As a result, the BlackRock LifePath Funds in the Plan underperformed relative to
13 target date benchmarks and alternative target date funds with comparable investment strategies. On
14 average, between December 31, 2010 and December 31, 2015, the nine Target Date Funds
15 underperformed the Dow Jones Target Date Index counterparts by approximately 2,000 basis points
16 ("bps"). Based on the \$509 million the Plan invested in the BlackRock LifePath Funds, employees
17 lost tens of millions of dollars in retirement assets due to the excessive fund layering of the
18 BlackRock LifePath Funds, leading to excessive fees.

19 21. Each of the ten BlackRock LifePath Funds funnel employee retirement assets into 27
20 additional BlackRock proprietary funds, which results in at least 26 additional layers of fees (see
21 discussion below).

22 22. A prudent fiduciary would have known that the investments were not suitable for the
23 Plan. By acting to benefit themselves and contrary to their fiduciary duty, the Fiduciary Defendants
24

1 caused the Plan, and hence participants, to suffer losses through excessive fees and
2 underperformance of over \$60 million.

3 23. Plaintiff seeks relief including disgorgement of all investment advisory fees paid to
4 BlackRock and/or its subsidiaries from Plan assets, as well as the losses caused to their retirement
5 accounts from the many fiduciary breaches and prohibited transactions.
6

7 24. The class consists entirely of participants in the Plan, and their beneficiaries,
8 (excluding the Defendants) who had a balance through their Plan accounts in any of the BlackRock
9 Proprietary Funds at any time during the Class Period.

10 25. The allegations in this complaint are based upon counsel's investigation of public
11 documents, including filings with the U.S. Department of Labor and U.S. Securities and Exchange
12 Commission. As many facts are still within Defendants' exclusive possession, Plaintiffs may make
13 further changes to the claims herein after discovery.
14

15 **II. JURISDICTION AND VENUE**

16 26. This Court has subject matter jurisdiction pursuant to 29 U.S.C. § 1132(e)(1).

17 27. Venue is proper in this district pursuant to ERISA, U.S.C. § 1132(e)(2) because: (1)
18 Defendant BlackRock Institutional Trust Company, N.A., has its principal office in this District, CA;
19 (2) Defendant BlackRock, Inc. also maintains an office in this District; and/or (3) many of the
20 breaches occurred in this District.
21

22 **III. PARTIES**

23 **A. Plaintiffs**

24 28. Plaintiff Charles Baird ("Plaintiff Baird" or "Plaintiff") was an employee of Barclays
25 from 2000 until 2009, when Barclays was acquired by BlackRock, and an employee of BlackRock
26 from 2009 until July 2016.

27 29. Plaintiff Baird resides in San Francisco, California, within this District.
28

1 30. Plaintiff Baird is a participant in the BlackRock Retirement Savings Plan.

2 31. Plaintiff Baird's individual account in the Plan was invested in various investment
3 options offered under the Plan's investment menu in the Class Period.

4 32. Plaintiff Baird is currently invested in one or more of the BlackRock Proprietary
5 Funds offered by the Plan.

6 33. Plaintiff, like substantially all Plan participants, was not provided any information
7 regarding the substance of deliberations, if any, of the Investment Committee Defendants,
8 concerning the Plan's menu of investment options or selection and monitoring of service providers
9 during the Class Period, including the availability of non-proprietary alternatives.

10 34. Plaintiff also had no knowledge of the layering within the BlackRock funds, the
11 associated fees.

12 35. Plaintiff discovered all the facts underlying his claims shortly before commencing
13 this action.

14
15
16 **B. Defendants**

17 36. **Defendant BlackRock Institutional Trust Company, N.A.** Defendant BlackRock
18 Institutional Trust Company, N.A. is a national banking association organized under the laws of the
19 United States that operates as a limited purpose trust company.

20 37. Defendant BlackRock Institutional Trust Company, N.A. has its principal office in
21 San Francisco, California.

22 38. Defendant BlackRock Institutional Trust Company, N.A. is a wholly owned
23 subsidiary of BlackRock, Inc.

24 39. Defendant BlackRock Institutional Trust Company, N.A., throughout the Class
25 Period, was and continues to be a party-in-interest to the Plan as defined in 29 U.S.C. § 1002(14)
26 because it is an employer of employees covered by the Plan.
27
28

1 40. Defendant BlackRock Institutional Trust Company, N.A. manages and maintains all
2 the collective trusts offered through the Plan.

3 41. **Defendant BlackRock, Inc. (“BlackRock”)**. Defendant BlackRock, Inc., the Plan
4 Sponsor, is a Delaware company with its principal place of business in New York, New York.

5 42. Throughout the Class Period, BlackRock was and continues to be a fiduciary because
6 it appointed, directly or through its executives, the members of the Investment Committee, the
7 Administrative Committee, and/or the Retirement Committee.

8 43. BlackRock was and continues to be a party-in-interest to the Plan as defined in 29
9 U.S.C. § 1002(14) because it is an employer of employees covered by the Plan.

10 44. BlackRock operates various investment-related businesses, including investment
11 banking, brokerage, and investment management.

12 45. BlackRock is by far the world’s largest asset manager, with \$5.1 trillion in assets
13 under management.

14 46. **The BlackRock, Inc. Retirement Committee (“Retirement Committee”)**. The
15 Retirement Committee and its individual members serve as a named fiduciary and administrator of
16 the Plan.

17 47. Two sub-committees of the Retirement Committee were established effective January
18 1, 2008, for purposes of performing the Committee’s duties, responsibilities and obligations
19 attendant to the Plan: the Administrative Committee of the Retirement Committee and the
20 Investment Committee of the Retirement Committee.

21 48. Individuals who served on the Retirement Committee during the Class Period
22 include:

- 23 **a. Jason Herman**, who is Director of Financial Benefits (Americas).

1 **b. John and Jane Does 1-40.** Plaintiff does not currently know the identity of all of the
2 Plan’s fiduciaries, in particular the identities of all the persons who served on the
3 Retirement Committee. Once the identities of those not currently named, if any, are
4 ascertained, Plaintiff will seek leave to join them under their true names.
5

6 49. The Retirement Committee and its individual members are collectively referred to as
7 the “Retirement Committee Defendants.”

8 50. **The BlackRock, Inc. Investment Committee (“Investment Committee”).** The
9 Investment Committee of the Retirement Committee has responsibility for investment related
10 matters of the Plan.

11 **a. John and Jane Does 1-20.** Plaintiff does not currently know the identity of all of the
12 Plan’s fiduciaries, in particular the identities of all the persons who served on the
13 Retirement Committee. Once the identities of those not currently named, if any, are
14 ascertained, Plaintiff will seek leave to join them under their true names.
15

16 51. The Investment Committee and its individual members are collectively referred to as
17 the “Investment Committee Defendants.”

18 52. **The BlackRock, Inc. Administrative Committee (“Administrative Committee”).**
19 The Administrative Committee of the Retirement Committee has the responsibility for
20 administrative related matters of the Plan.

21 **a. John and Jane Does 21-40.** Plaintiff does not currently know the identity of all of the
22 Plan’s fiduciaries, in particular the identities of all the persons who served on the
23 Administrative Retirement Committee. Once the identities of those not currently named, if
24 any, are ascertained, Plaintiff will seek leave to join them under their true names.
25

26 53. The Administrative Committee and its individual members are collectively referred to
27 as the “Administrative Committee Defendants.”
28

1 62. Participants in the Plan have the opportunity to direct the investment of all of the
2 assets allocated to their individual accounts into the investment options offered by the Plan, and the
3 return on those investments are credited to each participant's account.

4 63. The Plan's benefits are funded by participants' voluntary tax-deferred contributions
5 and by employer matching contributions. The Plan is intended to qualify under Internal Revenue
6 Code § 401(k).

7 64. As of December 31, 2015, the Plan's investments had a reported value of
8 \$1,496,651,702.

9 65. Approximately 92.9%, or \$1,390,551,546, of the Plan's assets were invested in
10 entities affiliated with BlackRock.

11 66. These investments include BlackRock Active Stock Fund; BlackRock Emerging
12 Market Index; BlackRock Equity Dividend; BlackRock Global Allocation Collective Trust Fund;
13 BlackRock LifePath 2020 Index; BlackRock LifePath 2025 Index; BlackRock LifePath 2030 Index;
14 BlackRock LifePath 2035 Index; BlackRock LifePath 2040 Index; BlackRock LifePath 2045 Index;
15 BlackRock LifePath 2050 Index; BlackRock LifePath 2055 Index; BlackRock LifePath 2060 Index;
16 BlackRock LifePath Retirement Index; BlackRock Low Duration Bond Fund; BlackRock MSCI
17 ACWI Ex. US CL F; BlackRock Russell 1000 Fund; BlackRock Russell 2000 Alpha Fund;
18 BlackRock Short Term Investment Fund; BlackRock Total Return Fund; BlackRock US Debt Index
19 Fund; BlackRock US TIPS Fund; BlackRock Strategic Income Opportunities Fund, BlackRock, Inc.
20 Common Stock; and the PNC Financial Services Group, Inc. Common Stock.¹

21
22
23
24
25
26 ¹ During the Class Period, the Plan held positions in other BlackRock affiliated funds
27 including the BlackRock LifePath 2015 Index Fund, the BlackRock Large Cap Core Fund, the
28 BlackRock Equity Index Trust, the FFI Premier Institutional Fund, the FFI Government Fund, and
the BlackRock Retirement Preservation Trust.

1 **B. The Investment Committee Defendants Disloyally and Imprudently Favor BlackRock**
2 **Proprietary Funds, Despite the Fact that Investment in Proprietary Funds Constitutes**
3 **Prohibited Transactions.**

4 67. The Investment Committee Defendants had the authority, discretion, and
5 responsibility to select, monitor, and remove or replace the investment options in the Plan. Their
6 specific responsibilities included, but were not limited to:

- 7 a. Selecting and making decisions with respect to removing or replacing investment
8 options for the Plan;
- 9 b. Monitoring the performance of the Plan's investment options on a regular basis and
10 removing any investment options that either alone or in the context of the entire Plan
11 portfolio were imprudent, disloyal and/or non-diversified;
- 12 c. Removing any investment options that caused the Plan to engage in Prohibited
13 Transactions; and
- 14 d. Ensuring that the Plan did not engage in Prohibited Transactions.

15 68. The Investment Committee Defendants selected and monitored investments for the
16 Plan in a manner that benefited BlackRock and the other Defendants rather than the Plan and its
17 beneficiaries, in dereliction of Investment Committee Defendants' ERISA fiduciary duties.

18 69. In 2009, BlackRock acquired Barclays' fund management arm, Barclays Global
19 Investors, which became BlackRock Institutional Trust Company, N.A.

20 70. BlackRock Institutional Trust Company, N.A. sponsors all collective trusts offered
21 through the Plan.

22 71. Prior to the acquisition, there were no Barclays vehicles offered through the Plan.

23 72. Following the acquisition, the Fiduciary Defendants exhibited a clear trend of
24 preferring affiliate investment options, including trusts sponsored by the new BlackRock
25 Institutional Trust Company, N.A.

1 73. Specifically, 92.9% of the Plan’s assets were invested in BlackRock Proprietary
2 Funds.

3 74. By selecting BlackRock’s own Proprietary Funds, the Investment Committee
4 Defendants ensured that BlackRock would receive the substantial fees paid with Plan assets and
5 would increase BlackRock affiliates’ assets under management (“AUM”).
6

7 75. Such an act would improve the marketability of BlackRock products and portray
8 confidence to the public in BlackRock’s ability to manage assets.

9 76. However, the BlackRock Proprietary Funds charged excessive fees, primarily though
10 fund and fee layering, and underperformed their respective benchmarks and similar cheaper
11 investment vehicles.

12 77. In addition, some of the funds were actively managed mutual funds, which are more
13 expensive than other fund vehicles available to institutional investors such as 401(k) plans, such as
14 collective investment trusts.²
15

16 78. The Investment Committee Defendants have also mapped non-affiliated investment
17 options to affiliated alternatives.

18 79. For instance, the Tamro Small Cap Collective Fund was mapped to the BlackRock
19 Russell 2000 Alpha Tilts Fund. The Investment Committee Defendants selected an affiliated Russell
20 2000 product even though small-cap indices like the S&P 600 had a history of outperforming the
21 Russell 2000.
22

23
24
25 ² In this complaint, “**mutual fund**” refers to an investment fund governed by the Investment
26 Company Act of 1940. A “**Collective Investment Trust**” refers to an investment vehicle, other than
27 a mutual fund governed by the Investment Company Act of 1940, that is offered for investment to
28 more than one investor. Such funds are typically offered by financial institutions such as banks, are
usually cheaper than mutual funds, and are only available to high net worth investors such as
institutional investors or retirement plans.

1 80. On December 31, 2009, 37.15% of the Plan's assets were not affiliated with
2 BlackRock.

3 81. By December 31, 2015, less than 8% of the Plan's assets were not affiliated with
4 BlackRock.
5

6 **C. BlackRock LifePath Funds Expose Participants to Unnecessary and Imprudent Fees
7 through Fund Layering.**

8 82. The Plan has a substantial position in target date funds through the Retirement
9 Committee Defendant's selection of BlackRock's own LifePath Target Date Funds (the "BlackRock
10 LifePath Funds" or "LifePath Funds").

11 83. The LifePath funds are collective investment trusts sponsored by BlackRock
12 Institutional Trust Company, N.A.

13 84. The Investment Committee also designated and continues to designate the BlackRock
14 LifePath funds as the default investment option for Plan participants. A participant that is
15 automatically enrolled in the Plan will have his or her contributions invested in a LifePath fund.

16 85. As of December 31, 2015, the BlackRock LifePath funds made up \$509,916,830.00,
17 or 34.07%, of the Plan's assets, all of which was comprised of BlackRock Proprietary Funds.
18

19 86. The LifePath funds selected and maintained for the Plan by Investment Committee
20 Defendants underperformed comparable investments and subjected the Plan to a mire of expense
21 layering that cannibalized the employees' investment returns.

22 87. Despite this, the LifePath funds have remained the Plan's default options since at
23 least 2010.

24 88. Each LifePath fund unnecessarily invests in 27 **additional** BlackRock proprietary
25 funds.
26

1 89. In other words, with each investment into a single LifePath fund, employee retirement
2 assets were funneled into a total of 28 distinct BlackRock funds, all of which charge additional fund
3 fees (except one).

4 90. Department of Labor Form 5500 filings report that the Plan participates in the M class
5 of each LifePath fund.

6 91. The M class is layered such that its assets feed into another class of the same LifePath
7 fund--the F class.

8 92. The M class has higher expenses than other classes of the same fund, including the F
9 class.

10 93. By participating in the M class, rather than in cheaper classes of the same Fund, the
11 Plan incurred expenses over 10 times more than other available share classes, which offer the exact
12 same investment for lower fees.

13 94. Moreover, the funneling of employee retirement assets into additional BlackRock
14 proprietary funds continues beyond the F class.

15 95. The F class of the LifePath funds feeds into the following seven BlackRock funds:
16 BK MSCI ACWI EX-US IMI INDEX FUND E; COMMODITY INDEX DAILY FUND E;
17 DEVELOPED REAL ESTATE INDEX FUND E; EQUITY INDEX FUND E; EXTENDED
18 EQUITY MARKET FUND E; US DEBT INDEX FUND E; and US TIPS FUND E.

19 96. The BK MSCI ACWI EX-US IMI INDEX FUND E, which is also fed directly by the
20 F class of the LifePath funds, then feeds into the following five BlackRock funds: BK MSCI
21 CANADA IMI INDEX FUND; BK MSCI EAFE SMALL CAP EQUITY INDEX FUND E; EAFE
22 EQUITY FUND F; EMERGING MARKETS EQUITY INDEX MASTER FUND; and EMERGING
23 MARKETS SMALL CAPITALIZATION EQUITY INDEX NL FND.
24
25
26
27

1 97. The EQUITY INDEX FUND E, which is also fed directly by the F class of the
2 LifePath funds, feeds into the following BlackRock fund: EQUITY INDEX FUND.

3 98. The EXTENDED EQUITY MARKET FUND E, which is also fed directly by the F
4 class of the LifePath funds, feeds the following BlackRock fund: EXTENDED EQUITY MARKET
5 FUND.

6 99. The US DEBT INDEX FUND E, which is also fed directly by the F class of the
7 LifePath funds, feeds the following six BlackRock funds: INT GOVERNMENT BOND INDEX
8 FUND; INT TERM CREDIT BOND INDEX FUND; LONG TERM CREDIT BOND INDEX
9 FUND; LONG TERM GOV BOND INDEX FUND; MBS INDEX FUND; and US SEC CREDIT
10 EX-MBS IDX NL FD E.

11 100. The BK MSCI CANADA IMI INDEX FUND, which is fed by the BK MSCI ACWI
12 EX-US IMI INDEX FUND E, feeds the following two BlackRock funds: BK MSCI CANADA
13 SMALL CAP EQUITY INDEX FUND and MSCI EQUITY INDEX FUND-CANADA.

14 101. The BK MSCI EAFE SMALL CAP EQUITY INDEX FUND E, which is fed by the
15 BK MSCI ACWI EX-US IMI INDEX FUND E, feeds the following BlackRock fund: BK MSCI
16 EAFE SMALL CAP EQUITY INDEX FUND.

17 102. The EMERGING MARKETS SMALL CAPITALIZATION EQUITY INDEX NL
18 FND E, which is fed by the BK MSCI ACWI EX-US IMI INDEX FUND E, feeds the following
19 BlackRock fund: EMERGING MARKETS SMALL CAPITALIZATION EQUITY INDEX NL
20 FUND.

21 103. The table below illustrates the layering of BlackRock funds in each LifePath fund,
22 described above.
23

Master-Level	Sub-Level	Name	EIN	Administrative Expense at Level?
Feeder Level		LIFEPATH INDEX [YEAR] FUND M		Yes
Level 1	0	LIFEPATH INDEX [YEAR] FUND F		Yes
Level 2	A.1	BK MSCI ACWI EX-US IMI INDEX FUND E	336371935	Yes
	B.1	COMMODITY INDEX DAILY FUND E	272531932	Yes
	C.1	DEVELOPED REAL ESTATE INDEX FUND E	336371934	Yes
	D.1	EQUITY INDEX FUND E	943138576	Yes
	E.1	EXTENDED EQUITY MARKET FUND E	943170135	Yes
	F.1	US DEBT INDEX FUND E	943149397	Yes
	G.1	US TIPS FUND E	336370138	Yes
Level 3	A.1.1	BK MSCI CANADA IMI INDEX FUND	336379492	Yes
	A.1.2	BK MSCI EAFE SMALL CAP EQUITY INDEX FUND E	272050259	Yes
	A.1.3	EAFE EQUITY FUND F	943358162	Yes
	A.1.4	EMERGING MARKETS EQUITY INDEX MASTER FUND	272777161	Yes
	A.1.5	EMERGING MARKETS SMALL CAPITALIZATION EQUITY INDEX NL FND E	272050190	No
	C.1.1	MSCI RE	336370139	Yes
	C.1.2	EX-US RE	205998056	Yes
	D.1.1	EQUITY INDEX FUND	946052285	Yes
	E.1.1	EXTENDED EQUITY MARKET FUND	946507863	Yes
	F.1.1	INT GOVERNMENT BOND INDEX FUND	943118548	Yes
	F.1.2	INT TERM CREDIT BOND INDEX FUND	943118549	Yes
	F.1.3	LONG TERM CREDIT BOND INDEX FUND	943118550	Yes
	F.1.4	LONG TERM GOV BOND INDEX FUND	943118547	Yes
F.1.5	MBS INDEX FUND	946581672	Yes	
F.1.6	US SEC CREDIT EX-MBS IDX NL FD E	453620007	Yes	
Level 4	A.1.1.1	BK MSCI CANADA SMALL CAP EQUITY INDEX FUND	336379493	Yes
	A.1.1.2	MSCI EQUITY INDEX FUND-CANADA	943149391	Yes
	A.1.2.1	BK MSCI EAFE SMALL CAP EQUITY INDEX FUND	260719768	Yes
	A.1.5.1	EMERGING MARKETS SMALL CAPITALIZATION EQUITY INDEX NL FUND	270794016	Yes

104. Each of the 28 of BlackRock funds (except one--the EMERGING MARKETS SMALL CAPITALIZATION EQUITY INDEX NL FND E) cannibalizes the employees' investment returns through fees charged by the management of each fund.

105. The fees paid by employees through this rabbit hole of fund layering are not reflected in the expense ratio reported to participants.

1 106. Rather, each fund nets expenses against the assets it holds on its balance sheet;
2 thereby decreasing the performance and growth of each fund underlying the LifePath funds.

3 107. Similar investments offered by non-BlackRock entities exhibit significantly less fee
4 layering (if any), and as a result, outperformed the LifePath funds.

5 108. The Vanguard Group (“Vanguard”) is a reputable, low-cost asset manager that offers
6 comparable alternative investments to the LifePath funds.

7 109. For instance, Vanguard manages the Vanguard Target Retirement Income Trust I
8 target date funds (the “Vanguard Target Date funds”), which are comparable in investment strategy
9 to the BlackRock LifePath funds.

10 110. The LifePath funds underperformed the Vanguard Target Date funds by
11 approximately 8.5% on average for the period between December, 31 2010 and December 31, 2015
12 (after taking into account the compounding of returns realized every year).

13 111. The LifePath suite performed even worse compared to the Dow Jones Target Date
14 benchmark indices.

15 112. After taking into account the compounding of returns realized every year, the
16 LifePath funds underperformed the Dow Jones Target Date indices by almost 20% during this
17 period.

18 113. The Vanguard Target Date funds do not have extensive expense layering like the
19 LifePath funds.

20 114. Underlying each Vanguard fund investment are only six additional funds: a master
21 trust and five index funds. This comes in stark contrast to the 27 additional funds and attendant
22 expenses underlying each LifePath investment.

1 115. Like Vanguard and BlackRock, the Thrift Savings Plan offers a suite of target date
2 funds (the “TSP funds”) that, like the Vanguard and LifePath funds, strategically shift their asset
3 allocation from risky to conservative as the target date approaches.

4 116. Although the TSP funds are only available to government employees, BlackRock was
5 hired to manage the assets underlying the TSP funds; namely the C, F, G, I and S Funds.

6 117. BlackRock applied many of the same strategies in the C, F, G, I and S Funds as it did
7 for the funds underlying the LifePath funds.

8 118. For instance, both the EQUITY INDEX FUND E, which directly underlies the
9 LifePath funds, and C Fund, which underlies the TSP funds, were indexed to the S&P 500.

10 119. Similarly, both the US DEBT INDEX FUND E, underlying the LifePath Funds, and F
11 Fund, underlying the TSP funds, were indexed to the BarCap US Agg Bond TR USD Index.

12 120. BlackRock managed the funds underlying the TSP funds and implemented similar
13 strategies to the funds underlying the LifePath funds.

14 121. The TSP funds are therefore a helpful benchmark against which to compare the
15 performance and structure of LifePath funds available to Plan participants.

16 122. Specifically, the TSP and LifePath funds that were indexed to the exact same
17 underlying assets and managed by the same company should have performed almost exactly the
18 same.

19 123. However, in reality, the LifePath funds underperformed the TSP funds.

20 124. After taking into account the compounding of returns realized every year, the
21 LifePath funds underperformed the TSP funds by 5.6% on average during this period.

22 125. Investment documents provided by TSP indicate that BlackRock invests the C, F, G, I
23 and S Funds in separate accounts which directly purchase the securities making up the indices,
24 thereby avoiding the excessive fund layering utilized by the BlackRock LifePath Funds.

1 126. Thus, government employees are spared multiple layers of management fees that
2 BlackRock employees invested in the LifePath funds are charged.

3 127. By selecting and maintaining the LifePath funds and designating them as the default
4 for participants, the Investment Committee enabled all trusts layered within the LifePath funds
5 sponsored by BlackRock Institutional Trust Company, N.A. to report large institutional participation
6 and growing assets under management.

7 128. By selecting and maintaining the LifePath funds and designating them as the default
8 for participants, the Investment Committee Defendants exposed the Plan and participants to
9 excessive fee layering and underperformance.

10 129. As a result of the Investment Committee Defendants' actions, the Plan's investment
11 in trusts with excessive fee layering has dramatically increased.

12
13
14 **D. Most Investments That the Investment Committee Defendants Selected and Retained in
15 the Plan Expose Participants to Unnecessary and Imprudent Fund and Fee Layering.**

16 130. Most of the other BlackRock proprietary funds offered in the Plan exhibit excessive
17 and unnecessary fund and fee layering.

18 131. This includes the BlackRock MSCI ACWI Ex. US IMI Index Fund, Equity Dividend
19 Fund, Global Allocation Fund, Strategic Income Opportunities Bond Fund, Active Stock Fund,
20 Russell 1000 Index Fund, U.S. Debt Index Fund, U.S. Treasury Inflation Fund, and Russell 2000
21 Alpha Fund.

22 132. In total, these layered funds and the layered LifePath funds comprise \$1.15 billion, or
23 77%, of the Plan's assets.

24 133. These funds are also administered and sponsored by BlackRock Institutional Trust
25 Company N.A.
26

134. The Russell 2000 Alpha Tilts Fund is an example of a fund with unnecessary layering. A participant that selects the Russell 2000 Alpha Tilts Fund F class feeds five distinct BlackRock trusts.

Master-Level	Sub-Level	Name	EIN
Level 1	0	RUSSELL 2000 ALPHA TILTS FUND F	472641596
Level 2	A.1	RUSSELL 2000 INDEX FUND F	943318704
	B.1	RUSSELL 2000 ALPHA TILTS FUND	943123057
Level 3	A.1.1	RUSSELL 2000 INDEX FUND E	943283276
Level 4	A.1.1.1	RUSSELL 2000 INDEX FUND	943273839

135. However, BlackRock allows other non-BlackRock retirement plans to participate directly in the sub-funds layered within the Russell 2000 Alpha Tilts Fund F class. Those retirement plans avoid fees associated with the Russell 2000 Alpha Tilts Fund F class.

136. Other retirement plans not sponsored by BlackRock are able to participate in trusts layered within the Russell 2000 Alpha Tilts Fund F class. Those retirement plans avoid layers fed by the Plan and avoid associated expenses.

137. In total, 21 of the BlackRock Proprietary Funds offered to employees in the Plan funnel employee retirement assets into other BlackRock Proprietary Funds, which charge additional fees (not reported in the expense ratio for the top level fund), thereby eroding the participants' returns.

138. Participants are thereby exposed to more layers and expenses than other retirement plans not sponsored by BlackRock.

E. Other Breaches of Fiduciary Duty and Prohibited Transactions.

1. BlackRock Global Allocation Trust

139. The Plan offers the BlackRock Global Allocation Trust F. As of December 31, 2015, the Plan's position in this trust was worth \$179,472,599.

1 140. However, until mid-2014, the Plan held the Global Allocation Fund mutual fund,
2 instead of the collective investment trust. This mutual fund has the ticker symbol “MALOX.”

3 141. The investment manager for MALOX is BlackRock Advisors, LLC.

4 142. The Investment Committee Defendants selected and retained MALOX even though it
5 subjected the Plan to excessive fees.
6

7 143. MALOX had a gross expense ratio ranging from 99 bps in 2009 to 87 bps in 2014.

8 144. MALOX was over 4000% more expensive than the gross fee for the collective
9 investment trust version of this fund.

10 145. During the Class Period, MALOX participated in an advisory agreement with
11 BlackRock Advisors, LLC (“BRAL”) whereby BRAL would provide various services to MALOX
12 for a fee ranging from 75 bps to 60 bps of fund assets, depending on the mutual fund’s total assets
13 under management.
14

15 146. These services included (1) portfolio management responsibilities like researching
16 investments, selecting investments and executing trades, voting and exercising shareholder
17 discretion, and supervising asset composition; and (2) administrative duties like maintaining books
18 and records, preparing regulatory filings, overseeing performance of accountants, and ensuring
19 compliance with regulatory requirements.
20

21 147. BRAL delegated the substance of its responsibilities under the advisory agreement to
22 BlackRock Investment Management (“BRIM”) through a sub-advisory arrangement.

23 148. The responsibilities BRAL delegated included (1) portfolio management
24 responsibilities like researching investments, selecting investments and executing trades, voting and
25 exercising shareholder discretion, and supervising asset composition; and (2) administrative duties
26 like maintaining books and records, communicating investment decisions, and complying with
27 BlackRock Advisor, LLC’s policies, objective, and restrictions.
28

1 149. BRIM performed these delegated responsibilities for approximately half the fee paid
2 to BlackRock Advisors, LLC (BRAL) by the BlackRock Global Allocation Fund.

3 150. Third party investment advisors entered into arm's-length negotiations for BRIM to
4 provide advisory services similar to those BRAL agreed to provide MALOX. For instance, Allianz
5 Investment Management LLC ("AZL") and Jackson National Asset Management, LLC ("JNL")
6 negotiated for and hired BRIM to provide advisory services to mutual funds marketed under the
7 AZL and JNL brands.

9 151. BRIM agreed to provide these services to third parties, including JNL and AZL, at
10 expense ratios ranging from 42 to 37.5 basis points, depending on assets under management--
11 significantly less than the fees charged to MALOX.

12 152. By investing in the BlackRock affiliated fund, MALOX, the Plan was subjected to
13 excessive fees for the services rendered, when it could have paid less for the exact same fund and
14 services by including JNL or AZL in the Plan rather than the BlackRock affiliate.

16 153. Between 2009 and mid-2014, the Plan paid approximately \$4.8 million fees for
17 MALOX.

18 2. BlackRock Low Duration Bond Mutual Fund

19 154. In 2013, The Investment Committee Defendants added to the Plan the BlackRock
20 Low Duration Bond Fund, which is a mutual fund. As of December 31, 2015, the Plan held a
21 position in this fund worth \$6,951,559.38.

23 155. The Investment Committee Defendants selected and failed to remove the BlackRock
24 Low Duration Bond Fund despite a substantially higher expense ratio than comparable investments
25 and a history of underperformance.

1 156. The BlackRock Low Duration Bond Fund charged between 61 and 36 basis points
2 throughout the Class Period. Vanguard offers a fund similar to this³ that charges only 7 basis points
3 for its bond fund. In other words, employees are paying 500% - 871% more than necessary for the
4 Low Duration Bond Fund.
5

6 157. The investment manager for the BlackRock Low Duration Bond Fund is BlackRock
7 Advisors, LLC.

8 158. The BlackRock Low Duration Bond Fund uses the following strategy:
9 “The Low Duration Fund invests primarily in investment grade bonds and maintains an average
10 portfolio duration that is between 0 and 3 years. The Low Duration Fund normally invests at least
11 80% of its assets in debt securities. The Low Duration Fund may invest up to 20% of its assets in
12 non-investment grade bonds (commonly called “high yield” or “junk bonds”). The Low Duration
Fund may also invest up to 25% of its assets in assets of foreign issuers, of which 10% (as a
percentage of the Fund’s assets) may be invested in emerging markets issuers.”

13 159. The Vanguard Short-Term Investment-Grade Fund implements a similar strategy:
14 “The Fund invests in a variety of high-quality and, to a lesser extent, medium-quality fixed income
15 securities, at least 80% of which will be short- and intermediate-term investment-grade securities. ...
16 The Fund is expected to maintain a dollar weighted average maturity of 1 to 4 years.”

17 160. Despite the similar strategies, the BlackRock Low Duration Bond Fund has an
18 expense ratio that is over 400% greater than the Vanguard alternative.

19 161. After fee waivers, the K Shares of the BlackRock Low Duration Bond Fund have an
20 expense ratio of 0.36%.

21 162. The comparable institutional class of the Vanguard Short-Term Investment-Grade
22 Fund has an expense ratio of 0.07%.

23 163. The substantially higher fee has not come with a commensurate performance
24 improvement.
25

26 ³ The BlackRock Low Duration Bond Fund invests 80% of its assets in investment-grade
27 short- to intermediate-term bonds. Vanguard offers the Short-Term Investment Grade Fund, which
28 is similar to the BlackRock Low Duration Bond Fund in that it also invests 80% of its assets in
investment-grade short- to intermediate-term bonds.

1 164. Rather, the BlackRock Low Duration Bond Fund has consistently underperformed
2 Vanguard and other alternative investments.

3 3. The Selection and Maintenance of Mutual Funds and Other More Expensive
4 Share Classes

5 165. The Investment Committee Defendants selected and retained the BlackRock Total
6 Return Fund, which is a mutual fund managed by BlackRock Advisors LLC, and which is more
7 expensive than similar alternative non-proprietary funds.

8 166. Similarly, even when the Plan offers collective trust funds, the share class option
9 offered is often more expensive than other available share classes.

10 167. For instance, the Plan offers the W class of the US Debt Index Fund according to
11 DOL Form 5500 reporting.

12 168. The expenses reported by the W class are 50-150% greater than other classes of the
13 same US Debt Index Fund, such as the E class.

14 4. Failure to Include Passively Managed Alternatives for Certain Asset Classes

15 169. The Plan only offers three passively managed index funds: the BlackRock US Debt
16 Index Fund, the BlackRock Russell 1000 Index Fund, and the BlackRock MSCI ACWI-ex US IMI
17 Index Fund.

18 170. The Investment Committee Defendants failed to include any other passively managed
19 equity index funds, even though the actively managed equity funds that the Investment Committee
20 Defendants selected were more expensive and demonstrated a consistently worse performance than
21 the passively managed index funds.

22 **F. By Concentrating Investments Under BlackRock Affiliates' Administration, the**
23 **Retirement Committee Defendants Failed to Adequately Diversify Risk**

24 171. The Retirement Committee Defendants have concentrated the Plan's assets under the
25 management and/or administration of BlackRock affiliates.

1 172. Most of the investments selected by the Retirement Committee Defendants for the
2 Plan are administered by BlackRock affiliates, including BlackRock Institutional Trust Company,
3 N.A. and BlackRock Advisors, LLC.

4 173. The Retirement Committee Defendants' decision subjects the Plan's assets to risks
5 that could be avoided by diversifying investments outside the BlackRock umbrella.
6

7 174. The following risks, among others, are discussed in the prospectus and statement of
8 additional information provided for the BlackRock Low Duration Bond Fund (a mutual fund).
9 BlackRock Advisors, LLC manages and administers the BlackRock Low Duration Bond Fund.

10 175. **Cyber Security Issues.** With the increased use of technologies such as the Internet to
11 conduct business, each Fund is susceptible to operational, information security and related risks
12 related to cyber-attacks, which have the ability to cause disruptions and impact business operations,
13 potentially resulting in financial losses, interference with a Fund's ability to calculate its net asset
14 value ("NAV"), impediments to trading, the inability of Fund shareholders to transact business,
15 violations of applicable privacy and other laws, regulatory fines, penalties, reputational damage,
16 reimbursement or other compensation costs, or additional compliance costs. In addition, substantial
17 costs may be incurred in order to prevent any cyber incidents in the future.
18

19
20 176. **Operational Risk.** The Fund is exposed to operational risk arising from a number of
21 factors, including but not limited to human error, processing and communication errors, errors of the
22 Fund's service providers, counterparties or other third-parties, failed or inadequate processes and
23 technology or systems failures.

24
25 177. Collective trusts do not have the same risk disclosure requirements as mutual funds
26 like the Low Duration Bond Fund, so Defendants were not required to disclose these risks to their
27

1 employees with respect to the collective investment trusts—including the LifePath funds, which are
2 the default investment.

3 178. On information and belief, the systemic risks discussed above are pertinent to
4 collective trusts offered through the Plan.

5 179. Diversification would minimize these known risks by preventing the failures at one
6 organization from having an effect on a substantial portion of the Plan’s assets.

7 180. By failing to diversify the Plan’s assets beyond BlackRock affiliates, the Retirement
8 Committee Defendants subject the Plan to greater risk than is controllable.

9
10 **V. CLASS ALLEGATIONS**

11 181. Plaintiff brings this action on behalf of:

12 All participants and beneficiaries in the BlackRock Retirement Savings
13 Plan from April 5, 2011 through the date of judgment. Any individual
14 Defendants are excluded from the class.

15 182. Class certification is appropriate under Fed. R. Civ. P. 23(a) and (b)(1) and/or (b)(3).

16 183. The class satisfies the numerosity requirement because it is composed of thousands of
17 persons. The Plan currently has more than 9,700 participants. The number of class members is so
18 large that joinder of all its members is impracticable.

19 184. Common questions of law and fact include:

- 20 (a) Whether all the Retirement Committee Defendants were and are ERISA fiduciaries
21 responsible for monitoring the Plan investments;
- 22 (b) Whether Defendant BlackRock, Inc. was and is an ERISA fiduciary to the Plan;
- 23 (c) Whether the Investment Committee Defendants breached their ERISA fiduciary
24 duties in monitoring or failing to monitor the investment options in the Plan during
25 the Class Period;
- 26 (d) Whether the Investment Committee Defendants breached their ERISA fiduciary
27 duties in selecting additional BlackRock Proprietary Fund options for the Plan during
28 the Class Period;

1 (e) Whether the Investment Committee Defendants caused the Plan to engage in multiple
2 prohibited transactions in violation of ERISA § 406, 29 U.S.C. 1106, throughout the
Class Period;

3 (f) Whether the Plan and its participants suffered losses as a result of Defendants'
4 fiduciary breaches.

5 185. Plaintiff's claims are typical of the claims of the Class. He has no interests that are
6 antagonistic to the claims of the Class. He understands that this matter cannot be settled without the
7 Court's approval.

8 186. Plaintiff will fairly and adequately protect the interests of the Class. Plaintiff is
9 committed to the vigorous representation of the Class. Plaintiff's counsel are Cohen Milstein Sellers
10 and Toll PLLC ("Cohen Milstein") and Feinberg, Jackson, Worthman & Wasow ("Feinberg
11 Jackson").

12 187. Plaintiff's counsel has agreed to advance the costs of the litigation contingent upon
13 the outcome. Counsel is aware that no fee can be awarded without the Court's approval.

14 188. A class action is the superior method for the fair and efficient adjudication of this
15 controversy. Joinder of all members of the class is impracticable. The losses suffered by some of
16 the individual members of the class may be small, and it would therefore be impracticable for
17 individual members to bear the expense and burden of individual litigation to enforce their rights.
18

19 189. Moreover, Defendants, as Plan fiduciaries, were obligated to treat all class members
20 similarly because ERISA imposes uniform standards of conduct on fiduciaries. Individual
21 proceedings, therefore, would pose the risk of inconsistent adjudications. Plaintiff is unaware of any
22 difficulty in the management of this action as a class action.
23

24 190. This Class may be certified under Rule 23(b).

25 A. 23(b)(1). As an ERISA breach of fiduciary duty action, this action is a classic
26 23(b)(1) class action. Prosecution of separate actions by individual members would create
27

1 the risk of (A) inconsistent or varying adjudications with respect to individual class members
2 that would establish incompatible standards of conduct for the Defendants, or (B)
3 adjudications with respect to individual class members would, as a practical matter, be
4 dispositive of the interests of the other members not parties to the adjudication or
5 substantially impair or impede their ability to protect their interests.

6
7 B. 23(b)(2). Rule 23(b)(2) allows class treatment when “the party opposing the class has
8 acted or refused to act on grounds that apply generally to the class, so that final injunctive
9 relief or corresponding declaratory relief is appropriate respecting the class as a whole.” Fed.
10 R. Civ. P. Here, the challenged conduct at issue—Defendants’ investment of plan assets and
11 improper use thereof—not only can be, but must be enjoined or declared unlawful only as to
12 all of the class members or as to none of them. Because the focus of Plaintiff’s claims is on
13 Defendants’ actions, and because the relief sought is equitable plan-wide relief, there are
14 simply no individual issues. The requirements for Rule 23(b)(2) certification are plainly met.

15
16 C. 23(b)(3). This action is suitable to proceed as a class action under 23(b)(3) because
17 questions of law and fact common to the members of the Class predominate over individual
18 questions, and a class action is superior to other available methods for the fair and efficient
19 adjudication of this controversy. Given the nature of the allegations, no class member has an
20 interest in individually controlling the prosecution of this matter.

21 **VI. CAUSES OF ACTION**

22 **Count I**

23 **Breach of Fiduciary Duties for Failing to Prudently and Loyalily Monitor and Select Investments for**
24 **the Plan during the Class Period in Violation of ERISA §404, 29 U.S.C. § 1104**
25 **(Against Investment Committee Defendants)**

26 191. Plaintiff restates and incorporates the allegations of the preceding paragraphs as if set
27 forth fully herein.

28

1 192. The Investment Committee Defendants were responsible for selecting, monitoring
2 and removing if necessary the investments of the Plan, including the fund options offer to
3 participants.

4 193. At all relevant times, the Investment Committee Defendants were fiduciaries within
5 the meaning of 29 U.S.C. § 1002(21)(A)(i) by exercising authority or control respecting the
6 management or disposition of Plan assets.

7 194. At all relevant times, the Investment Committee Defendants were also fiduciaries
8 within the meaning of 29 U.S.C. § 1002(21)(A)(i) by exercising discretionary authority or
9 discretionary control respecting management of the Plan.

10 195. The Investment Committee Defendants had an ongoing duty to act solely in the
11 interest of the participants and beneficiaries of the Plan they served and “for the exclusive purpose
12 of: (i) providing benefits to participants and their beneficiaries; and (ii) defraying reasonable
13 expenses of administering the plan” in accordance with ERISA § 404(a)(1)(A), 29 U.S.C. §
14 1104(a)(1)(A).

15 196. The Investment Committee Defendants had an ongoing duty to act prudently when
16 exercising authority or control of the Plan’s assets or management of the Plan, meaning to discharge
17 their duties “with the care, skill, prudence, and diligence under the circumstances then prevailing
18 that a prudent man acting in a like capacity and familiar with such matters would use in the conduct
19 of an enterprise of a like character and with like aims,” in accordance with ERISA § 404(a)(1)(B),
20 29 U.S.C. § 1104(a)(1)(B).

21 197. ERISA’s duty of prudence required the Investment Committee Defendants to follow
22 reasonable standards of investment due diligence by giving appropriate consideration to those facts
23 and circumstances that, given the scope of their fiduciary investment duties, they knew or should
24
25
26
27

1 have known were relevant to the particular investments of the Plan, and then to act accordingly. 29
2 CFR § 2550.404a-1.

3 198. The Investment Committee Defendants were required to diversify the investments of
4 the Plan so as to minimize the risk of large losses unless it was clearly prudent not to do so in
5 accordance with § 404(a)(1)(C), 29 U.S.C. § 1104(a)(1)(C). This obligation includes a duty to avoid
6 the risk of manager concentration.
7

8 199. Specifically, the Investment Committee Defendants had ongoing duties to monitor the
9 Plan's assets, including evaluating and monitoring the Plan's investment fund options on a regular
10 and frequent basis, and removing imprudent or disloyal options or options that constituted prohibited
11 transactions or caused the Plan to be non-diversified as a whole.
12

13 200. The Investment Committee Defendants, in violation of their fiduciary duties,
14 employed disloyal and imprudent monitoring processes, including giving preferential treatment to
15 BlackRock affiliated funds because maintaining those funds in the Plan financially benefited
16 BlackRock, its subsidiaries, and its officers and directors.
17

18 201. The imprudent and disloyal monitoring process resulted in a plan loaded with
19 relatively expensive and poor-to-mediocre options which substantially impaired the Plan's use,
20 value, and investment performance for all participants, past and present.
21

22 202. The BlackRock affiliated funds included the use of BlackRock's own proprietary
23 mutual funds, collective investment trusts, and separate accounts, all of which had hidden fees,
24 excessive fund and fee layering, and poor-to-mediocre performance.
25

26 203. The Retirement Committee Defendants breached their duties of loyalty, prudence,
27 and diversification under 29 U.S.C. §§ 1104(a)(1) by selecting and then failing to timely monitor and
28 remove as Plan investment options the following funds:

BlackRock Active Stock Fund

- 1 BlackRock Emerging Market Index
- 2 BlackRock Russell 1000 Fund
- 3 BlackRock US Debt Index Fund
- 4 BlackRock US TIPS Fund
- 5 BlackRock LifePath 2015 Index
- 6 BlackRock LifePath 2020 Index
- 7 BlackRock LifePath 2025 Index
- 8 BlackRock LifePath 2030 Index
- 9 BlackRock LifePath 2035 Index
- 10 BlackRock LifePath 2040 Index
- 11 BlackRock LifePath 2045 Index
- 12 BlackRock LifePath 2050 Index
- 13 BlackRock LifePath 2055 Index
- 14 BlackRock LifePath 2060 Index
- 15 BlackRock LifePath Retirement Index
- 16 BlackRock MSCI ACWI Ex. US CL F
- 17 BlackRock Equity Dividend
- 18 BlackRock Global Allocation Fund
- 19 BlackRock Global Allocation Collective Trust Fund
- 20 BlackRock Short Term Investment Fund
- 21 BlackRock Low Duration Bond Fund
- 22 BlackRock Total Return Fund
- 23 BlackRock Russell 2000 Alpha Fund
- 24 BlackRock Strategic Income Opportunities Fund

28

1 204. In giving preferential treatment to BlackRock affiliated funds and/or failing to
2 adequately consider for the Plan better-performing investments with substantially less or no fee
3 layering that were not affiliated with BlackRock, the Investment Committee Defendants failed to
4 discharge their fiduciary duties with respect to the entire Plan with the care, skill, prudence, and
5 diligence under the circumstances then prevailing that a prudent person acting in a like capacity and
6 familiar with such matters would use in the conduct of an enterprise of like character and with like
7 aims.

9 205. In giving preferential treatment to BlackRock affiliated funds and/or failing to
10 adequately consider for the Plan better-performing investments with substantially less or no fee
11 layering that were not affiliated with BlackRock, the Investment Committee Defendants failed to act
12 with undivided loyalty to the participants and beneficiaries, or to discharge their fiduciary duties
13 with an “eye single” to the interests of the Plan’s participants and beneficiaries. *Donovan v.*
14 *Bierwirth*, 680 F.2d 263, 271 (2d Cir. 1982), *cert denied*, 459 US 1069 (1982).

16 206. In giving preferential treatment to BlackRock affiliated funds and/or failing to
17 adequately consider for the Plan better-performing investments with substantially less or no fee
18 layering that were not affiliated with BlackRock, the Investment Committee Defendants caused the
19 Plan to be non-diversified in that almost all of the investment options have the same manager and
20 operational risk associated with BlackRock.

22 207. Had a prudent and loyal fiduciary taken these factors into consideration, it would
23 have concluded that the Plan’s investment options were selected and retained for reasons other than
24 the best interest of the Plan and its participants.

25 208. The Investment Committee Defendants committed these breaches during each of the
26 meetings of the Investment Committee that occurred periodically during each year of the relevant
27 period.

1 209. At each of these meetings, the Investment Committee Defendants had cause to
2 remove the BlackRock Funds based on their poor performance.

3 210. At each of these meetings, the Investment Committee Defendants failed to do so.

4 211. As a direct and proximate result of these breaches of fiduciary duties, the Plan and
5 each of its participants have suffered tens of millions of losses in retirement assets which continue to
6 accrue, for which all Defendants are jointly and severally liable pursuant to 29 U.S.C. § 1109.

7 212. Pursuant to ERISA §§ 409 and 502(a)(2) and 502(3), 29 U.S.C. §§ 1109, 1132(a)(2)
8 and 1132(a)(3), Plaintiffs seek to restore all losses to the Plan resulting from the breaches of
9 fiduciary duties alleged in this Count, to restore to the Plan any profits made by any fiduciary
10 defendant including BlackRock through use of Plan assets, and any other equitable or remedial relief
11 as appropriate.
12

13
14 **Count II**

15 Violations of ERISA §406(a) and (b), 29 U.S.C. § 1106(a) and (b) for
16 Engaging in Multiple Party in Interest Transactions
(Against the Investment Committee Defendants, BlackRock Inc.
and BlackRock Institutional Trust Company)

17 213. Plaintiff restates and incorporates the allegations of the preceding paragraphs as if set
18 forth fully herein.

19 214. As an employer and the sponsor of the Plan, BlackRock, Inc. was and continues to be
20 a party-in-interest to the Plan under ERISA § 3(14), 29 U.S.C. § 1002(14).

21 215. As an employer of employees who participate in the Plan, BlackRock Institutional
22 Trust Company, N.A. was and continues to be a party-in-interest to the Plan under ERISA § 3(14),
23 29 U.S.C. § 1002(14).

24 216. ERISA § 406(a)(1)(A), 29 U.S.C. § 1106(a)(1)(A), prohibits transactions that
25 constitute direct or indirect sale or exchange of property between the Plan and any parties in interest
26 and prohibits fiduciaries from causing the Plan to engage in such transactions.
27
28

1 217. ERISA § 406(a)(1)(D), 29 U.S.C. § 1106(a)(1)(D), prohibits transactions that
2 constitute direct or indirect transfers of the Plans' assets to, or use of the Plans' assets by or for the
3 benefit of, parties in interest and prohibits fiduciaries from causing the Plan to engage in such
4 transactions.

5
6 218. Engaging in such transactions are considered a per se violations because they entail a
7 high risk for abuse.

8 219. By virtue of their positions as fiduciaries of the Plan, the Investment Committee
9 Defendants caused the Plan to engage in multiple party-in-interest transactions, namely the repeated
10 purchase of BlackRock affiliated funds which transferred plan assets directly and indirectly to
11 BlackRock, Inc. and BlackRock Institutional Trust Company, N.A. (both parties in interest), in the
12 form of various direct or indirect fees paid to BlackRock, Inc., BlackRock Institutional Trust
13 Company, N.A., their subsidiaries, and/or their affiliates, which constituted multiple violation of
14 ERISA § 406(a)(1)(D), 29 U.S.C. § 1106(a)(1)(D).

15
16 220. By virtue of their positions as fiduciaries of the Plan, the Investment Committee
17 Defendants also caused the Plan to engage in multiple party-in-interest transactions, namely the
18 repeated purchase of funds affiliated with BlackRock Inc. or BlackRock Institutional Trust Company
19 (both parties in interest), which constituted the direct or indirect sale or exchange of property
20 between the Plan and with BlackRock Inc. or BlackRock Institutional Trust Company constituting
21 multiple violation of ERISA § 406(a)(1)(A), 29 U.S.C. § 1106(a)(1)(A).

22
23 221. ERISA § 406(b), 29 U.S.C. § 1106(b), prohibits a fiduciary from “deal[ing] with the
24 assets of the plan in his own interest or for his own account” ERISA § 406(b)(1), 29 U.S.C.
25 § 1106(b)(1) or from acting “in any transaction involving the plan on behalf of a party (or represent a
26 party) whose interests are adverse to the interests of the plan or the interests of its participants or
27

1 beneficiaries,” which has been interpreted to prohibit fiduciaries of the Plan from acting on both
2 sides of a transaction that involves Plan assets. ERISA § 406(b)(2), 29 U.S.C. § 1106(b)(2)

3 222. By virtue of their positions as fiduciaries of the Plan, the Investment Committee
4 Defendants and BlackRock, Inc., made decisions about the investment of the Plan’s assets in ways
5 that benefitted themselves or were in their own self-interest because: (a) BlackRock, Inc. received
6 many direct and indirect fees from the Plan investing in BlackRock proprietary funds; and/or (b) the
7 Investment Committee Defendants were BlackRock executives whose compensation and promotion
8 levels increased when they acted to increase revenues for BlackRock, Inc., which violated ERISA §
9 406(b)(1), 29 U.S.C. § 1106(b)(1).
10

11 223. Because BlackRock, Inc. was the corporate parent of the managers of all the
12 BlackRock Affiliated Funds, BlackRock, Inc. was acting on both sides of all transactions where the
13 Plan invested or redeemed its interest in the BlackRock Affiliated Funds. By these actions,
14 BlackRock, Inc. violated its fiduciary duties under ERISA numerous times by engaging in
15 transactions involving the Plan on behalf of a party whose interests were and are adverse to the
16 interests of the Plan or the interests of its participants or beneficiaries, in violation of ERISA §
17 406(b)(2), 29 U.S.C. § 1106(b)(2).
18

19 224. Pursuant to ERISA §§ 409 and 502(a)(2) and 502(3), 29 U.S.C. §§ 1109, 1132(a)(2)
20 and 1132(a)(3), Plaintiff seeks to restore all losses to the Plan resulting from violations of ERISA §
21 406, 29 U.S.C. § 1106, and to disgorge any profits or fees received by the Investment Committee
22 Defendants, BlackRock, Inc., and/or BlackRock Institutional Trust, in connection with such
23 prohibited transactions and to restore to the Plan the losses suffered by the Plan as a result of the
24 prohibited transactions.
25

26 **Count III**

27 **Failure to Monitor Other Fiduciaries in Violation of ERISA §404, 29 U.S.C. § 1104**
28 **(Against BlackRock, Inc.)**

1
2 225. Plaintiff restates and incorporates the allegations of the preceding paragraphs as if set
3 forth fully herein.

4 226. As alleged above, BlackRock, Inc. was and continues to be a Plan fiduciary under 29
5 U.S.C. § 1002(21) because it appointed, directly or through its executives, the members of the
6 Investment Committee, the Administrative Committee, and/or the Retirement Committee.

7 227. The scope of the fiduciary responsibilities of BlackRock thus included the
8 responsibility to appoint, and remove, and thus, monitor the performance of all fiduciaries that it
9 appointed, including the members of the Investment Committee, the Administrative Committee,
10 and/or the Retirement Committee.

11 228. As a result, BlackRock is a monitoring fiduciary under ERISA.

12 229. A monitoring fiduciary must ensure that the monitored fiduciaries are performing
13 their fiduciary obligations, including those with respect to the investment and holding of plan assets.
14

15 230. A monitoring fiduciary must take prompt and effective action to protect the plan and
16 participants when the monitored fiduciaries fail to perform their obligations.
17

18 231. To the extent the Investment Committee Defendants managed the assets of the Plan,
19 BlackRock's monitoring duties included an obligation to ensure that any delegated tasks were being
20 performed prudently and loyally.

21 232. BlackRock, Inc. breached its fiduciary monitoring duties by:

- 22 a. failing to monitor its appointees, to evaluate their performance, or to have a system in
23 place for doing so, and standing idly by as the Plan suffered significant losses as a
24 result of its appointees' imprudent actions and omissions with respect to the Plan;
25
26 b. failing to monitor its appointees' fiduciary process, which would have alerted any
27 prudent fiduciary to the potential breach because of the excessive fees and fee
28

1 layering of the BlackRock affiliated funds and the consistent underperformance of
2 such funds in violation of ERISA;

3 c. failing to ensure that the monitored fiduciaries considered the ready availability of
4 comparable non-affiliated fund options to a plan of the size of this Plan, including
5 lower-cost similar funds that performed better than the Blackrock affiliated funds;
6 and

7
8 d. failing to remove appointees whose performance was inadequate in that they
9 continued to maintain imprudent, excessive-cost investments that did not perform as
10 well as comparable options, all to the detriment of Plan participants' retirement
11 savings.

12 233. As a consequence of these breaches of the fiduciary duty to monitor the performance
13 of other fiduciaries, participants and employees suffered very substantial losses.

14 234. Had BlackRock, Inc. discharged its fiduciary monitoring duties prudently as
15 described above, the losses suffered by the Plan would have been avoided.

16 235. Therefore, as a direct result of the breaches of fiduciary duty alleged herein, the Plan,
17 and Plaintiff and other Class members, lost tens of millions of dollars of their retirement savings.

18 236. Each Defendant is personally liable under 29 U.S.C. § 1109(a) to make good to the
19 Plan any losses to the Plan resulting from the breaches of fiduciary duties alleged in this Count and
20 is subject to other equitable or remedial relief as appropriate.

21 237. Pursuant to ERISA §§ 409 and 502(a)(2) and 502(3), 29 U.S.C. §§ 1109, 1132(a)(2)
22 and 1132(a)(3), Plaintiff seeks to restore all losses to the Plan resulting from the breaches of
23 fiduciary duties alleged in this Count, to restore to the Plan any profits made by any fiduciary
24 defendant including BlackRock through use of Plan assets, and any other equitable or remedial relief
25 as appropriate.
26
27
28

Count IV

Co-Fiduciary Liability, Violation of ERISA § 405, 29 U.S.C. §1105
(Against BlackRock, Inc., Investment Committee Defendants and Administrative Committee
Defendants)

238. Plaintiff restates and incorporates the allegations of the preceding paragraphs as if set forth fully herein.

239. As alleged above, during the Class Period, BlackRock and the Administrative Committee Defendants were named as fiduciaries pursuant to ERISA § 402(a), 29 U.S.C. § 1102(a), were de facto fiduciaries within the meaning of ERISA § 3(21)(A), 29 U.S.C. § 1002(21)(A), or both. Thus, they were bound by the duties of loyalty, exclusive purpose, and prudence.

240. Section 405 of ERISA, 29 U.S.C. § 1105 imposes co-fiduciary liability, in addition to any other liability a fiduciary may have under any other provision of ERISA. Specifically, Section 405(a)(1) of ERISA, 29 U.S.C. § 1105(a)(1) imposes liability for the knowing participation in a breach of fiduciary duty by a co-fiduciary. Section 405(a)(2) of ERISA, 29 U.S.C. § 1105(a)(2), imposes liability if a fiduciary, in the administration of his fiduciary responsibilities, enables another fiduciary to commit a breach. Section 405(a)(3) of ERISA, 29 U.S.C. § 1105(a)(3), imposes liability on a fiduciary if he knows of a breach by a co-fiduciary and fails to make reasonable efforts to remedy it.

241. BlackRock, Inc. knew that the Plan had virtually all BlackRock Affiliated Funds because its officers and directors reviewed and signed off on the Form 5500s, which indicated the investment options for the Plan.

242. Defendant BlackRock is therefore liable as co-fiduciary because it was aware of, participated in, enabled, concealed, and failed to remedy the Investment Committee Defendants' breaches of fiduciary duty and the many prohibited transactions committed during the Class Period

1 related to the Plan's selection of, and failure to remove, the BlackRock affiliated funds from the
2 Plan.

3 243. As a direct and proximate result of BlackRock's actions, the Plan and its participants
4 lost tens millions of dollars and BlackRock profited from direct and indirect fees it received from the
5 Plan.

6 244. Pursuant to ERISA 29 U.S.C. §§1132(a)(2) & 1109(a), BlackRock is therefore liable
7 to restore all losses to the Plan caused by the breaches of its co-fiduciaries and disgorge all profits or
8 gains it received from such breaches.

9 245. The Administrative Committee Defendants knew that the Plan had virtually all
10 BlackRock affiliated funds because its members reviewed and signed off on the Form 5500s, which
11 indicated the investment options for the Plan.

12 246. The Administrative Committee Defendants are all liable as co-fiduciaries because
13 they were aware of, participated in, enabled, concealed, and failed to remedy the Investment
14 Committee Defendants' breaches of fiduciary duty and the many prohibited transactions committed
15 during the Class Period, related to the Plan's selection of, and failure to remove, the BlackRock
16 affiliated funds from the Plan.

17 247. As a direct and proximate result of the actions or inaction by the Administrative
18 Committee Defendants, the Plan and its participants lost tens millions of dollars.

19 248. Pursuant to ERISA 29 U.S.C. §§1132(a)(2) & 1109(a), the Administrative Committee
20 Defendants are therefore liable to restore all losses to the Plan caused by the breaches of its co-
21 fiduciaries.

22 249. Pursuant to ERISA §§ 409 and 502(a)(2) and 502(3), 29 U.S.C. §§ 1109, 1132(a)(2)
23 and 1132(a)(3), Plaintiffs seek to restore all losses to the Plan resulting from the breaches of
24 fiduciary duties alleged in this Court, to restore to the Plan any profits made by any fiduciary
25
26
27
28

1 defendant including BlackRock through use of Plan assets, and any other equitable or remedial relief
2 as appropriate.

3
4 **VII. PRAYER FOR RELIEF**

5 Plaintiff, on behalf of the Plan and all similarly-situated Plan participants and beneficiaries,
6 respectfully requests that the Court:

- 7 a. Issue a declaration that the Defendants have breached their fiduciary duties to the
8 Class in the manner described herein;
- 9 b. Order each fiduciary found to have breached his/her/its fiduciary duty to the Plan to
10 jointly and severally pay such amount or surcharge to the Plan as is necessary to
11 make the Plan whole for any losses which resulted from said breaches or by virtue of
12 liability pursuant to ERISA § 405, plus pre-judgement and post-judgment interest;
- 13 c. Order Defendants to provide all accountings necessary to determine the amounts
14 Defendants must remit to the Plan under 29 U.S.C. § 1109(a) to restore losses and any
15 profits fiduciaries obtained from the use of plan assets or other violations of 29
16 U.S.C. § 1104, 1106, or 1105;
- 17 d. To the extent necessary, issue an injunction or order creating a constructive trust into
18 which all ill-gotten gains, fees and/or profits paid to any of the Defendants in
19 violation of ERISA shall be placed for the sole benefit of the Plan and its participants
20 and beneficiaries. This includes, but is not limited to, the ill-gotten gains, fees and/or
21 profits paid to any of the Defendants that have been wrongly obtained as a result of
22 breaches of fiduciary duty or prohibited transactions or other violations of ERISA.
23
24
25
26
27
28

- 1 e. Issue an injunction removing the fiduciaries who have breached their fiduciary duties
2 their roles as fiduciaries for the Plan, and an order appointing an independent
3 fiduciary to manage the assets of the Plan;
4
5 f. Issue an injunction requiring all fiduciaries to avoid all prohibited transactions and
6 future ERISA violations, including but not limited to removing all BlackRock
7 affiliated funds from the Plan;
8
9 g. Certify the Class, appoint Plaintiff as a class representative, and appoint Cohen
10 Milstein Sellers & Toll PLLC, and Feinberg, Jackson, Worthman & Wasow LLP as
11 Class Counsel;
12
13 h. Award to the Plaintiff and the Class their attorneys' fees and costs under 29 U.S.C. §
14 1132(g)(1) and/or the common fund doctrine;
15
16 i. Order the payment of interest to the extent it is allowed by law; and
17
18 j. Order other equitable or remedial relief as the Court deems appropriate.
19

20 Dated: April 5, 2017

**FEINBERG, JACKSON, WORTHMAN &
WASOW, LLP**

/s/ Nina Wasow

Nina Wasow (Cal. Bar No. 242047)
Todd Jackson (Cal. Bar No. 202598)
383 4th Street
Suite 201
Oakland, CA 94607
Tel: (510) 269-7998
Fax: (510) 269-7994
nina@feinbergjackson.com
todd@feinbergjackson.com

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

COHEN MILSTEIN SELLERS & TOLL, PLLC

Karen L. Handorf (*Pro Hac Vice* forthcoming)

Michelle C. Yau (*Pro Hac Vice* forthcoming)

1100 New York Avenue, N.W.

Suite 500, West Tower

Washington, D.C. 20005

Tel: (202) 408-4600

Fax: (202) 408-4699

khandorf@cohenmilstein.com

myau@cohenmilstein.com

Counsel for Plaintiff