UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
(WESTERN DIVISION)

JEFFEREY YATES, on behalf of the Marathon Petroleum Thrift Plan and a class of all others similarly situated, Plaintiff, vs. RODNEY P. NICHOLS, as administrator for the Marathon Petroleum Thrift Plan, THE MARATHON PETROLEUM CORPORATION SAVINGS PLAN INVESTMENT COMMITTEE, TIMOTHY GRIFFITH, TOM KACZYNSKI and John Does 1-10, Defendants.	**Civil Action No.: 3:17-cv-1389**

CLASS ACTION COMPLAINT

Plaintiff Jefferey Yates ("Plaintiff"), on behalf of the Marathon Petroleum Thrift Plan (the "Plan") and a class of similarly situated participants in the Plan, brings this action against Rodney P. Nichols in his capacity as the administrator for the Plan, the Marathon Petroleum Corporation Savings Plans Investment Committee (the "Committee"), Timothy Griffith, Tom Kaczynski and John Does 1–10 as the individual members of the Committee (together with the Committee, the "Committee Defendants") pursuant to §§ 404, 405, 409 and 502 of the Employee Retirement Income Security Act of 1974 ("ERISA"), 29 U.S.C. §§ 1104, 1105, 1109 and 1132.

I. NATURE OF ACTION

1. Plaintiff, a participant in the Plan during the Class Period, brings this action concerning the Plan's imprudent investment in the common stock of Marathon Oil Corporation

("Marathon Oil") on behalf of the Plan and on behalf of a class of all participants in the Plan whose retirement assets were invested in Marathon Oil from July 1, 2011 to the date of judgment in this Action (the "Class Period").

2. The Plan was established on July 1, 2011 when Marathon Petroleum Company LP ("Marathon Petroleum") was spun-off from Marathon Oil. After the spin-off, Defendants wrongfully and imprudently invested the Plan's assets in Marathon Oil stock out of the incorrect belief that Marathon Oil was an "employer security" under ERISA that was proper to include in the Plan's ESOP. Defendants allowed $88 million of the Plan's assets to be invested in Marathon Oil, an independent company that no longer employed any of the Plan's participants.

3. Defendants coupled their lack of knowledge with a complete lack of diligence in monitoring the Plan's investment options to ensure they were prudent for retirement assets. Defendants operated the Plan to "mirror" Marathon Oil's retirement plan and kept Marathon Oil as an investment option because it was offered in the retirement plan for employees of a different, independent company.

4. The Plan's investment in Marathon Oil's stock violated ERISA's prudence requirement and was reckless under any common-sense investment strategy. Marathon Oil is in the oil and gas industry, a very volatile, high-risk sector of the economy subject to frequent boom-and-bust cycles. Marathon Oil stock dramatically underperformed the market since the spin-off, causing the Plan to lose tens of millions of dollars.

5. As a result of these breaches, each Defendant is liable to the Plan for all losses resulting from each of their breaches of fiduciary duty. Plaintiff also seeks equitable relief.

II. JURISDICTION AND VENUE

6. **Subject Matter Jurisdiction**. This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. § 1331 and ERISA § 502(e)(1), 29 U.S.C. § 1132(e)(1).

7. **Personal Jurisdiction**. This Court has personal jurisdiction over all Defendants because they are all residents of the United States and ERISA provides for nation-wide service of process pursuant to ERISA § 502(e)(2), 29 U.S.C. § 1132(e)(2).

8. **Venue**. Venue is proper in this district pursuant to ERISA § 502(e)(2), 29 U.S.C. § 1132(e)(2), because the Plan is administered, some or all of the fiduciary breaches for which relief is sought occurred, and one or more Defendants reside or may be found, in this district.

III. PARTIES

a. The Plaintiff

9. Plaintiff Jefferey Yates was a participant in the Plan within the meaning of ERISA § 3(7), 29 U.S.C. § 1102(7), and held shares of Marathon Oil in his Plan account, during the Class Period. Mr. Yates had part of his retirement savings invested through the Plan at the beginning of the Class Period and terminated his Plan account in 2016.

10. During the Class Period, the value of Marathon Oil shares within Plaintiff's Plan account diminished considerably and he, like thousands of other Plan participants, suffered losses resulting from Defendants' breaches of fiduciary duty.

b. The Defendants

11. Defendant Rodney P. Nichols is an individual who resides in Ohio. At all relevant times, Nichols was the Plan Administrator and, as Plan Administrator, was the Plan's named fiduciary and responsible for the administration and interpretation of the Plan.

12. Defendant Marathon Petroleum Corporation Savings Plans Investment Committee (the "Committee") is an unincorporated association with a principal place of business in Findlay, Ohio.

13. At all relevant times, the Committee administered the Plan and was a fiduciary of the Plan. The Committee was also a fiduciary of the Plan within the meaning of ERISA § 3(21)(A), 29 U.S.C. § 1002(21)(A) because it exercised discretionary authority or control over management of the Plan and the management or disposition of Plan assets and/or had discretionary authority to appoint and monitor Plan fiduciaries who had control over management or disposition of Plan assets.

14. Nichols, as the Plan Administrator, was a member of the Committee at all relevant times.

15. Defendant Timothy Griffith is an individual who resides in Ohio. Upon information and belief, Griffith was a member of the Committee from July 1, 2011 until on or about August 30, 2015.

16. Defendant Tom Kaczynski is an individual who resides in Ohio. Upon information and belief, Kaczynski has been a member of the Committee since August 31, 2015.

17. John Does 1 through 10, inclusive, are the other individual Plan Administrators and/or members of the Committee, and any other committee(s) responsible for carrying out the provisions of the Plan, and their names and identities are currently not known. Upon information and belief, John Does 1 through 10 are or were senior executive officers of Marathon Petroleum who knew or should have known the facts alleged herein.

IV. DESCRIPTION OF THE PLAN

18. On or about June 30, 2011, Marathon Petroleum separated from Marathon Oil in a series of transactions that the companies refer to as a "spin-off." As a result of the spin-off, Marathon Petroleum became an independent, publicly traded company. The spin-off created "two distinct businesses with separate ownership and management" and Marathon Petroleum thereafter had "its own financial and operating characteristics."

19. As part of the spin-off, Marathon Petroleum established the Plan, effective as of July 1, 2011 to cover its employees. The Plan was spun-off from the Marathon Oil Company Thrift Plan ("Marathon Oil Plan").

20. The Plan covers all employees of Marathon Petroleum that meet certain eligibility requirements. The Plan is not offered to employees of Marathon Oil.

21. At all relevant times, the Plan was an employee benefit plan within the meaning of ERISA §§ 3(3) and 3(2)(A), 29 U.S.C. §§ 1002(3) and 1002(2)(A).

22. At all relevant times, the Plan was a "defined contribution" or "individual account" plan within the meaning of ERISA § 3(34), 29 U.S.C. § 1002(34) because it provided individual accounts for each participant and benefits based upon the amount contributed to the participant's account, and any income, expenses, gains and losses, and any forfeitures of accounts of other participants which could be allocated to such participants' accounts.

23. Under the terms of the Plan, the Defendants had discretion to "add, modify, or delete any investment option as they may deem appropriate." *See* Plan Document at Article VIII. Defendants had the ability to make these changes "at any time." *See* Summary Plan Description at IX.

24. Within their authority and discretion, Defendants could also "freeze" an investment option by allowing participants to hold balances in the option but prohibit additional contributions or exchanges.

V. THE PLAN SHOULD NOT HAVE INVESTED IN MARATHON OIL STOCK

a. Marathon Oil Stock Is Not A "Qualifying Employer Security" Under ERISA

25. When the Plan was established on July 1, 2011, approximately $1.5 billion was transferred from the Marathon Oil Plan to the Plan. Of this amount, approximately $88 million was invested in shares of Marathon Oil stock. The Marathon Oil common stock was held in a separate investment option which was frozen to new contributions.

26. At the end of 2011, Marathon Oil represented the third largest investment in the Plan, behind only the Stable Value Fund and Marathon Petroleum stock. Marathon Oil represented over 6% of the total Plan assets.

27. As alleged more fully below, Marathon Oil remained an investment option for the Plan's participants because of Defendants' dereliction of duties not because they followed an appropriate process in evaluating the prudence of Marathon Oil stock or believed was a prudent investment for retirement assets.

28. Defendants incorrectly thought that Marathon Oil stock was an "employer security" for the Plan and thus proper to include in the Plan's ESOP. In the Form 5500s for the years 2011, 2012, 2013 and 2014 that were filed with the Internal Revenue Service, Defendants classified Marathon Oil stock as an "employer security" for the Plan even though it did not meet ERISA's definition for the term. *See* Plan's 5500 at Schedule H at Part I(1)(d)(1).

29. ERISA § 3(5), 29 U.S.C. § 1002(5) defines "employer" as "any person acting directly as an employer, or indirectly in the interest of an employer, in relation to an employee benefit plan."

30. ERISA § 407(d)(1), 29 U.S.C. 1107(d)(1), defines "employer security" as a "security issued by an employer of employees covered by the plan, or by an affiliate of such employer." Under ERISA, a "qualifying employer security" is an "employer security" that is either a stock, a marketable obligation (e.g., a bond) or an interest in a publicly traded partnership. *See* ERISA § 407(d)(5), 29 U.S.C. § 1107(d)(5).

31. After Marathon Petroleum's spinoff from Marathon Oil, Marathon Petroleum was an independent company that did not own or control Marathon Oil. Moreover, Marathon Oil was no longer an "employer" for the Plan's participants. For example, Marathon Oil did not pay participants' wages, make contributions to the Plan or otherwise act in Marathon Petroleum's interests concerning the Plan. Accordingly, Marathon Oil was not an "employer" of Plan participants under ERISA.

32. Marathon Oil was also not an "affiliate" of Marathon Petroleum after the spin-off and, therefore, its stock does not fall within ERISA's definition of "qualifying employer security." ERISA § 407(d)(7), 29 U.S.C. § 1107(d)(7) provides that a corporation is an "affiliate" of an employer if it is a member of a "controlled group of corporations," a term defined as when a parent corporation owns stock possessing at least 50% of the subsidiary's voting power or when five or fewer individuals, estates or trusts own stock possessing at least 50% of each corporation's voting power. *Id.* citing 26 U.S.C. § 1563. After the spin-off, Marathon Petroleum was an independent, publicly-traded company with separate ownership and

management. Accordingly, Marathon Oil and Marathon Petroleum were not "affiliates" after the spin-off occurred on June 30, 2011.

33. As Marathon Oil was not an "employer" or an "affiliate" for the Plan after the spin-off, Marathon Oil stock was not a "qualifying employer security" and, therefore, Defendants were not exempt from the duty of prudence in ERISA § 404, 29 U.S.C. §1104(a). Defendants' inclusion of Marathon Oil stock within the Plan is contrary to both ERISA's plain language and private letter rulings from the IRS that hold that after a corporate spin-off, the previous employer's stock is no longer a "qualifying employer security" for the new employee benefit plan. *See, e.g.*, P.L.R. 2014-27-024 at 15.

b. Defendants neglected their duties to select prudent investment options.

34. Defendants' classification of Marathon Oil stock as an "employer security" and their inclusion of it in the Plan's ESOP was part of their overall failure to independently assess each investment option in the Plan to ensure it was prudent and to continually monitor those options.

35. Under the terms of the Plan, the Defendants were required to "meet, from time to time, but in no event less frequently than annually" to assist the Plan Administrator "in selecting and reviewing appropriate investment options, and in addressing any related investment matters." *See* Plan Document at Article XXI. While it is not known whether these meetings took place, Defendants neglected their duties to monitor the Plan's investment options.

36. Defendants administered the Plan to be a "mirror plan" of the Marathon Oil Plan. *See* Plan's 2012 Financial Statements at note 10. A review of each plans' investment options show that Defendants simply offered Plan participants the same investment options that Marathon Oil offered to its employees.

37. In 2011, 149 of the 150 mutual funds that the Plan offered to participants as investment options were also offered in the Marathon Oil Plan. The only mutual fund offered in the Plan that was not offered in the Marathon Oil Plan was a target-date fund for participants expected to retire in 2055.

38. In 2012, the Marathon Oil Plan dramatically changed the investment options, greatly reducing the mutual fund options for its participants. In 2013, the Plan did the same – and offered nearly the same slate of investment options that were in the Marathon Oil Plan. Thirty-one of the 32 mutual funds that the Plan offered as investment options in 2013 were also offered in the Marathon Oil Plan. In 2015, 28 of the Plan's 29 mutual fund options were also offered in the Marathon Oil Plan.

39. Defendants did not perform an adequate review or selection of the investment options that were offered to the Plan's participants, including Marathon Oil stock. Defendants simply "mirrored" the options offered by the Marathon Oil Plan, which was for employees of a separate, independent company, and continued to offer Marathon Oil stock as an option for participants to invest their retirement savings. Defendants did not perform an independent review, as they were required to do, and their failures cost the Plan participants millions of dollars.

40. Defendants also breached the duty of loyalty that they owed to the Plan and its participants. ERISA requires that a fiduciary "discharge his duties with respect to a plan solely in the interest of the participants and beneficiaries and . . . for the exclusive purpose of . . . providing benefits to participants and their beneficiaries . . . ." *See* ERISA § 404(a)(1)(A), 29 U.S.C. § 1104(a)(1)(A).

41. The duty of loyalty entails a duty to avoid conflicts of interest and to resolve them promptly when they occur. A fiduciary must always administer a plan with an "eye single" to the interests of the participants and beneficiaries, regardless of the interests of the fiduciaries themselves or the plan sponsor.

42. Defendants failed to make decisions about the Plan's investment options based solely on the interests of the Plan and the Plan's participants and beneficiaries. By simply mirroring the Marathon Oil plan, the Defendants were mimicking what the fiduciaries for another retirement plan thought was doing for Marathon Oil's employees and protecting Marathon Oil's stock price, neither of which should not be a concern for the fiduciaries of Marathon Petroleum's employees.

c. Marathon Oil Stock Was An Imprudent, Risky Investment For Retirement Assets

43. ERISA imposes strict fiduciary duties on fiduciaries. ERISA § 404(a), 29 U.S.C. § 1104(a), states, in relevant part, that:

> [A] fiduciary shall discharge his duties with respect to a plan solely in the interest of the participants and beneficiaries and . . . for the exclusive purpose of providing benefit to participants and their beneficiaries; and defraying reasonable expenses of administering the plan; with the care, skill, prudence, and diligence under the circumstances then prevailing that a prudent man acting in a like capacity and familiar with such matters would use in the conduct of an enterprise of like character and with like aims; by diversifying the investments of the plan so as to minimize the risk of large losses, unless under the circumstances it is clearly prudent not to do so; and in accordance with the documents and instruments governing the plan insofar as such documents and instruments are consistent with the provisions of this title and Title IV.

44. A fiduciary has "a continuing duty of some kind to monitor investments and remove imprudent ones" and "a plaintiff may allege that a fiduciary breached the duty of prudence by failing to properly monitor investments and remove imprudent ones." *Tibble v. Edison Int'l*, 135 S. Ct. 1823, 1829 (2015).

45. Defendants should have been particularly vigilant in monitoring Marathon Oil stock because it was historically risky and volatile.

46. Marathon Petroleum had earned $1,215 million, $449 million and $623 million in net income in the years 2008, 2009 and 2010, respectively and, because of the spin-off, Marathon Oil lost this revenue stream. While a single-stock fund, particularly in a volatile industry like energy, is always risky, there should have been heightened cause for concern here given Marathon Oil's historic performance and the changing nature of its business after the spin-off.

47. Marathon Oil stated that its stock price and earnings are highly dependent on the prices of liquid hydrocarbons (oil) and natural gas, which "fluctuate widely", "have been volatile" and "may continue to be volatile in the future." *See* 2013 Form 10-k.

48. As further alleged below, Marathon Oil stock experienced precisely the volatility and poor performance that might be expected during the Class Period. Notwithstanding this volatility, Defendants failed to remove Marathon Oil stock from the Plan.

49. As set forth above, Defendants did not affirmatively choose to have the Plan invest in Marathon Oil stock. Rather, the Plan invested in Marathon Oil stock because Defendants believed it was an "employer security" and because Defendants wanted the Plan to "mirror" the Marathon Oil Plan.

50. After the spin-off, upon information and belief, Defendants failed to engage in a prudent decision-making process with respect to the continued prudence of invested in such a concentrated single security.

51. Because the value of any single stock is tied to the fortunes of one company, holding a single stock is very risky. By contrast, people who hold a diverse portfolio of stocks

and bonds face less risk because they have only a small stake in each company. *See*, N. Gregory Mankiw, Principles of Economics 546 (1998); *DiFelice v. U.S. Airways, Inc.*, 497 F.3d 410, 415 (4th Cir. 2007); *Steinman v. Hicks*, 352 F.3d 1101, 1104 (7th Cir. 2003).

52. Upon information and belief, Marathon Oil's difficulties in obtaining value for its shareholders was a motivating factor behind the decision to spin-off Marathon Petroleum, and, while not known to Plaintiff, would have been known to the Committee and its members.

53. If the Defendants had performed a proper investigation and fulfilled their duty of prudence under ERISA on or around the date the Plan was established on July 1, 2011, they would have realized these risks, known that Marathon Oil stock was not a suitable option for the investment of retirement assets at the levels at which the Plan invested and would not have invested the Plan's assets that were held in Marathon Oil stock.

54. Defendants further breached their duty of prudence ***after*** the Plan was established by not properly monitoring the Plan's investment in Marathon Oil stock and by continuing to include tens of millions of dollars in Marathon Oil stock in the Plan. On July 1, 2011, Marathon Oil stock (MRO) opened at $33.28 per share. Within months, the stock had dropped below $20 per share, yet Defendants did nothing. As of June 19, 2017, Marathon Oil stock had fallen to less than $13 per share.

55. Properly diversified US equity investments also saw significant gains over the period. On July 1, 2011, the Vanguard Institutional Index Fund (VINIX) traded at $122.58 per share. As of June 19, 2017, it is trading at $222.56, an increase of more than 80% from the date of the spin-off.

56. Defendants further breached their fiduciary duties to monitor the Plan's investments in the in the second half of 2014 when Marathon Oil's price per share declined by

30%. Market news and information from that time made clear that energy prices would remain low in the future — warning signs that the Defendants should have recognized would cause the price of Marathon Oil stock to further drop. In November 2014, OPEC announced it would maintain its crude oil production target of 30 million barrels a day. The U.S. Energy Information Administration (USEIA) predicted that this supply would outpace consumption, leading to an increase in stored oil, and lower prices. *See* http://www.eia.gov/forecasts/steo/archives/dec14.pdf at p. 3.

57. On December 9, 2014, the USEIA released its "Short Term Energy Outlook" that provided that there was going to be high uncertainty in the price of oil and that Brent crude oil prices (Brent) would only average $68 per barrel in 2015 and West Texas Intermediate crude oil (WTI) would only average $63 per barrel. *See* http://www.eia.gov/forecasts/steo/archives/dec14.pdf. These prices were significantly lower than the $112 per barrel and $105 per barrel that Brent and WTI sold for respectively in June 2014. *See* http://www.eia.gov/todayinenergy/detail.php?id=19451.

58. On December 18, 2014, Bill Conerly of Forbes projected that oil prices would fall in 2015 and 2016 and that today's "$60 price is likely to be the high end for the coming two years." *See* http://www.forbes.com/sites/billconerly/2014/12/18/oil-price-forecast-2015-2016/#39d35f023e74. The Forbes article cited many factors for the decline, including slower economic growth, and noted that oil prices had been stagnant for many years due, in part, to increased exploration during periods of high prices that led to lower production costs. *Id.*

59. On October 29, 2015, Marathon Oil announced that it had slashed its quarterly dividend to address "the uncertainty of a lower for longer commodity price environment." *See* https://www.thestreet.com/story/13344367/1/how-will-marathon-oil-mro-stock-react-to-slashed-

dividend.html. Analysts accordingly downgraded Marathon Oil stock to a "Sell," gave it a rating of "D+" and stated that the company's weaknesses, including deteriorating net income and "feeble growth in earnings per share" "could make it more difficult for investors to achieve positive results compared to most of the stocks we cover." *Id.*

60. Financial analysts predicted that the dramatic fall in oil prices would negatively affect the price of natural gas. In December 2015, the price of natural gas fell to its lowest level since 2012, a decline that was called "just the beginning." *See* http://blogs.ft.com/nick-butler/2015/01/04/after-the-oil-price-fall-is-natural-gas-next/. Unlike oil, the fall in natural gas prices was not due to any production decisions from OPEC or political instability that might be considered short term. Rather, the falling prices were "simply a matter of supply and demand" and the fact that supply was "strong – driven by high prices in the last few years and the US shale revolution." *Id.* Simply put, there was too much natural gas being produced to maintain the price levels from prior years.

61. Defendants ignored these risks and failed to take any action that a prudent fiduciary would have taken to stop the massive risk of loss, and actual losses, that Plan participants were suffering.

62. Defendants did not remove Marathon Oil as a Plan investment or otherwise take action to save the Plan from losing millions of dollars in hard-earned retirement savings.

d. Defendants violated their duty to diversify the Plan's investments.

63. ERISA requires prudent fiduciaries to diversify the plan's investments "so as to minimize the risk of large losses, unless under the circumstances it is clearly prudent not to do so." *See* ERISA § 404(a)(1)(C), 29 U.S.C. § 1104(a)(1)(C). ERISA's legislative history indicates that a fiduciary should not invest an "unreasonably large percentage" of plan assets in

a "single security," in "one type of security," or in "various types of securities that are dependent upon success of one enterprise or upon conditions in one locality." *See* ERISA Conference Report on H.R. 2, H.R. Rep. No. 1280, 93d Cong., 2d Sess. 300, 304 (Aug. 12, 1974).

64. Defendants did ***not*** follow these principles.

65. Defendants invested over $88 million, more than 6% of the Plan's assets, in Marathon Oil stock on July 1, 2011. At the time of the spin-off, Marathon Oil was the Plan's second largest investment, behind only the Plan's Stable Value Fund which had a guaranteed rate of return and whose assets were diversified across a spectrum of investments and not tied to the success or failure of one stock or industry.

66. Given the Plan's excessive holding in Marathon Oil stock, a prudent fiduciary would have sold the Marathon Oil stock at the time of the spin-off to properly diversify the Plan's assets.

67. Failing that, given the warnings about the earnings potential for Marathon Oil after 2014, a prudent fiduciary would have sold Marathon Oil stock on or before December 31, 2014, when the global energy market was in decline and the price of Marathon Oil stock was rapidly falling.

68. By maintaining such a large holding in a single-stock investment option like Marathon Oil, Defendants caused the Plan to lose tens of millions of dollars.

VI. DEFENDANTS WERE FIDUCIARIES

69. ERISA requires that every plan name one or more fiduciaries who have "authority to control and manage the operation and administration of the plan." ERISA § 402(a)(1), 29 U.S.C. § 1102(a)(1).

70. ERISA treats as fiduciaries not only persons explicitly named as fiduciaries under § 402(a)(1), 29 U.S.C. § 1102(a)(1), but also any other persons who perform fiduciary functions for a retirement plan. A person or entity is considered a fiduciary to the extent:

> (i) he exercises any discretionary authority or discretionary control respecting management of such plan or exercises any authority or control respecting management or disposition of its assets, (ii) he renders investment advice for a fee or other compensation, direct or indirect, with respect to any moneys or other property of such plan, or has any authority or responsibility to do so, or (iii) he has any discretionary authority or discretionary responsibility in the administration of such plan.

ERISA § 3(21)(A)(i), 29 U.S.C. § 1002(21)(A)(i).

71. Each of the Defendants was a fiduciary during the Class Period within the meaning of ERISA § 3(21)(A)(i), 29 U.S.C. § 1002(21)(A)(i) as either a named or a *de facto* fiduciary with respect to the Plan, and each owed fiduciary duties to the Plan and its participants under ERISA.

72. Defendant Rodney P. Nichols was the Plan administrator and the Plan's named fiduciary. *See* Plan Document at Article XXI. In this capacity, he had complete control of the administration of the Plan, including complete discretion to construe or interpret the provisions of the Plan. *Id.* Nichols was also a member of the Committee during the Class Period. *Id.*

73. The Committee, and each member of the Committee, including Defendants Rodney P. Nichols, Timothy Griffith and Tom Kaczynski, was a fiduciary under ERISA because they had the discretion "to add new investment options or eliminate current investment options at any time." *See* Summary Plan Description at Article IX. The Committee also was responsible for "selecting and reviewing appropriate investment options, and in addressing any related investment matters." *See* Plan Document at Article XXI.

VII. CLASS ACTION ALLEGATIONS

74. Plaintiff brings this action derivatively on the Plan's behalf pursuant to ERISA §§ 409 and 502, 29 U.S.C. §§ 1109 and 1132, and as a class action pursuant to Rules 23(a), (b)(1), and/or (b)(2) of the Federal Rules of Civil Procedure on behalf of the Plan, Plaintiff, and the following class of similarly situated persons (the "Class"):

> All persons, except Defendants and their immediate family members, who were participants in or beneficiaries of the Marathon Petroleum Thrift Plan at any time from July 1, 2011 to the present, inclusive (the "Class Period"), and whose Plan accounts included investments in Marathon Oil stock.

75. The members of the Class are so numerous that joinder of all members is impracticable. While the exact number of Class members is unknown to Plaintiff at this time, and can only be ascertained through appropriate discovery, the Plan had 7,700 participants with account balances as of December 31, 2011. Accordingly, Plaintiff believes there are at least 500 participants in the Plan during the Class Period and whose Plan accounts included investment in Marathon Oil stock.

76. Multiple questions of law and fact common to the Class exist, including, but not limited to:

a. whether Defendants each owed a fiduciary duty to the Plan, Plaintiff, and members of the Class;

b. whether Defendants breached their fiduciary duties to the Plan, Plaintiff, and members of the Class by failing to act prudently and solely in the interests of the Plan and the Plan's participants and beneficiaries;

c. whether Defendants violated ERISA; and

d. whether the Plan, Plaintiff, and members of the Class have sustained damages and, if so, what is the proper measure of damages.

77. Plaintiff's claims are typical of the claims of the members of the Class because the Plan, Plaintiff, and the other members of the Class each sustained damages arising out of Defendants' uniform wrongful conduct in violation of ERISA as complained of herein.

78. Plaintiff will fairly and adequately protect the interests of the Plan and members of the Class because they have no interests antagonistic to or in conflict with those of the Plan or the Class. In addition, Plaintiff has retained counsel skilled and experienced in class action litigation, complex litigation, and ERISA litigation.

79. Class action status in this ERISA action is warranted under Rule 23(b)(1)(B) because prosecution of separate actions by the members of the Class would create a risk of adjudications with respect to individual members of the Class which would, as a practical matter, be dispositive of the interests of the other members not parties to the actions, or substantially impair or impede their ability to protect their interests.

80. Class action status is also warranted under Rule 23(b)(1)(A) and (b)(2) because: (i) prosecution of separate actions by the members of the Class would create a risk of establishing incompatible standards of conduct for Defendants; and (ii) Defendants have acted or refused to act on grounds generally applicable to the Class, thereby making appropriate final injunctive, declaratory, or other appropriate equitable relief with respect to the Class as a whole.

VIII. CAUSES OF ACTION

FIRST CAUSE OF ACTION
(Breach of Fiduciary Duty)

81. Plaintiff incorporates by reference the allegations in paragraphs 1 through 80, above.

82. During the Class Period, the Defendants were named fiduciaries pursuant to ERISA § 402(a)(1), 29 U.S.C. § 1102(a)(1), or *de facto* fiduciaries within the meaning of ERISA § 3(21)(A), 29 U.S.C. § 1002(21)(A), or both.

83. Defendants breached their fiduciary duties by wrongfully allowing the Plan to hold Marathon Oil stock as an investment option for participants' retirement assets.

84. As alleged above, the scope of the fiduciary duties and responsibilities of the Defendants included managing the assets of the Plan for the sole and exclusive benefit of participants and beneficiaries and with the care, skill, diligence, and prudence required by ERISA. Defendants were responsible for, among other things, selecting and offering only prudent investment options, eliminating imprudent options, evaluating the merits of the Plan's investments on an ongoing basis, administering the operations of the Plan and taking all necessary steps to ensure that the Plan's assets were invested prudently.

85. According to the United States Department of Labor ("DOL") regulations and case law interpreting this statutory provision, a fiduciary's investment or investment course of action is prudent if: (a) he has given appropriate consideration to those facts and circumstances that, given the scope of such fiduciary's investment duties, the fiduciary knows or should know are relevant to the particular investment or investment course of action involved, and (b) he has acted accordingly.

86. Defendants had a duty to know the applicable terms of ERISA and that Marathon Oil stock was not an "employer security" for the Plan. Moreover, Defendants had a duty to follow a regular, appropriate systematic procedure to evaluate the prudence of including Marathon Oil stock as an investment in the Plan. Defendants, however, failed to conduct an appropriate investigation of the merits of continued investment in Marathon Oil. Contrary to their duties and obligations under ERISA, Defendants instead administered the Plan to "mirror" the Marathon Oil Plan and kept Marathon Oil as an investment option because it was offered in the retirement plan of another, independent company.

87. Defendants failed to prudently manage the assets of the Plan. Specifically, during the Class Period, Defendants knew or should have known that Marathon Oil was not, and had never been, a suitable and appropriate investment for the Plan. Nonetheless, during the Class Period, Defendants continued to permit the Plan to invest in Marathon Oil.

88. Defendants could not have acted prudently when they continued to offer or invest the Plan's assets in Marathon Oil stock because, among other reasons:

(a) they knew of and/or failed to investigate Marathon Oil as alleged above; and

(b) The risk associated with the investment in Marathon Oil during the Class Period was by far above and beyond the normal, acceptable risk for retirement plan investments.

89. Knowing these extraordinary risks, Defendants had a duty to remove the Marathon Oil stock as an investment for the Plan.

90. Defendants also breached their fiduciary duties by failing to diversify Plan investments. Defendants were bound by the duty to diversify the Plan's investments "so as to minimize the risk of large losses, unless under the circumstances it is clearly prudent not to do

so." *See* ERISA § 404(a)(1)(C), 29 U.S.C. § 1104(a)(1)(C). Defendants allowed the Plan to invest over $80 million of the Plan's assets in Marathon Oil stock.

91. Despite the power and ability to do so, Defendants did not take any actions to diversify the Plan's assets. Defendants' failure to properly diversify the Plan's assets caused the Plan to suffer tens of millions of dollars in losses during the Class Period.

92. Pursuant to ERISA §§ 409, 502(a)(2) and (a)(3), 29 U.S.C. §§ 1109, 1132(a)(2) and (a)(3), Defendants are liable to restore the losses to the Plan caused by their breaches of fiduciary duties alleged in this Count and to provide other equitable relief as appropriate.

SECOND CAUSE OF ACTION
(Co-Fiduciary Liability)

93. Plaintiff incorporates by reference the allegations in paragraphs 1 through 92, above.

94. ERISA § 405(a), 29 U.S.C. § 1105(a), imposes liability on a fiduciary, in addition to any liability which he may have under any other provision, for a breach of fiduciary responsibility of another fiduciary with respect to the same plan if he knows of a breach and fails to remedy it, knowingly participates in a breach, or enables a breach. Defendants breached all three provisions.

95. ERISA § 405(a)(3), 29 U.S.C. § 1105(a)(3), imposes co-fiduciary liability on a fiduciary for a fiduciary breach by another fiduciary if he has knowledge of a breach by such other fiduciary, unless he makes reasonable efforts under the circumstances to remedy the breach. As alleged above, each Defendant knew of the breaches by the other fiduciaries and made no efforts, much less reasonable ones, to remedy those breaches.

96. ERISA § 405(a)(1), 29 U.S.C. § 1105(a)(1), imposes liability on a fiduciary for a breach of fiduciary responsibility of another fiduciary with respect to the same plan if 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. Defendants knowingly participated in the each others' breaches because, as alleged above, they participated in the management of the Plan's improper investment in Marathon Oil stock and, upon information and belief, knowingly participated in the improper management of that investment by the other Defendants.

97. ERISA § 405(a)(2), 29 U.S.C. § 1105(a)(2), imposes liability on a fiduciary if, by failing to comply with ERISA § 404(a)(1), 29 U.S.C. §1104(a)(1), in the administration of his specific responsibilities which give rise to his status as a fiduciary, he has enabled another fiduciary to commit a breach.

98. As a direct and proximate result of the breaches of fiduciary duties alleged herein, the Plan, and indirectly Plaintiff and other participants and beneficiaries, lost millions of dollars of retirement savings.

99. Pursuant to ERISA §§ 409, 502(a)(2) and (a)(3), 29 U.S.C. §§ 1109, 1132(a)(2) and (a)(3), each of the Defendants is liable to restore the losses to the Plan caused by his or her breaches of the fiduciary duties alleged in this Count and to provide other equitable relief as appropriate.

CAUSATION

100. The Plan suffered injury as a result of Defendants' imprudent investment in Marathon Oil stock, losing tens of millions of dollars when prudent alternative investments in the Plan showed substantial gains over the class period.

101. Had Defendants properly discharged their fiduciary duties and/or their co-fiduciary duties, the Plan and its participants would have invested in prudent alternatives rather

than in Marathon Oil stock. The Plan should have prudently divested itself of Marathon Oil stock following the spin-off.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays for:

A. A Declaration that Defendants breached their ERISA fiduciary duties to the participants;

B. An Order compelling Defendants to make good to the Plan all losses to the Plan resulting from their breaches of their fiduciary duties, including loss of vested benefits to the Plan resulting from imprudent investment of the Plan's assets; to restore to the Plan all profits Defendants made through use of the Plan's assets; and to restore to the Plan all profits which the Plan and participants would have made if Defendants had fulfilled their fiduciary obligations;

C. An Order enjoining each of the Defendants from any further violations of their ERISA fiduciary obligations;

D. An Order requiring Defendants to appoint one or more independent fiduciaries to participate in the management of the Plan's investments;

E. Actual damages in the amount of any losses the Plan suffered, to be allocated among the participants' individual accounts in proportion to the accounts' losses;

F. An Order awarding costs pursuant to 29 U.S.C. § 1132(g);

G. An Order awarding attorneys' fees pursuant to the common fund doctrine, 29 U.S.C. § 1132(g), and other applicable law; and

H. An Order for equitable restitution and other appropriate equitable and injunctive relief against all Defendants.

Dated: June 29, 2017

Respectfully submitted,

/s/ Gregory Y. Porter
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