SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

MARY FRANCES WAGLEY, JAMES WAGLEY, ANNE WAGLEY, and MARY COPP, as beneficiaries of the MARY PENNEY WAGLEY IRREVOCABLE TRUST, Plaintiffs, - against – JPMORGAN CHASE BANK, N.A., individually, as trustee of the MARY PENNEY WAGLEY IRREVOCABLE TRUST, Defendant.	**<u>SUMMONS</u>** Index No.: ________________ File Date: September 14, 2018

TO THE ABOVE NAMED DEFENDANTS:

YOU ARE HEREBY SUMMONED to answer the complaint in this action and to serve a copy of your answer, or, if the complaint is not served with this summons, to serve a notice of appearance, on Plaintiff's attorney within 20 days after the service of this summons, exclusive of the date of service (or within 30 days after the service is complete if this summons is not personally delivered to you within the State of New York).

TAKE NOTICE THAT should you fail to answer, a judgment will be taken against you by default for the relief demanded in the Complaint and any additional interest the Court deems applicable.

Plaintiff designates the Supreme Court of the State of New York in and for New York County as the place of trial. Venue is proper pursuant to CPLR § 503 because JPMorgan's principal office is located at 270 Park Avenue, New York, New York, 10017.

DATED: New York, New York
September 14, 2018

QUINN EMANUEL URQUHART & SULLIVAN, LLP

By: */s/ Andrew J. Rossman*
Andrew J. Rossman
Alex Spiro
Nathan Goralnik

51 Madison Avenue, 22nd Floor
New York, New York 10010
Telephone: (212) 849-7000
Facsimile: (212) 849-7100

andrewrossman@quinnemanuel.com
alexspiro@quinnemanuel.com
nathangoralnik@quinnemanuel.com

Counsel for Plaintiffs

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

MARY FRANCES WAGLEY, JAMES WAGLEY, ANNE WAGLEY, and MARY COPP, as beneficiaries of the MARY PENNEY WAGLEY IRREVOCABLE TRUST, Plaintiffs, - against – JPMORGAN CHASE BANK, N.A., individually, as trustee of the MARY PENNEY WAGLEY IRREVOCABLE TRUST, Defendant.	Index No.: ______________ **COMPLAINT** **<u>JURY TRIAL DEMANDED</u>**

TABLE OF CONTENTS

Plaintiffs Mary Frances Wagley (**"Mary Frances"**), James Wagley (**"Wagley"**), Anne Wagley, and Mary Copp, beneficiaries of the Mary Penney Wagley Irrecovable Trust (the **"Penney Trust"** or the **"Trust"**) (collectively, **"Plaintiffs"**), by and through their attorneys, Quinn Emanuel Urquhart & Sullivan, LLP, bring this action and allege as follows:

NATURE OF THE ACTION

> *Many forms of conduct permissible in a workaday world for those acting at arm's length, are forbidden to those bound by fiduciary ties. A trustee is held to something stricter than the morals of the market place. Not honesty alone, but the punctilio of an honor the most sensitive, is then the standard of behavior. As to this there has developed a tradition that is unbending and inveterate. Uncompromising rigidity has been the attitude of courts of equity when petitioned to undermine the rule of undivided loyalty by the 'disintegrating erosion' of particular exceptions. Only thus has the level of conduct for fiduciaries been kept at a level higher than that trodden by the crowd. It will not consciously be lowered by any judgment of this court.*[1]
>
> *Meinhard v. Salmon*, 249 N.Y. 458, 464 (1928) (Cardozo, C.J.)

1. On April 14, 1902, James Cash Penney, known as "J. C. Penney," established a dry goods store called the Golden Rule in the small town of Kemmerer, Wyoming, in a one-room wooden building with an attic that provided living quarters for his family. From these modest origins, Penney built what would become one of the largest retail businesses in the United States. The J. C. Penney Company operated 1,000 department stores throughout the country by 1928 and was listed on the New York Stock Exchange the following year – only days before the stock market crash and the ensuing Great Depression, which battered the fortunes of Penney and the company that bore his name. As the J. C. Penney Company and the nation's economy embarked on their gradual recovery in the years that followed, Penney set up several trusts with the aim of protecting his family in future hard times. Penney believed in giving back, and contributed significantly to

[1] Internal citation omitted.

organizations such as the National 4-H Council, the Methodist Church, the University of Missouri, Stanford University, and the Massachusetts Institute of Technology. Penney established one trust, the Penney Trust, for the benefit of his young daughter, Mary Frances, pursuant to a Trust Agreement with Chemical Bank & Trust Co. (**"Chemical Bank"**) dated December 28, 1934 (the **"Trust Agreement"**). Penney gave Chemical Bank the discretion to select investments on behalf of his daughter based on his trust in and enduring relationship with the bank, which persevered through the Great Depression and subsequent decades.

2. In 1996, having grown to become the third largest bank in the United States in terms of total assets, Chemical Bank acquired the Chase Manhattan Corporation and adopted its brand. It acquired J.P. Morgan & Co. soon after, in 2000. As a result of these mergers and acquisitions, the Penney Trust is now administered by JPMorgan Chase Bank, N.A. (**"JPMorgan"**) as Trustee. Since 2009, at the request of Mary Frances, JPMorgan has managed and formally administered the Penney Trust out of its offices in Dallas, Texas, where Plaintiff James Wagley resides. Wagley has served as the Trust beneficiaries' designated point of contact with JPMorgan since Mary Frances, now a nonagenarian, entered her golden years. Throughout this time, the Penney family has maintained its trust in Chemical Bank and its successor entities. They have provided JPMorgan with the same mandate as they had previously given Chemical Bank, namely, to pursue the long-term growth of the principal value of the Penney Trust, with the objective of building an enduring family legacy.

3. In recent years, however, JPMorgan has allowed other objectives to compete with those of the Penney family and the best interests of the Penney Trust. In its quest to make up for lost earnings following the 2008-2009 financial crisis, JPMorgan directed its sprawling asset management business to systematically steer the assets of captive clients such as Plaintiffs into

unsuitable, self-dealing transactions that enriched the bank to the detriment of its clients' wealth and JPMorgan's fiduciary obligations. A former JPMorgan employee involved in the management of the Penney Trust has told the family that the Trust's case is ***"heartbreaking"*** and was caused by JPMorgan's policy of over-investing in costly, proprietary products. The former employee explained that the lucrative fees these products generated for JPMorgan necessarily exerted a continuing "drag" on its clients' investment returns, creating a classic conflict of interest. Under JPMorgan's failed stewardship, the growth of the Penney Trust has consistently lagged far behind the returns achieved by comparable Penney family endowments and widely recognized market benchmarks, such as the Standard & Poor's 500 (**"S&P 500"**) index of large, publicly listed companies. As of the present date, the Penney Trust's underperformance has accumulated into a shortfall of millions of dollars of principal value.

4. Plaintiffs, the beneficiaries of the Penney Trust, were not the only fiduciary clients to be let down by JPMorgan during that period. In early 2015, *Bloomberg* reported that ordinary JPMorgan clients such as a public library in Canton, Illinois and Episcopal churches in Indiana and West Virginia have ***lost millions of dollars*** because JPMorgan improperly placed their assets in speculative, unsuitable products from which JPMorgan received hefty management fees and other revenues. One such product was the failed Highbridge Dynamic Commodities Strategy Fund, which "had no performance history and Morningstar's lowest rating when JPMorgan trustees put about $750,000 from the library trust there" – a stake that it eventually sold in March 2013 at a loss of $254,000.[2] JPMorgan's culture of self-dealing likewise led Penney Trust assets to be squandered on this and other in-house investment products that benefited the bank to its clients' detriment.

[2] Neil Weinberg, "Losing Faith in JPMorgan, Two Churches Claim Self-Dealing," *Bloomberg.com* (Jan. 9, 2015), https://www.bloomberg.com/news/articles/2015-01-08/losing-faith-in-jpmorgan-two-churches-claim-self-dealing.

5. No fiduciary or reasonably prudent investor would have allocated trust assets on such a massive scale into such a risky and untested product. But JPMorgan had an apparently irresistible motive to funnel the assets of the Penney Trust and other fiduciary clients into this failed investment: the bank stood to reap hefty management fees as the owner of Highbridge Capital Management LLC (**"Highbridge"**), which JPMorgan completed its acquisition of in 2009.[3] "The benefit to JPMorgan is clear," as the *New York Times* explained. "The more money investors plow into the bank's funds, the more fees it collects for managing them."[4]

6. Even when JPMorgan was not placing clients' assets into unsuitable products such as the Highbridge funds, its asset managers systematically preferred proprietary funds, from which JPMorgan would earn exorbitant fees, over more cost-effective products offered by unaffiliated third parties. These and other self-dealing transactions affecting JPMorgan's fiduciary clients were so pervasive that they even infected the management of the bank's own 401(k) savings plan, according to class-action lawsuits proceeding in the Southern District of New York.[5]

7. JPMorgan ***has admitted*** as much as part of landmark settlements with the U.S. Securities and Exchange Commission and the Commodity Futures Trading Commission made public on December 18, 2015 (the **"SEC Order"**). Specifically, the bank acknowledged engaging in an undisclosed, years-long practice of corralling its unwitting clients' assets into JPMorgan-managed funds or into third-party funds in exchange for unseemly kickbacks known

---

[3] DealBook, JPMorgan to Acquire Rest of Highbridge Capital," *NYTimes.com* (June 11, 2009), https://dealbook.nytimes.com/2009/06/11/jpmorgan-to-buy-out-highbridge-capital/.
[4] Susanne Craig & Jessica Silver-Greenberg, "Former Brokers Say JPMorgan Favored Selling Bank's Own Funds Over Others," *NYTimes.com* (July 2, 2012), https://dealbook.nytimes.com/2012/07/02/ex-brokers-say-jpmorgan-favored-selling-banks-own-funds-over-others/.
[5] *See* Greg Iacurci, "J.P. Morgan Sued for Self-Dealing in Its 401(k) Plan," *Pensions & Investments* (January 27, 2017), http://www.pionline.com/article/20170127/ONLINE/170129874/jp-morgan-sued-for-self-dealing-in-its-401k-plan.

euphemistically as "retrocessions."[6] The Securities and Exchange Commission's head of enforcement found that "***undisclosed conflicts were pervasive***" at JPMorgan, which agreed to pay $307 million to resolve its admitted wrongdoing.[7] In the wake of the Securities and Exchange Commission's investigation, JPMorgan moved large amounts of fiduciary assets out of costly proprietary funds, such as the JPMorgan Mid Cap Growth and Small Cap Core funds, in which it had invested the assets of fiduciary clients such as JPMorgan's 401(k) plan beneficiaries.[8]

8. By the time regulators exposed the pervasive misalignment of incentives and systematic mismanagement of client assets within JPMorgan, the bank's self-dealing practices had inflicted millions of dollars of losses on Plaintiffs. Like many other victims of the misconduct detailed in the SEC Order, the Penney Trust's assets were placed in proprietary products such as the Highbridge Dynamic Commodities Strategy Fund and the JPMorgan Large Cap Core Fund, among many others. JPMorgan also placed Penney Trust assets in a litany of third-party funds, such as the Invesco Balanced-Risk Allocation Fund, that often "pay the intermediary ['such as a bank'] for the sale of Fund shares," *i.e.*, retrocessions, and may thereby "create a conflict of interest by influencing the broker-dealer or other intermediary" in regards to the placement of clients' funds.[9] Numerous investments influenced by JPMorgan's culture of self-dealing were disposed of at a significant loss to the Penney Trust even as the stock market soared to record-high levels. For example, in April 2013 JPMorgan eventually dumped a portion of the Penney Trust's ill-fated investments in the Highbridge Dynamic Commodities Strategy Fund at a ***nearly 28% loss***.

---

[6] *JPMorgan Chase Bank, N.A. & J.P. Morgan Sec. LLC, Respondents.*, Investment Advisers Act of 1940 Release No. 4295, 113 SEC Docket 26 (Dec. 18, 2015).
[7] Nathaniel Popper, "JPMorgan to Pay $307 Million for Steering Clients to Own Funds," *NYTimes.com* (Dec. 18, 2015), https://www.nytimes.com/2015/12/19/business/dealbook/jpmorgan-to-pay-307-million-for-steering-clients-to-own-funds.html.
[8] Owen Davis, "JPMorgan Obliterated One of Its Own Mutual Funds By Yanking Employee 401(k) Assets," *Dealbreaker* (Jan. 26, 2017), https://dealbreaker.com/2017/01/jpmorgan-obliterated-own-mutual-fund/.
[9] Prospectus, Invesco Balanced-Risk Allocation Fund (Feb. 28, 2018), http://hosted.rightprospectus.com/Invesco/Fund.aspx?cu=00141V747&dt=P&ss=mf.

9. As with the other clients affected by the misconduct detailed in the SEC Order, JPMorgan wrongfully failed to disclose to Plaintiffs that the bank's policy was to systematically prefer investment products for which JPMorgan received management fees or kickbacks. For example, JPMorgan's sole disclosures to Plaintiffs regarding its potential or actual conflicts of interest prior to 2014 was the following language, appearing in fine print at the very end of the Penney Trust's annual account statement for 2013, or language substantially similar to it:

> J.P. Morgan affiliates may receive compensation from the JPMorgan funds for providing investment advisory services to the funds. J.P. Morgan affiliates may also provide administrative, custodial, sales, distribution, shareholder or other services to the JPMorgan Funds or funds established, sponsored, advised, or managed by third parties, and J.P. Morgan affiliates may be compensated for such services as allowed by applicable law. The distributor of the JPMorgan Funds is JPMorgan Distribution Services, Inc., which is an affiliate of JPMCB.

As JPMorgan admitted to the SEC and the CFTC, this boilerplate disclosure was materially misleading at the time it was made: it fails to disclose JPMorgan's bank-wide policy of funneling captive clients' assets into JPMorgan's in-house investment products, or its practice of directing business to third parties in exchange for kickback payments.

10. Following the commencement of the Securities and Exchange Commission's investigation of JPMorgan, the bank updated its standard-form disclosures with fine print acknowledging the ***possibility*** of conflicts of interest, but even these disclosures were false when made: they misleadingly suggested that JPMorgan would prefer proprietary investments ***only on the margin***, *i.e.*, where its in-house products were substantially identical to those managed by third parties. In fact, JPMorgan's policy was to ***systematically compromise its investment process*** in favor of the bank's own financial interests. JPMorgan also failed and has continued to refuse to specifically identify the transactions corrupted by retrocessions and other conflicts of interest. JPMorgan's misleading disclosures concealed the corruption of its investment process from

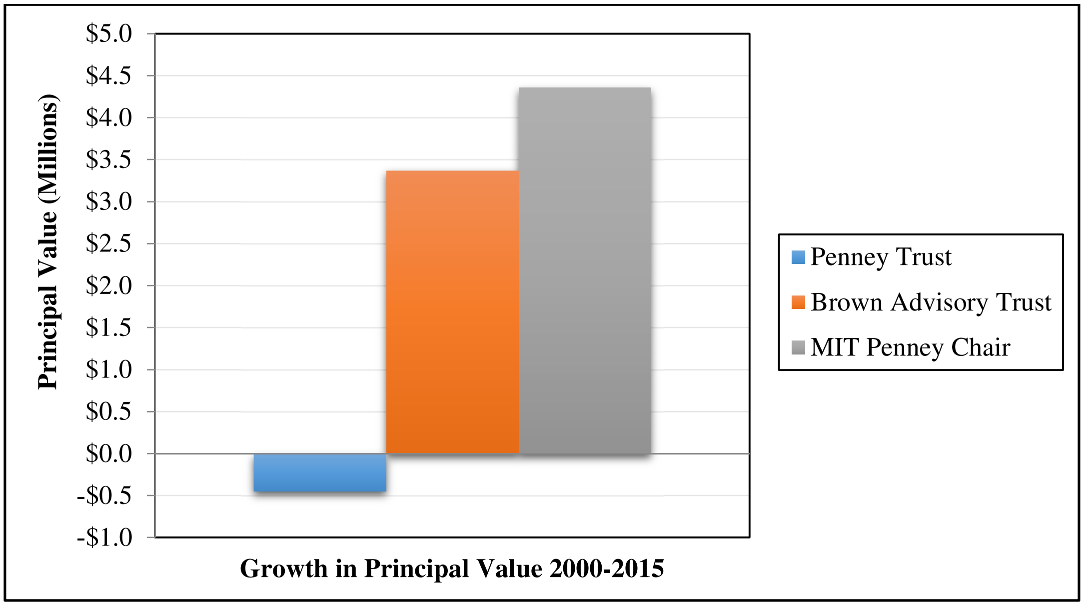
Plaintiffs, who remained unaware of JPMorgan's misaligned incentives, its policy of self-dealing, and the resulting impact on the Penney Trust.

11. JPMorgan's mismanagement of the Penney Trust was not limited to the misconduct detailed in the SEC Order. The bank's policy of prioritizing its own revenues over the best interests of its fiduciary clients drove other misconduct, including executing an extraordinarily and unjustifiably high volume of trades on behalf of the Penney Trust. By 'churning' the trust's investments, JPMorgan's trading activity inflicted ongoing and accumulating losses on the Penney Trust's principal value while generating commissions and other revenues for the bank. These trades included numerous speculative, short-term bets on derivatives and other leveraged and highly volatile instruments that were not suitable for the Penney Trust's investment objectives and frequently incurred breathtaking losses. For example, in March 2015, JPMorgan liquidated a speculative oil trade for a ***short-term loss in excess of 50%***. JPMorgan undertook transactions of this nature and volume, which bore no relationship to the Penney Trust's investment objectives, in a reckless and deceitful bid to drive revenues for the bank at unjustifiable risk to Plaintiffs.

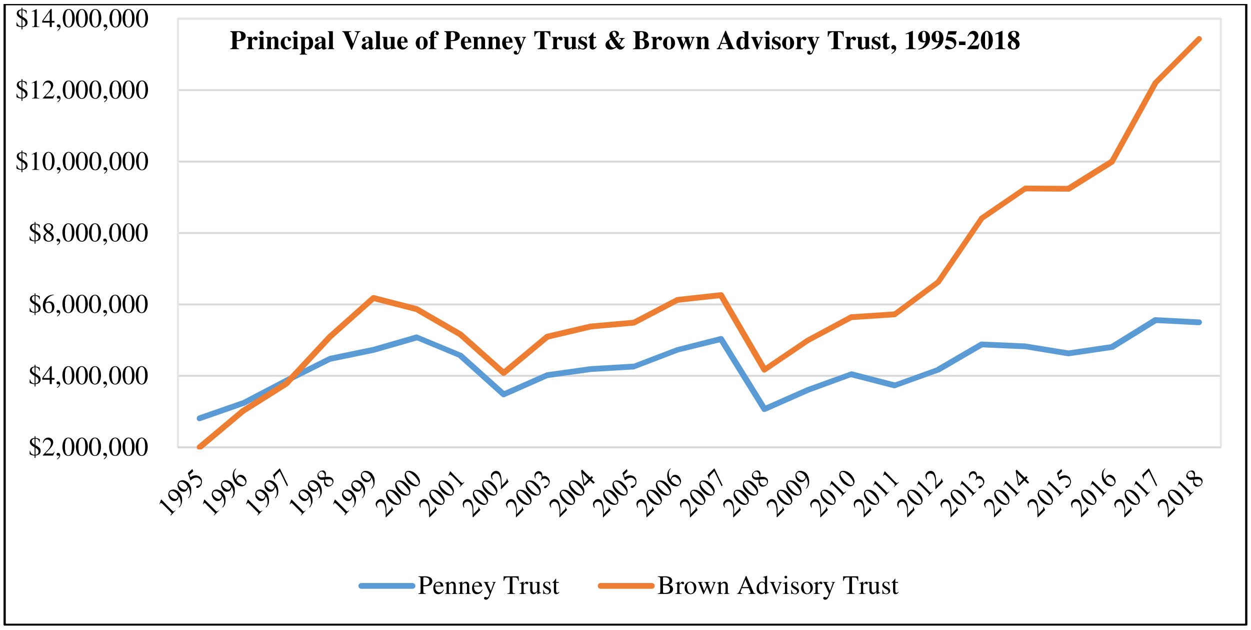
12. The inevitable result of JPMorgan's incompetent and self-dealing conduct as Trustee of the Penney Trust was to waste trust property and cost Plaintiffs millions of dollars. The extent of the damage is evident in the grave underperformance of the Penney Trust relative to comparable family endowments. Between 2000 and 2015, the Penney Trust has not grown but rather has ***lost nearly 9% of its principal value***. In contrast, a Penney family trust with the investment management firm Brown Advisory (the **"Brown Advisory Trust"**), for which Plaintiffs provided instructions similar to those given to JPMorgan, grew in principal value by ***more than 58%***, or nearly $3.4 million.[10] A Penney family-endowed chair at the Massachusetts

[10] A Penney family-endowed chair at the Massachusetts Institute of Technology (the **"MIT Penney Chair"**) likewise gained $4.3 million in principal value over the same period.

Institute of Technology (the **"MIT Penney Chair"**) likewise gained ***59%*** between 2000 and 2015. In sum, the Penney Trust has seen its principal value dwindle under JPMorgan's stewardship even as the Brown Advisory Trust and the MIT Penney Chair have grown by millions of dollars:



13. As demonstrated by the chart below, the chasm between the performance of the Penney Trust and the Brown Advisory Trust has only grown since JPMorgan's Dallas, Texas office took over administration of the Penney Trust in 2009.



In 1995, the principal value of the Penney Trust exceeded that of the Brown Advisory Trust by nearly $800,000. By mid-2018, as a result of JPMorgan's systematic mismanagement, the value of the Penney Trust had fallen behind the Brown Advisory Trust by ***approximately $8 million***.

14. Plaintiffs have made repeated reasonable inquiries regarding the Penney Trust's poor performance to the responsible fund managers at JPMorgan and have consistently reiterated their instruction to prioritize long-term principal growth. JPMorgan has represented to and assured Plaintiffs that the bank, as a fiduciary, has acted in a manner consistent with Plaintiffs' directives and exercised "extensive due diligence" in selecting investments for the Penney Trust. Despite the revelations in the SEC Order and the accumulating evidence that the Penney Trust fell prey to self-dealing and other misconduct by JPMorgan, JPMorgan has stonewalled Plaintiffs' efforts to hold the bank to account for its fiduciary breaches and the ill-gotten advantages it has gained as a result. When Plaintiffs formally demanded in 2016 that the bank identify and fully disclose the entirety of its self-dealing and conflicted transactions, JPMorgan engaged in delay tactics and, in some cases, refused to respond to Plaintiffs' requests entirely.

15. JPMorgan has been craven in its efforts to evade accountability. In February 2009, following the innocuous request by Mary Frances that JPMorgan transfer the Trust's administration to Dallas, Texas, JPMorgan drafted a self-serving letter for Mary Frances to sign, praising "the care and management you [JPMorgan] have given my trust . . . . [since] I was seven," and stating that "I have been pleased with JPMorgan." While a key purpose of the transfer to Dallas was to facilitate greater involvement by James Wagley given his mother's old age, JPMorgan continued to ***circumvent both Wagley and Plaintiffs' counsel***, instead directing highly material communications to Wagley's ***nearly 90-year-old mother***. For example, on January 20, 2017, after Plaintiffs formally demanded an accounting from JPMorgan, the bank notified Mary Frances alone that "[w]hile preparing the accounting to file with the Court, we discovered that we incorrectly charged fees to the Trust" totaling ***$188,245.72***, and announced that this amount would be added to her quarterly distribution check. This was a troubling admission given JPMorgan's representation that it never received fees from the Trust over and above trust management fees,[11] and JPMorgan's decision to notify only Mary Frances, then 89 years old, was an inexcusable attempt to evade the attention of both Wagley and Plaintiffs' counsel.

16. This lawsuit seeks to recover Plaintiffs' damages and hold JPMorgan to account for its impermissible conduct as administrator of the Penney Trust and the ill-gotten benefits it as extracted to the detriment of Plaintiffs. Plaintiffs should be awarded treble damages and attorney's fees based on the sprawling scale of JPMorgan's misconduct towards the investing public. Plaintiffs bring this action for: breach of fiduciary duties; fraud; negligent misrepresentation; deceptive practices in violation of New York's General Business Law § 349; and unjust enrichment and restitution.

---

[11] Even this figure does not include the indirect fee income, retrocessions, and other advantages that JPMorgan wrongfully obtained from its role as Plaintiffs' fiduciary, and has refused to disclose to Plaintiffs.

PARTIES

17. Plaintiffs Mary Frances Wagley, James Wagley, Anne Wagley, and Mary Copp are individual beneficiaries of the Penney Trust.

a. Mary Frances resides in Cockeysville, Maryland.

b. Wagley resides in Dallas, Texas.

c. Anne Wagley resides in Berkeley, California.

d. Mary Copp resides in Westport, Massachusetts.

18. Defendant JPMorgan Chase Bank, N.A., is a nationally charted bank with its principal place of business located at 270 Park Avenue, New York, New York 10017. Since 2009, JPMorgan has administered the Penney Trust from its offices in Dallas, Texas.

JURISDICTION AND VENUE

19. Jurisdiction in this Court is founded upon New York Civil Practice Law and Rules (**"CPLR"**) § 301 and upon CPLR § 501, pursuant to Paragraph 11 of the Trust Agreement.

20. Venue is proper in this County pursuant to CPLR § 503 because JPMorgan's principal office is located at 270 Park Avenue, New York, New York, 10017, and pursuant to CPLR § 509 because Plaintiff has designated New York County as the place of trial.

FACTUAL ALLEGATIONS

I. JPMORGAN'S ASSET MANAGEMENT UNIT ENGAGED IN SYSTEMIC MISCONDUCT DIRECTED AT THE PUBLIC

A. JPMorgan Had a Motive and Opportunity to Steer Assets of Ordinary Clients Into Transactions Where JPMorgan's Interests Were Conflicted

21. JPMorgan's parent company, JPMorgan Chase & Co., boasted in its 2015 Annual Report that "[a]t J.P. Morgan Asset Management," which managed the Penney Trust, "we have

been building a client-first, fiduciary culture for more than 180 years."[12] But the transfer of the Penney Trust's administration from New York to JPMorgan's offices in Dallas, Texas in 2009 came at a pivotal moment for the bank, which had begun to bend its fiduciary culture to the breaking point in an effort to shore up its profitability following the mortgage meltdown. As the *New York Times* reported, "[f]acing a slump after the financial crisis, JPMorgan Chase turned to ordinary investors to make up for the lost profit."[13] JPMorgan looked to take advantage of the sway it held over captive investors like Plaintiffs, whose assets represented a ready pool of cash to funnel into products that generated fees for the bank. The opportunity to extract additional revenues at the expense of its fiduciary clients proved irresistible to JPMorgan, which adopted a pervasive and undisclosed policy of steering fiduciary assets into costly proprietary investments, often to the detriment of the clients JPMorgan was bound to serve.

22. JPMorgan's practices were improper because of the obvious conflict of interest it created for JPMorgan's investment advisors and managers. "The concern is that, driven by fees, banks will push their own products over lower-cost options with stronger returns."[14] By systematically steering assets to JPMorgan products, where JPMorgan could directly or indirectly generate additional fees, JPMorgan was placing its advisors and managers in positions of conflict with the best interests of its clients and fiduciaries. As the *New York Times* reported, "[i]t is a controversial practice, and many companies have backed away from offering their own funds because of the perceived conflicts."[15]

---

[12] JPMorgan Chase & Co., *Annual Report 2015*, at 67.

[13] Susanne Craig and Jessica Silver-Greenberg, "Former Brokers Say JPMorgan Favored Selling Bank's Own Funds Over Others," *NYTimes.com* (July 2, 2012), https://dealbook.nytimes.com/2012/07/02/ex-brokers-say-jpmorgan-favored-selling-banks-own-funds-over-others/.

[14] Susanne Craig & Jessica Silver-Greenberg, "Selling the Home Brand: A Look Inside an Elite JPMorgan Unit," *NYTimes.com* (March 2, 2013), https://dealbook.nytimes.com/2013/03/02/selling-the-home-brand-a-look-inside-an-elite-jpmorgan-unit-2/.

[15] Craig & Silver-Greenberg (July 2, 2012).

23. More brazen than its competitors, JPMorgan persisting in this practice, often without making ***any*** disclosure of its self-dealing to clients and fiduciaries – until its misconduct attracted regulatory attention from the Securities and Exchange Commission. According to the *New York Times*:

> While financial advisers at other firms are typically free to offer a variety of investments, JPMorgan pressures brokers to sell the bank's own products, according to the current and former employees. Several advisers who resisted said they were told to change their tactics or be pushed out.[16]

One former JPMorgan adviser told the *Times*, ***"We were not able to do the right things for our clients."*** He reported that "an executive told the brokers on a conference call, ***'You are not a money manager; you are an asset gatherer.'"*** Former employees of the bank described how they and/or their colleagues were terminated if they did not aggressively favor JPMorgan's own products over those of its competitors.[17]

24. Consistent with reporting by the *Times*, a former JPMorgan employee who was ***assigned to the Penney Trust*** has informed Plaintiffs that JPMorgan personnel faced quotas and were compensated to bring in new clients, new assets, and new revenues. This employee stated that the environment in which the Penney Trust was administered was rife with conflicts of interest: "we want to act ***for*** our clients," but ***"at JPMorgan we kept doing things to our clients."*** Like many other clients of JPMorgan, the Penney Trust fell prey to the misaligned incentives and the resulting pervasive culture of self-dealing perpetrated by JPMorgan against its asset management clients. As described in further detail below, this misconduct was revealed when the SEC and the Commodity Futures Trading Commission released the findings of their investigations into the bank's practices near the end of 2015.

---

[16] Craig & Silver-Greenberg (March 2, 2013).

[17] *Id.* (emphasis added).

B. JPMorgan Admitted to the Securities Exchange Commission That It Maintained an Undisclosed Practice of Self-Dealing Using Client Assets

25. While JPMorgan's misconduct was concealed from ordinary clients like Plaintiffs, who relied on the bank as their Trustee and fiduciary, its practices triggered a lengthy investigation by the SEC and the CFTC that resulted in a settlement released on December 18, 2015. As part of the SEC Order, JPMorgan and its affiliates "agreed to pay $307 million to settle accusations that [they] improperly steered clients to the company's in-house mutual funds and hedge funds" and failed to disclose this practice to their customers."[18] JPMorgan ***admitted*** to a company-wide

> negligent ***failure . . . to disclose conflicts of interests*** arising from [its] preferences for (i) JPMorgan-managed mutual funds . . . (ii) JPMorgan-managed private hedge funds . . . and (iii) and third-party-managed private hedge funds that shared client fees with a [JPMorgan] affiliate.[19]

JPMorgan and an affiliate were ordered to cease and desist from committing further violations and to pay disgorgement of profits gained from their wrongdoing. In the wake of the settlement, the CFTC's director of enforcement noted that "[i]nvestors are entitled to know if a bank managing their money favors placing investments in its own proprietary funds or other vehicles that generate fees for the bank."[20]

26. JPMorgan's admissions to the SEC and the CFTC reveal that the bank's asset managers did not just prefer JPMorgan's own mutual funds and hedge funds on the margin – they systematically favored these investments over competitors' products. For example, regulators

---

[18] Nathaniel Popper, "JPMorgan to Pay $307 Million for Steering Clients to Own Funds," NYTimes.com (Dec. 18, 2015), https://www.nytimes.com/2015/12/19/business/dealbook/jpmorgan-to-pay-307-million-for-steering-clients-to-own-funds.html.

[19] *JPMorgan Chase Bank, N.A. & J.P. Morgan Sec. LLC, Respondents*, Investment Advisers Act of 1940 Release No. 4295, 113 SEC Docket 26, ¶ 1 (Dec. 18, 2015) (**"SEC Order"**). It is important to note that JPMorgan's admission of negligence was made as part of an offer of settlement that was accepted by the SEC and CFTC, and does not support the inference that JPMorgan's misleading statements and omissions were made without fraudulent intent, particularly in the specific case of material misstatements and omissions of material fact made to Plaintiffs.

[20] "CFTC Orders JPMorgan Chase Bank, N.A. to Pay $100 Million for Failure to Disclose Conflicts of Interest," CFTC Release No. 7297-15 (Dec. 18, 2015), https://www.cftc.gov/PressRoom/PressReleases/pr7297-15.

found that "in early 2011, [JPMorgan] had invested ***47% of mutual fund assets*** and ***35% of hedge fund assets*** in [JPMorgan] IM client accounts in Proprietary Funds."[21] JPMorgan further admitted that it "failed to adequately disclose certain conflicts of interest to [its] clients,"[22] having begun to disclose the bank's self-serving preference for proprietary mutual funds and hedge funds in its account documentation no earlier than 2014.[23] Directing clients' assets into JPMorgan's own investment products allowed JPMorgan to extract additional revenues at its clients' expense, including management fees, prime brokerage revenues, and other income directly or indirectly resulting from its placement of client funds in proprietary instruments. As noted in *Forbes*, this conflict of interest was especially pronounced in the case of "hedge funds and other alternative investments," which "are far more expensive than low-cost index funds. Alts charge fees of 2% of assets and 20% of any profits—hundreds of times higher than index fund fees of a few basis points."[24] As such, placing client assets in these products was particularly lucrative to JPMorgan – and even costlier to JPMorgan's fiduciary clients.

27. Besides favoring its own proprietary funds, JPMorgan also admitted to the practice of steering client funds into third-party-managed hedge funds that compensated JPMorgan in the form of "retrocessions" or placement agent fees. As *Forbes* explains, "[r]etrocessions are . . . kickbacks that hedge fund managers make to bankers, brokers and other intermediaries who steer clients their way." These kickbacks "'can ***result in ulterior motives*** driving a bank or wealth manager's decisions to recommend products which are not in their client's best interest.'"[25] The SEC reported that "[t]he standard retrocession that the broker-dealer affiliate of [JPMorgan]

---

[21] SEC Order ¶ 34.
[22] *Id.* ¶ 9.
[23] *Id.* ¶¶ 36-37.
[24] Edward Siedle, "JP Morgan Asset Management SEC Settlement Exposes Hedge Fund Retrocessions," *Forbes.com* (Feb. 9, 2018), https://www.forbes.com/sites/edwardsiedle/2018/02/09/jp-morgan-asset-management-sec-settlement-exposes-hedge-fund-retrocessions/.
[25] *Id.*

receives from a third-party hedge fund is approximately ***1.0% of the market value of relevant client assets invested***, paid on an annual basis."[26] As revealed in the SEC Order, JPMorgan unscrupulously requested retrocession payments from third-party hedge fund managers – and took their clients' business money elsewhere if these payments were not forthcoming.

> Beginning in at least 2005, [JPMorgan] sought retrocessions from third-party private hedge fund managers under consideration for inclusion on the Private Bank Platform. During introductory meetings, third-party hedge fund managers were typically asked about their willingness to pay retrocessions. If a manager declined to pay retrocessions, an alternative manager with a similar investment strategy that would pay retrocessions was typically sought.[27]

Furthermore, JPMorgan consistently failed to disclose this obvious conflict of interest to its clients, admitting that it "did not disclose its preference for retrocession-paying third-party hedge fund managers in IM accounts and GAP IM Holdings until August 2015."[28] Even if retrocessions were disclosed, they represented clear conflicts of interest that were impermissible for a bank being paid to act in a fiduciary capacity in its clients' best interest. Moreover, as demonstrated by JPMorgan's mismanagement of the Penney Trust, the undisclosed conflicts highlighted in the SEC Order are only a partial consequence of the pervasive misalignment of incentives at JPMorgan, which systematically prioritized its own interests over those of its fiduciary clients.

C. <u>JPMorgan's Self-Dealing Mismanagement of Client Assets Has Dealt Widespread Losses to Ordinary Investors</u>

28. Regulators found "significant harm to clients"[29] as a result of the misconduct admitted to by JPMorgan in the SEC Order – a finding borne out by the injury suffered by the Penney Trust and widespread reports of similar harm done to other JPMorgan clients. Behind the

---

[26] *Id.* ¶ 39.
[27] *Id.* ¶ 40.
[28] *Id.* ¶ 41.
[29] Nathaniel Popper, "JPMorgan to Pay $307 Million for Steering Clients to Own Funds," NYTimes.com (Dec. 18, 2015), https://www.nytimes.com/2015/12/19/business/dealbook/jpmorgan-to-pay-307-million-for-steering-clients-to-own-funds.html.

headline findings of the SEC and the CFTC are stories of individual investors whose assets were placed in unsuitable investments based on JPMorgan's misaligned incentives and unseemly practice of self-dealing using client funds.

29. In 2015, for example, JPMorgan settled a lawsuit brought by an Indianapolis church, endowed by Eli Lilly Jr., which alleged that JPMorgan inflicted $13 million in losses on the church's endowment over nine and a half years through its decision "'to purchase over 177 different investment products, mostly from itself, using church funds because they produced the highest revenues to JPMorgan, to the detriment of Christ Church.'"[30] The fees charged on some of the proprietary products were invested ***exceeded 8 percent per year***: for example, JPMorgan invested the church's assets in nearly 90 different structured notes, an alternative investment product linked to stock indices, currencies, and other assets, saddling the church with fees totaling up to 11 percent of the principal value of its investment.[31] Other endowments, such as ones benefiting the Episcopal Diocese of West Virginia and a public library in Illinois, similarly report that JPMorgan has steered millions of dollars of their assets into loss-making proprietary investments while charging them exorbitant fees for doing so. Dwindling assets and income from these endowments, caused by JPMorgan's mismanagement, has forced the trust beneficiaries to cut back on aid to charitable institutions such as a medical center, HIV, hunger, and domestic-abuse programs, a Boy Scout troop, and a soup kitchen.[32]

30. Besides steering assets into costly, proprietary products at the expense of cost-effective third-party alternatives, JPMorgan has invested these clients' trust assets into untested

---

[30] Tim Evans, "Christ Church Cathedral claims JPMorgan mismanaged trust funds," *IndyStar.com* (Aug. 13, 2014), https://www.indystar.com/story/news/2014/08/13/christ-church-cathedral-claims-jpmorgan-mismanaged-trust-funds/13998197/.

[31] Neil Weinberg, "Losing Faith in JPMorgan, Two Churches Claim Self-Dealing," *Bloomberg.com* (Jan. 9, 2015), https://www.bloomberg.com/news/articles/2015-01-08/losing-faith-in-jpmorgan-two-churches-claim-self-dealing.

[32] *See id.*

and ultimately catastrophic investments, including the Highbridge Dynamic Commodities Strategy Fund. This fund opened in 2010, just months after JPMorgan completed its acquisition of Highbridge, and soon achieved $2.7 billion in assets under management following massive inflows of funds from JPMorgan clients. One such client was a $24 million trust benefiting a public library in Canton, Illinois, of which JPMorgan trustees invested some $750,000 in the fund at a time when it had ***no performance history*** and held Morningstar's ***lowest rating***. *Bloomberg* reports that JPMorgan later sold the library's stake in this unsuitable product at a ***$254,000 loss***.[33] The Penney Trust was another such client to take significant losses based on its ill-fated investment in the fund, which incurred 17% in cumulative losses before shutting its doors in 2014.[34] Far from steering clear of any situation where its interests might come into conflict with those of its fiduciary clients, JPMorgan willfully sought to corral trust assets into transactions that enriched the bank at its clients' expense.

31. JPMorgan's practice of steering client assets into investments that benefited the bank extended to ***its own 401(k) savings plan***, which beneficiaries have alleged improperly favored high-cost proprietary products managed by JPMorgan and its allies, with a motive of earning outsized fees, in violation of its fiduciary duties under the Employee Retirement Income Security Act.[35] A 2017 news report explained that "[b]y choosing its own mutual funds," among other wrongdoing, "the bank had profited at the expense of its own employees' nest eggs."[36] Besides those allegations, JPMorgan's handling of its 401(k) plan suggests that the bank knew that it was not in the best interests of the plan beneficiaries to invest in JPMorgan's own, higher-cost

---

33 *Id.*
34 *Id.*
35 Robert Steyer, "J.P. Morgan faces second suit alleging self-dealing in 401(k) plan," *Pensions & Investments* (March 6, 2017), http://www.pionline.com/article/20170306/ONLINE/170309898/jp-morgan-faces-second-suit-alleging-self-dealing-in-401k-plan.
36 Owen Davis, "Here's How Badly JPMorgan Screwed Over Employees Who Have 401(k)s," *Dealbreaker* (March 2, 2017), https://dealbreaker.com/2017/03/jpmorgan-screwed-over-employees-401ks/.

funds: as JPMorgan neared a settlement with the SEC and CFTC in late 2015, "some of the most expensive in-house options were jettisoned" from the 401(k) plan's portfolio, a fact that "suggests that ***the bank knew it could do better***."[37] Indeed, Plaintiffs have learned from former JPMorgan financial advisers, including one who was assigned to the Penney Trust, that JPMorgan employees understood that JPMorgan over-invested clients' assets in proprietary products and that the high fees charged on JPMorgan's asset management products exerted a significant "drag" on the performance of its clients' investments.

32. JPMorgan's self-dealing business practices were not limited to policy preferences for proprietary investment products and retrocession-paying fund managers. Rather, they reflected a fundamental corruption of incentives within the bank. Former JPMorgan financial advisers, including one who served the Penney Trust account out of Dallas, have told Plaintiffs that even JPMorgan personnel in fiduciary roles were subject to quotas and variable compensation tied to their volume of new clients, assets, and revenues. According to these former advisers, JPMorgan began each year at zero along each of these axes, driving them to search for assets to place in JPMorgan products and to thereby generate new revenues for the bank. In addition to being incentivized to prioritize the bank's revenues, these former employees have reported to Plaintiffs that JPMorgan's staff was micro-managed by senior personnel to ensure that asset allocations served the bank's interest, corroborating investigative reports by the *New York Times*.[38] As a result, the former adviser to the Penney Trust reported that JPMorgan employees face ubiquitous conflicts of interest in their role as trustees. This former employee stated that "we want to act ***for*** our clients," but that "at JPMorgan we kept doing things ***to*** our clients."

---

[37] *Id.* (emphasis added).

[38] Susanne Craig & Jessica Silver-Greenberg, "Selling the Home Brand: A Look Inside an Elite JPMorgan Unit," *NYTimes.com* (March 2, 2013), https://dealbook.nytimes.com/2013/03/02/selling-the-home-brand-a-look-inside-an-elite-jpmorgan-unit-2/.

33. JPMorgan's culture of self-dealing and incompetence had a broad and pernicious impact on accounts like the Penney Trust. For example, in October 2012, JPMorgan was ordered to pay more than $18 million plus punitive damages and attorney's fees after JPMorgan entered into numerous variable prepaid forward contracts with a trust under its administration. The court ruled that these transactions improperly benefited JPMorgan at the trust's expense, finding that the resulting fee income for the bank "amounted to double dipping that was inherently unreasonable." The court awarded punitive damages because the bank "has been guilty of reckless disregard for the rights of others."[39] In certain instances, JPMorgan's mismanagement has apparently been enabled by the incompetence of its personnel. For example, in 2017, a Texas jury returned a verdict finding JPMorgan had breached its fiduciary duties and its agreement to administer the estate of Max D. Hopper. The bank's mismanagement of Mr. Hopper's estate evinced such disorganization and incompetence that the jury awarded his widow billions of dollars in punitive damages in addition to $4.7 million in actual damages suffered.[40]

II. <u>JPMORGAN BREACHED ITS FIDUCIARY DUTIES TO PLAINTIFFS AND COMMITTED OTHER WILLFUL WRONGDOING</u>

A. <u>JPMorgan Failed to Comply with the Prudent Investor Rule</u>

34. JPMorgan's responsibilities as Trustee of the Penney Trust included fiduciary duties to preserve trust property and to invest with reasonable care and competence. Among other things, JPMorgan owed Plaintiffs a duty to comply with the prudent investor rule, which required JPMorgan to invest and manage its assets in according with the prudent investor rule, exercising

---

[39] "JPMorgan must pay $18 million in trust mismanagement case," *Reuters* (Oct. 10, 2012), https://www.reuters.com/article/us-jpmorgan-trustcase/jpmorgan-must-pay-18-million-in-trust-mismanagement-case-idUSBRE8991HF20121010.

[40] *See* PR Newswire, "Texas Jury Finds JP Morgan Chase Violated Estate Administration Duties and Awards More Than $4 Billion in Punitive Damages" (Sept. 26, 2017), https://www.prnewswire.com/news-releases/texas-jury-finds-jp-morgan-chase-violated-estate-administration-duties-and-awards-more-than-4-billion-in-punitive-damages-300526398.html.

reasonable care, skill, and caution and pursuing an investment strategy in accordance with risk and return objectives reasonably suited to the portfolio.

35. The distribution requirements and risk and return objectives of the Penney Trust were clearly outlined for JPMorgan. In February 2009, Plaintiff Mary Frances requested that the administration of the Penney Trust be transferred to JPMorgan's offices in Dallas, Texas, in part so that Wagley, her son, could manage the family's relationship with the Trustee. This new arrangement began with a conference call, early in 2009, during which Wagley and Mary Frances instructed JPMorgan to prudently invest to achieve long-term principal growth, and to de-prioritize yearly income. Wagley repeatedly instructed JPMorgan between 2009 and 2015 that it should eliminate high-fee investment products in favor of low-cost, passive index funds, as he reiterated in an e-mail to JPMorgan on January 16, 2015:

> As I have mentioned to you in numerous conversations that we have had I would prefer that this money be invested in an S&P index fund or a Vanguard Fund that mirrors the broad market. You are aware that the focus of this Trust for all the folks in my family is to grow the principal.

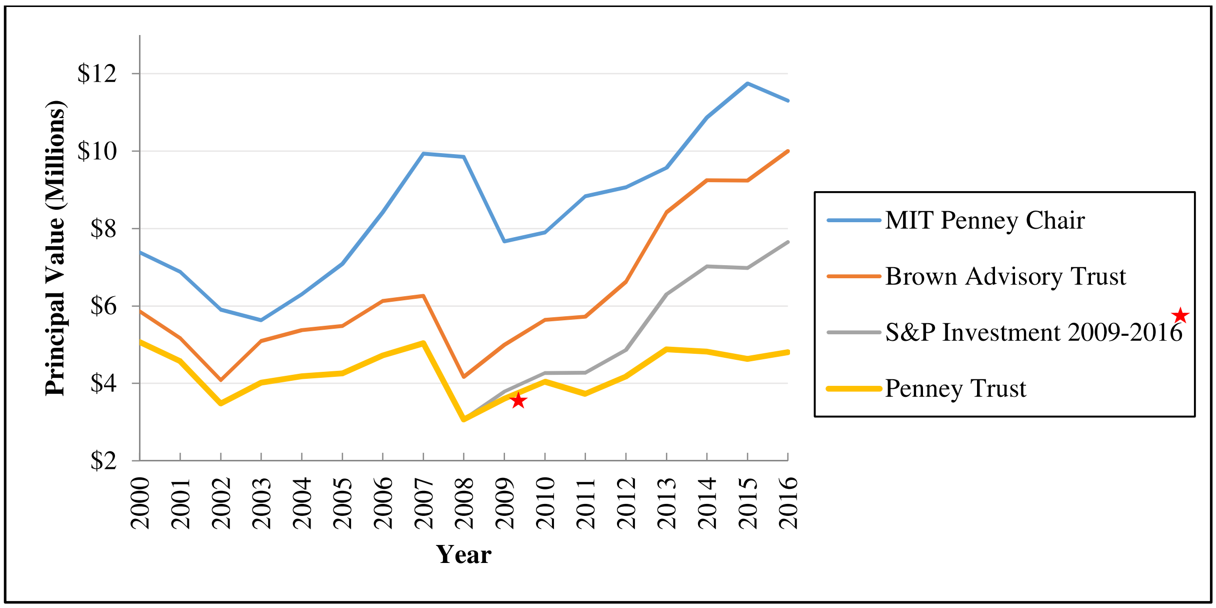
36. JPMorgan has admitted to Plaintiffs that "JPMorgan's fiduciary obligations include preserving the Trust's wealth while helping achieve Ms. Wagley's goals; namely, seeking real capital growth with secondary goals of generating income and maintaining principal stability over a long time horizon."[41] JPMorgan repeatedly assured and represented to Wagley and other Plaintiffs that it had and would continue to follow the family's investment strategy and stated objectives for the Penney Trust. For example, it represented on November 1, 2016, that "JPMorgan has at all times acted in accordance with those goals and its fiduciary obligations."[42] However, the performance of the Penney Trust does not bear out JPMorgan's assurances, and it

---

[41] Letter, Nov. 1, 2016.
[42] *Id.*

departs so drastically from the performance of market benchmarks as to confirm JPMorgan's violation of the most basic standards of prudent investing.

37. The chart below compares the performance of the Penney Trust with the performance of two comparable accounts, the Brown Advisory Trust and the MIT Penney Chair, from 2000 through 2016. The chart also shows the performance of the benchmark S&P 500 index from 2009, the year the administration of the Penney Trust was moved to Dallas, Texas (adjusted for the Penney Trust's average annual payout of 1.9% over that period).



Comparing these trusts with one another, and with the benchmark S&P 500 index, is telling because the trusts have similar investment objectives. Yet as demonstrated above, ***the Penney Trust has lost principal value*** during a time when the stock market has flourished and the Brown Advisory Trust and the MIT Penney Chair have grown by millions of dollars.[43] The MIT Penney Chair's outperformance is particularly striking given that this trust pays out annual income (rather than re-investing it as principal) at a substantially higher rate than does the Penney Trust. Notably,

[43] The MIT Penney Chair values are FYE June 30.

the chart above also demonstrates that, had JPMorgan done nothing but place the entirety of the Penney Trust assets into S&P 500 index in 2009, the principal value of the Penney Trust would have grown to more than $7.5 million by 2016, even assuming an annual 1.9% distribution of Penney Trust principal.

38. As described in further detail below, a part of the underperformance of the Penney Trust portfolio is explained by JPMorgan's deliberate placement of trust assets into costly investment products from which the fee income would improperly inure to JPMorgan's benefit at Plaintiffs' expense, among other self-dealing transactions. In other cases, JPMorgan managers squandered Penney Trust assets on highly speculative, unsuitable investments that no reasonably prudent investor would have believed to be consistent with the bank's duty to preserve trust property. For example, in 2013, while the S&P 500 soared by over 32%, JPMorgan executed a short-term, speculative trade on a highly leveraged derivative instrument referencing the Hang Seng China Enterprises Index, on which Penney Trust realized a ***loss exceeding 26 percent***. JPMorgan also made speculative, leveraged bets on the value of currencies, oil, and other commodities using Penney Trust assets; one of these was unwound in March 2015 at ***a short-term loss exceeding 50 percent***. The inherent leverage of these products makes them unacceptably risky (not to mention costly) for a portfolio with a long-term growth objective, as illustrated by the dramatic loss incurred by the Penney Trust. These and other imprudent transactions by JPMorgan violated both Plaintiffs' directives and the investment objectives of the Penney Trust.

39. One potential contributing factor to JPMorgan's erratic and loss-making trading activity was the constant turnover within the Penney Trust's client service team. For example, the Penney Trust's fiduciary manager, Dian Kauth, replaced in July 2010 by Gary Ward. In Mr. Ward was given a new title ("T &E Officer") in December 2011 and replaced soon after by Jean Davis.

Kelly Adams (**"Adams"**) was assigned as the Penney Trust's T & E Officer in 2014. Similarly, the Penney Trust's portfolio manager, Robert Berry, was replaced in May 2010 by Ryan Lehrke, who by 2012 had been replaced by John Canning, Jr. (**"Canning"**). JPMorgan's continuous overhauling of the team in charge of the Penney Trust resulted in abrupt changes of investment strategy and loss of institutional knowledge that weakened and proved costly to the Trust.

B. <u>JPMorgan Engaged in Self-Dealing by Investing in Proprietary Funds and Receiving Kickbacks in Return for Investments of Plaintiffs' Property</u>

40. JPMorgan also owed Plaintiffs a duty of loyalty, a cornerstone of any fiduciary relationship. This duty, which was not waived in the Trust Agreement, required JPMorgan to distance itself from any investments where its interests might be at odds with those of the Penney Trust. Nevertheless, without disclosure and in violation of its duty to avoid conflicts of interest, JPMorgan has consistently steered Penney Trust assets into proprietary funds, putting JPMorgan in a position to double-dip on fee income from products a fiduciary would not otherwise have invested in. These self-interested transactions, which have no place in a fiduciary relationship, reflect the pernicious misalignment of incentives detailed in both the SEC Order and investigative reporting into unacceptable conflicts of interest within JPMorgan. A former JPMorgan employee who was assigned to the Penney Trust has confirmed to Plaintiffs that the Trust, contrary to JPMorgan's false assurances, fell prey to the pervasive pressure within JPMorgan to sell proprietary products and obtain kickbacks, rather than serving clients' best interests.

1. <u>JPMorgan Engaged in Self-Dealing by Investing Penney Trust Assets in Costly and Unsuitable Proprietary Funds</u>

41. Like many clients of JPMorgan's far-flung asset management business, Plaintiffs saw the assets of the Penney Trust swept up in JPMorgan's campaign to drive captive clients into its own investment products. These included two struggling Highbridge funds, the Highbridge

Dynamic Commodities Strategy Fund and the Highbridge Statistical Market Neutral Fund, both of which were closed down after JPMorgan sold the Penney Trust's positions at a significant loss.

42. JPMorgan invested Penney Trust assets into the Highbridge Statistical Market Neutral Fund on June 20, 2008. At that time, JPMorgan held a controlling stake in Highbridge and had recently taken over the Bear Stearns units that provided prime brokerage and custodial services to Highbridge. Thus, JPMorgan stood to earn revenues from the Penney Trust both as its Trustee and from services provided to the Highbridge funds in which the Penney Trust's assets were placed. JPMorgan never disclosed this conflict of interest, breaching its fiduciary duties to Plaintiffs. The Penney Trust would come up short in this trade, liquidating its shares in the Highbridge Statistical Market Neutral Fund at a substantial loss in 2010. JPMorgan subsequently shut down this fund by rolling its into another proprietary fund, following years of lagging performance and a wave of redemptions.[44]

43. In December 2010, JPMorgan invested Penney Trust assets in a newly launched fund, the Highbridge Dynamic Commodities Strategy Fund, which wagered on commodity-linked derivatives with a "long" bias. JPMorgan would not have invested the Penney Trust's property in the Highbridge Dynamic Commodities Strategy Fund, a highly speculative product with no track record and Morningstar's lowest rating,[45] had JPMorgan not stood to profit handsomely from attracting assets to the fund. Yet JPMorgan never disclosed this conflict of interest to Plaintiffs, and the fund performed disastrously for Penney Trust and numerous other investors whose funds

[44] Chris Sloley, "JPM rolls market neutral fund into €815m Euro equity strategy," *Wealth Manager* (March 18, 2015), http://citywire.co.uk/wealth-manager/news/jpm-rolls-market-neutral-fund-into-815m-euro-equity-strategy/a804243?section=global.
[45] Neil Weinberg, "Losing Faith in JPMorgan, Two Churches Claim Self-Dealing," *Bloomberg.com* (Jan. 9, 2015), https://www.bloomberg.com/news/articles/2015-01-08/losing-faith-in-jpmorgan-two-churches-claim-self-dealing.

were funneled into the product by JPMorgan trustees.[46] JPMorgan eventually dumped the Penney Trust's its interest in the fund for a ***28 percent loss*** to the Trust.

44. These and other "alternative investments" that JPMorgan placed Penney Trust assets in were never suitable investment vehicles for the trust's long-term investment goals. By investing Penney Trust assets in costly and highly speculative investments to generate fees for itself, JPMorgan breached its most fundamental duties of loyalty and competency. The Highbridge investments introduced clear conflicts of interest into JPMorgan's fiduciary relationship with the Penney Trust, but JPMorgan failed ***even to disclose*** its conflicts to Plaintiffs, ***let alone*** avoid them.

45. Besides the Highbridge funds, JPMorgan invested the Penney Trust's assets into numerous proprietary funds directly managed by JPMorgan. At various times during 2013, for example, the Penney Trust held shares in the JPMorgan Growth Advantage Fund, the JPMorgan U.S. Large Cap Core Plus Fund, the JPMorgan Market Expansion Enhanced Index Fund, the JPMorgan Global Research Enhanced Index Fund, the JPMorgan Strategic Income Opportunities Fund, the JPMorgan Intermediate Tax Free Bond Fund, the JPMorgan Short-Intermediate Municipal Bond Fund, the JPMorgan International Currency Income Fund, the JPMorgan International Value Fund, and the JPMorgan U.S. Real Estate Fund. The Trust's investment in the JPMorgan U.S. Large Cap Core Plus Fund was especially suspicious, as that fund's top holdings were ***virtually identical*** to the top holdings in the Trust's portfolio of common stocks. In effect, the Trust was paying JPMorgan mutual fund management fees merely to duplicate the allocation of the Trust's own securities portfolio – a particularly brazen example of double-dipping.

46. As JPMorgan admitted to the SEC and the CFTC, JPMorgan made and maintained these investments ***without disclosing*** that it systematically preferred these JPMorgan-managed

[46] *See id.*

products on the basis of the fees it stood to earn from them. According to a former JPMorgan employee, JPMorgan continued to invest the assets of the Penney Trust in a JPMorgan-managed fixed-income fund even though it ***knew*** that the fund's track record could not justify the higher fees it charged. In so doing, JPMorgan willfully breached its most basic duties of competence and loyalty to Plaintiffs.

2. Upon Information and Belief, JPMorgan Engaged in Self-Dealing by Receiving Placement Fees for Investments

47. Based on JPMorgan's admissions in the SEC Order and other information,[47] JPMorgan also engaged in self-dealing transactions using the Penney Trust's funds by making investments in exchange for the kickbacks known as retrocessions or placement agent fees. JPMorgan's portfolio managers placed the Penney Trust's fund assets almost exclusively with third-party fund managers that have admitted to the practice of paying retrocessions to intermediaries such as JPMorgan. At the end of 2013, for example, such investments of Penney Trust assets included shares in the Edgewood Growth Fund, the Hartford Capital Appreciation Fund, the ASTON/Fairpointe Mid Cap Fund, the Dodge & Cox International Stock Fund, the Oakmark International Fund, the T. Rowe Price New Asia Fund, the Delaware Emerging Markets Fund, the Neuberger Berman Greater China Equity Fund, the Eaton Vance Floating-Rate Fund, the Eaton Vance Global Macro Absolute Return Fund, the Gateway Fund, the Invesco Balanced-Risk Allocation Fund, the PIMCO Unconstrained Bond Fund, the PIMCO CommoditiesPLUS Strategy Fund, and the DoubleLine Total Return Bond Fund. On information and belief,

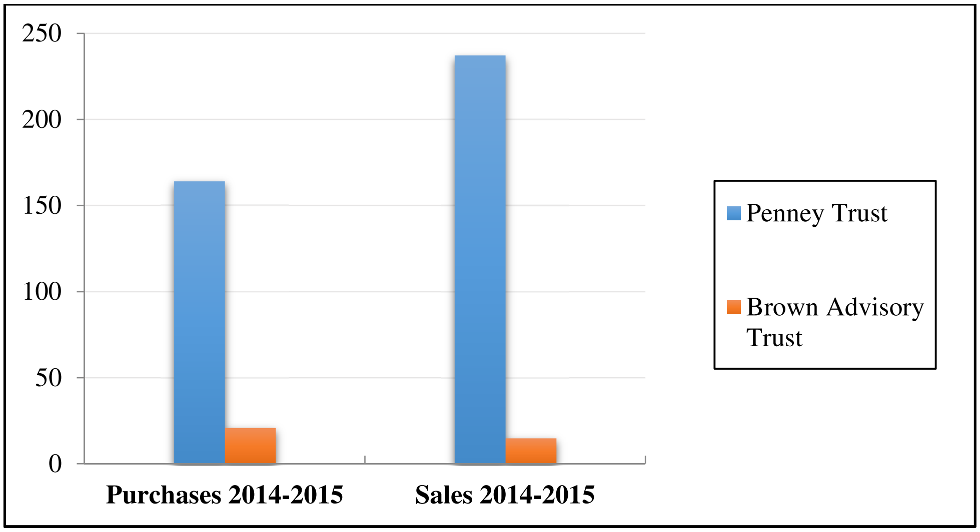
[47] That JPMorgan received kickbacks in the form of retrocessions for its placement of Penney Trust funds with hedge funds is highly probable, as "[r]etrocessions amount to approximately half the asset-based fees hedge fund managers charge." Edward Siedle, "JP Morgan Asset Management SEC Settlement Exposes Hedge Fund Retrocessions," *Forbes.com* (Feb. 9, 2018), https://www.forbes.com/sites/edwardsiedle/2018/02/09/jp-morgan-asset-management-sec-settlement-exposes-hedge-fund-retrocessions/.

JPMorgan also received retrocessions for placing Penney Trust assets in complicated investment products known as structured notes.

48. Thanks to disclosures by former JPMorgan employees, Plaintiffs are aware that money managers in JPMorgan's Dallas, Texas office declined to pursue specific investment opportunities on behalf of their clients because third parties refused to pay kickbacks to the bank. One such fund manager, EnCap Investments L.P. (**"EnCap"**), was viewed within JPMorgan as an ideal commodity fund manager, but JPMorgan passed over EnCap because it was unwilling to pay the retrocessions that JPMorgan demanded. In the case of the Penney Trust, JPMorgan instead continued to hold on to failing investments in the same asset class, such as the PIMCO CommoditiesPlus Strategy Fund, before selling the Penney Trust's stake at a ***loss of nearly 45% in November 2015***. Plaintiffs' losses on the PIMCO fund had grown dramatically over the course of 2014 and 2015 – losses that the Penney Trust ***would not have incurred*** had JPMorgan discharged its fiduciary duty to select the best investments for the Penney Trust rather than the most lucrative opportunities for the bank. As disclosed in the SEC Order, the hunt for retrocessions systematically compromised JPMorgan's investment process and created conflicts of interest with respect to most if not all of the Penney Trust's fund portfolio – facts that JPMorgan inexcusably failed to disclose to the fiduciary clients whose assets were parked in the failed investments based impermissibly on JPMorgan's own self-interest.

3. JPMorgan Traded the Penney Trust's Investments in High Volumes to Generate Additional Fee Income at Plaintiffs' Expense

49. JPMorgan also stood to gain at Plaintiffs' expense by executing large numbers of trades in order to generate additional fees and commissions from its management of the Penney Trust. In 2014-2015, for example, JPMorgan traded the Penney Trust's assets in volumes far exceeding trades in the Brown Advisory Trust, as shown below:



It is well known in the finance profession that investors "pay a tremendous performance penalty for active trading."[48] Accordingly, JPMorgan's high trading volumes were inimical to the growth of the Penney Trust and the best interests of the Plaintiffs – but they enriched JPMorgan, which received fees and commissions for trade clearing and execution. By 'churning' the Penney Trust, JPMorgan's portfolio managers breached their duties of competence and loyalty to Plaintiffs by prioritizing their own fee income over the long-term growth of the Penney Trust.

C. <u>JPMorgan's False Representations and Inadequate Disclosures Breached JPMorgan's Fiduciary Duties and Defrauded Plaintiffs</u>

50. As Trustee of the Penney Trust, JPMorgan owed Plaintiffs an affirmative duty to make a full and accurate disclosure of all facts material to their fiduciary relationship – especially any self-dealing transactions or conflicts of interest potentially compromising its activities as Trustee – and to provide a full accounting upon demand. However, JPMorgan routinely and knowingly failed to disclose its conflicts of interest and misled Plaintiffs about its investment process. Mary Frances, who was 81 years of age at the time the Trust was transferred to JPMorgan's Dallas, Texas office, and the other Plaintiffs were entitled as JPMorgan's

[48] Brad M. Barber & Terrance Odean, "Trading Is Hazardous to Your Wealth: Common Stock Investment Performance of Individual Investors," *Journal of Finance* (April 2000).

longstanding fiduciary clients to rely on JPMorgan's representations that its investment decisions were the process of extensive due diligence and its failure to disclose conflicts of interest. Plaintiffs did so rely, and their reliance was justifiable as demonstrated, *inter alia*, by the reasonable diligence Plaintiffs undertook in 2014 afterward to investigate their concerns and to repeatedly demand an accounting by JPMorgan. But Plaintiffs relied on JPMorgan's knowing misstatements and omissions to their detriment, as the Trust suffered accumulating losses under JPMorgan's mismanagement.

51. When Plaintiffs stepped up their efforts to investigate the management of the Penney Trust, JPMorgan refused to comply with Plaintiffs' reasonable inquiries regarding the nature of such conflicts and violated its duty of accounting. Despite the admissions in the SEC Order and the unexplained $188,245.72 in "fees" JPMorgan was forced to admit it wrongly charged the Penney Trust, JPMorgan has flatly denied any wrongdoing with respect to the Penney Trust and declared that it does not need to provide an accounting of the revenue it received by investing Penney Trust assets because no such revenue exists. Similarly, despite the Plaintiffs' requests for JPMorgan to identify all self-interested transactions, the rationale for entering into such self-interested transactions, and the purported "rigorous and ongoing" analysis that JPMorgan used to rule out alternative investments, JPMorgan has refused to comply with its fiduciary duty to provide full disclosure.

1. JPMorgan Misrepresented Its Investment Process and Misleadingly Failed to Disclose Its Conflicts of Interest

52. As detailed in the SEC Order, JPMorgan systematically preferred its own proprietary mutual funds and hedge funds when trading on behalf of discretionary accounts like the Penney Trust – and failed to disclose this material fact to Plaintiffs and its other clients. For example, the 2013 annual account statement for the Penney Trust makes ***no mention of any***

preference for proprietary investments, even though it was both the practice of the bank to prefer such investments, and its duty to specifically disclose them to Plaintiffs. JPMorgan knew that this omission was misleading at the time it was made, since it was the explicit preference of the bank to steer client assets into assets that generated additional revenues for JPMorgan.

53. While the 2014 and 2015 statements belatedly and vaguely refer to a "general" preference for "J.P. Morgan managed strategies," even these admissions did not disclose the extent of JPMorgan's self-dealing. For example, the Trust's 2014 account statement asserts that JPMorgan "prefer[s] internally managed strategies because they generally align well with our forward looking views and our familiarity with the investment processes, as well as the risk and compliance philosophy that comes from being part of the same firm." However, the disclosure also represents that JPMorgan would prefer third-party strategies whenever they "offer substantially differentiated portfolio construction benefits." Accordingly, it states that "the proportion of J.P. Morgan managed strategies will be high" only in asset classes "such as, for example, cash and high-quality fixed income," where such differentiated benefits are unlikely.

54. These statements were materially misleading when made, because JPMorgan knew that it preferred (and pushed and incentivized its financial advisers to prefer) proprietary investments, even where third-party strategies offered clear, "differentiated" benefits (such as lower cost) to JPMorgan's clients. Indeed, the language in JPMorgan's 2015 account statement confirms the falsity of the disclosures in its 2014 account statement, as it acknowledges that the bank preferred JPMorgan-managed strategies without the qualification, appearing in the 2014 version, "unless we think third-party managers offer substantially differentiated portfolio construction benefits." In fact, JPMorgan routinely preferred proprietary funds ***even where*** third

parties offered superior investment options to JPMorgan's fiduciary clients, because such investments allowed it to earn more money from its clients.

55. JPMorgan also routinely invested trust assets into third-party funds that offered JPMorgan retrocessions without disclosing to clients that it faced a conflict of interest in such situations – let alone that it systematically preferred retrocession-paying fund managers. For example, the annual account statements JPMorgan provided to the Penney Trust beneficiaries in 2013 makes no mention of retrocessions at all. The annual account statement for 2014 states only that "[c]onflicts ***may*** result, for example . . . when J. P. Morgan receives payment as a result of purchasing an investment product for a client's account" (emphasis added), but fails to disclose that JPMorgan actively preferred such investments or to specifically identify such conflicts. Even the 2015 disclosure, which admits that "[c]onflicts ***will*** result" (emphasis added) under such circumstances, fails to specifically identify the conflicted transactions executed on the Penney Trust's behalf and misleadingly omits the fact that JPMorgan attempted systematically to allocate its clients' portfolios to fund managers who would provide kickback payments.

56. JPMorgan also misleadingly characterized its investment process even as it breached its duties of competence and care. In 2014, JPMorgan's annual account statement for the Penney Trust represented that "[p]rospective investment strategies are carefully selected from both J.P. Morgan and third-party asset managers across the industry and are subject to a rigorous and ongoing review process that is consistently applied by our manager research teams." Yet the bank's 2015 disclosure all but admits to the falsity of this representation, stating that JPMorgan's investment strategies are merely "subject to ***a*** review process" (emphasis added). In fact, JPMorgan did ***not*** apply a rigorous or consistent review process to ensure that its self-interested transactions were truly in the best interests of its clients. But while JPMorgan's belated disclosures

begin to shed light on the gravity and pervasiveness of its self-dealing and mismanagement, they were too little, too late to make Plaintiffs aware of the misaligned incentives that corrupted JPMorgan's investment process and underlay its failed investment strategy for the Penney Trust.

2. Plaintiffs Justifiably Relied On JPMorgan's Fraudulent Misstatements and Inadequate Disclosures

57. Plaintiff Mary Frances, who was 81 years old at the time the Trust's administration was transferred to JPMorgan's Dallas, Texas office, had by that time reposed her trust in JPMorgan's and its predecessors' discretion as Trust administrator for nearly three-quarters of a century. The beneficiaries of the Penney Trust, who paid JPMorgan thousands of dollars annually in trust management fees, were entitled to rely on JPMorgan's fiduciary obligation to provide complete and accurate disclosures of all facts material to the management of the Trust. As such, Plaintiffs' reliance on JPMorgan's representations and omissions was justifiable. Specifically, Plaintiffs relied on JPMorgan's representations and omissions by continuing to repose their trust in the bank as the Trust's performance diverged from that of market benchmarks. Had JPMorgan admitted to Plaintiffs that it was systematically compromising the interests of the Penney Trust in favor of its own interest in selling proprietary funds and earning other income at Plaintiffs' expense, Plaintiffs would have demanded an accounting and a change in the Trust's administration years earlier than they ultimately did.

58. That Plaintiffs relied on JPMorgan's assurances and did so justifiably is demonstrated by the diligence they exercised when the extent of the Trust's mismanagement became increasingly clear during and after 2014. Despite their fiduciary relationship with JPMorgan, Plaintiffs exercised not just reasonable, but ***extraordinary*** diligence as beneficiaries of the Trust. Indeed, it was precisely to enable such diligence that the Trust's administration was moved to Dallas, where James Wagley resides. Led by Wagley, Plaintiffs met regularly with the

Trust's team at JPMorgan and routinely reviewed the Trust's monthly account statements to understand the construction of the portfolio in relation to the Trust's growth objectives. In numerous ways, Plaintiffs went far beyond the call of duty for beneficiaries of a discretionary trust account.

59. For example, in 2014, concerned by the Penney Trust's poor performance, Wagley set up a meeting with JPMorgan representatives in March of 2014. There, Wagley reiterated the family's request that the Penney Trust assets be invested in low-cost index funds. Months later, Wagley again reached out to JPMorgan on January 16, 2015. He wrote:

> I would like to look at the performance of the Trust over the last ten years. In addition to performance I would like to look at fees that JP Morgan has received from managing this trust. Also will you please disclose any fees that JP Morgan has obtained in regards to investing in Funds and or trading individual stocks.

Following additional requests for information (discussed further below), Plaintiffs went so far as to prepare a forty-nine page PowerPoint presentation that they showed to JPMorgan executives on June 9, 2016. Among other things, the presentation provided an extraordinarily detailed outline of the Trust's history and purpose; a rigorous comparison of the performance of the Penney Trust with that of the Brown Advisory Trust and other portfolios and market benchmarks; and detailed inquiries into the nature of various fees and the rationale behind the Trust's investments in various hedge funds, commodities funds, structured products, and proprietary mutual funds. Having demonstrated the falsity of JPMorgan's representations, Plaintiffs called upon JPMorgan to step down as Trustee as the Penney Trust – a step they would have taken years earlier had JPMorgan not falsely assured them and fraudulently omitted to disclose the corruption of its investment process.

3. JPMorgan Stonewalled Plaintiffs' Requests for Information and Violated Its Duties of Full Disclosure and Accounting

60. In addition to misleading Plaintiffs about the bank's investment process for the Penney Trust, JPMorgan breached its obligations of disclosure and accounting once confronted with Plaintiffs' reasonable requests for information about the performance of the Trust. In response to Wagley's January 16, 2015 e-mail requesting information on the performance of and fees paid by the Trust, Adams, the T & E Officer, misleadingly provided only a "breakdown of account administrative fees" for the period requested. This was no more than an evasion on JPMorgan's part, since such administrative fees necessarily excluded "any fees that [JPMorgan] has obtained in regards to investing in Funds or trading individual stocks" on the Penney Trust's behalf, as requested in Wagley's e-mail. Meanwhile, Adams failed to disclose the $188,245.72 in additional fees that JPMorgan charged to the Penney Trust. Wagley responded by requesting a more fulsome accounting for any fees paid by the Penney Trust, but JPMorgan likewise failed to satisfactorily resolve these requests, often providing incomplete or irrelevant documentation in response to Wagley's requests.

61. As a result, in the summer of 2015, Wagley requested that JPMorgan meet with him and Mary Frances to discuss the family's growing concerns about JPMorgan's management of the Penney Trust. Due to both the serious nature of the concerns, and the high degree of turnover among the Penney Trust's management team, Wagley specifically requested that both Canning and Elaine Agather (**"Agather"**), the Chairman of JPMorgan's Dallas region, be present at the meeting. Canning agreed and scheduled the meeting to accommodate both his schedule and Agather's. Plaintiff Mary Frances flew to Dallas to join her son at the meeting, only to learn that Agather would not attend because she was in Italy at the time. Instead, the sole attendees representing JPMorgan were Canning and his colleague Matt Smith (**"Smith"**). At the meeting,

JPMorgan represented that it had done an excellent job as Trustee of the Penney Trust, and failed to acknowledge the self-dealing that was responsible for the Trust's poor performance.

62. Wagley requested another meeting the following year, along with an accounting for any and all payments (including placement fees) that JPMorgan earned from the use, trading and investment of funds from the Penney Trust. JPMorgan agreed to schedule the meeting on June 9, 2016, which was attended by Agather, Canning, Adams, and Smith, along with Plaintiffs Wagley, Anne Wagley, and Mary Copp. Agather apologized for the performance of the Trust, which she admitted was ***"disturbing,"*** but again failed to admit any wrongdoing – even though JPMorgan's admissions of wrongdoing had by that time been made public by the SEC Order. JPMorgan also rejected Plaintiffs' request for an accounting.

63. Discouraged, but hopeful of resolving Plaintiffs' concerns about resorting to litigation, Plaintiffs followed up with a demand letter, dated September 1, 2016 (the **"Demand Letter"**), that formally requested that JPMorgan disclose any fees or benefits received by the bank in connection with the management of the Penney Trust, as well as a full accounting for all self-interested investments JPMorgan made on its behalf.

64. After two months and multiple requests by JPMorgan for additional time to gather the requested documents, JPMorgan finally responded to the Demand Letter on November 1, 2016. The response was threadbare, consisting only of: a general publication, authored by JPMorgan, describing JPMorgan's benchmarking philosophy; a schedule showing the expense ratios of investments in the Penney Trust; and copies of account statements from 2005 to the present. Thus, JPMorgan continued to breach its obligation to account to Plaintiffs and provide a full disclosure of its conflicted transactions, including by providing the requested documentation showing the fees, including placement fees, and other revenues it received by investing the Penney Trust assets.

Instead, JPMorgan affirmatively misrepresented that ***"JPMorgan did not make 'self-interested' investments with Trust funds"*** and that "there are no fees to identify," in part because JPMorgan purportedly "offset the management and other fees paid to JPMorgan affiliates for [proprietary] mutual funds against the trustee's fee."[49] JPMorgan likewise brushed aside questions about its trading commissions by representing that, "[g]enerally, JPMorgan does not collect a commission for trades made on behalf of the Trust."[50] This vague statement did not come close to adequately accounting for any trade commissions that JPMorgan ***did*** collect and was misleading in light of JPMorgan's admission in the 2014 and 2015 account statements that it charges accounts for "trade execution and trade clearing."

65. Plaintiffs again wrote to JPMorgan to identify various inconsistences and gaps in JPMorgan's response. This second demand letter (the **"Second Demand Letter"**) again requested JPMorgan to answer the questions posed in the Demand Letter, this time by January 17, 2017. JPMorgan ignored the Plaintiffs' requests for information contained within the Second Demand Letter and never contacted Plaintiffs' counsel with any questions or concerns about the information requested. Instead, the only further communication from JPMorgan was a petition to withdraw as Trustee filed in Surrogate's Court for Monroe County, New York.[51] The Withdrawal Petition also requests that the court discharge JPMorgan "from any liability as Successor Trustee of the trust."

66. As noted above, shortly after JPMorgan filed the Withdrawal Petition, Adams sent Mary Frances a letter disclosing, without any explanation, that JPMorgan had improperly overcharged the Penney Trust $188,245.72 in fees. Remarkably, Adams copied neither the counsel that JPMorgan knew represented Mary Frances nor the son that JPMorgan knew had become the

---

49 Letter, Nov. 1, 2016 (emphasis added).
50 *Id.*
51 *See* Petition for Judicial Settlement of Intermediate Account of Trustee, Resignation of Trustee and Discharge of Trustee (N.Y. Surrogate's Ct. Jan. 13, 2017) (the "**Withdrawal Petition**").

preferred point of contact for Mary Frances. Instead, Adams sent the letter directly and exclusively to the 89-year-old beneficiary of the Penney Trust. While the letter's vague description of the "incorrectly charged fees" is indisputably inadequate, but it is tantamount to an admission that, despite its prior representations to the contrary, JPMorgan has inappropriately charged fees to the Penney Trust and treated its assets as it would treat an ordinary account — rather than as a fiduciary. That JPMorgan discovered these "incorrectly charged fees" only after petitioning to terminate its trusteeship and requesting a release from liability is indicative of how utterly it failed to discharge its duties as Plaintiffs' fiduciary.

D. <u>JPMorgan's Self-Dealing Investment Strategy Injured Plaintiffs</u>

67. As described above, JPMorgan's breaches of fiduciary duty, self-dealing and imprudent investment strategy resulted in damages to the Penney Trust, including but not limited to: (1) inhibiting the growth of the Penney Trust; (2) actual losses to the Penney Trust principal value; and (3) least $188,245.72 in improper, unexplained charges to the Penney Trust. The Penney Trust's underperformance relative to the Brown Advisory Trust is suggestive. As noted, while the Penney Trust was about $800,000 more valuable than the Brown Advisory Trust in 1995, by mid-2018, as a result of JPMorgan's systematic mismanagement, the value of the Penney Trust had fallen behind the Brown Advisory Trust by ***approximately $8 million***. The Penney Trust is but one of the numerous accounts that have been injured by JPMorgan's pervasive practice of misusing captive clients' assets for its own benefit.

III. <u>PLAINTIFFS' CLAIMS AGAINST JPMORGAN ARE TIMELY</u>

A. <u>No Limitations Period Can Begin Until JPMorgan's Removal as Trustee</u>

68. The Trust Agreement is a continuing contract under which JPMorgan managed the Penney Trust on an ongoing basis, until its termination as Trustee. In addition, JPMorgan's misconduct perpetrated a continuing wrong that has caused ongoing injury to Plaintiffs until

JPMorgan's last wrongful act. Thus, JPMorgan's continuous mismanagement of the Penney Trust over a period of years has generated an accumulating shortfall between the total returns of the Penney Trust and the benchmark returns of funds managed in a manner consistent with JPMorgan's fiduciary duties. These facts require the tolling of any otherwise-applicable statute of limitations until, at the very earliest, the JPMorgan's removal from trusteeship of the Penney Trust.

B. Inquiry Notice, Equitable Tolling, and Fraudulent Concealment

69. Plaintiffs have had a longstanding fiduciary relationship with JPMorgan and were entitled to rely on the bank's assurances that the underperformance of the Penney Trust was due to market factors rather than any improper behavior by JPMorgan. As described above, JPMorgan's account documentation never adequately disclosed the conflicts of interest that corrupted the bank's investment process, which did not come to light until the publication of the SEC Order on December 18, 2015. As such, Plaintiffs were not on inquiry notice of their claims until December 18, 2015 at the earliest. Moreover, when Plaintiffs inquired about possible conflicts at JPMorgan in their June 9, 2016 presentation and subsequent Demand Letter, JPMorgan ***affirmatively denied*** any improper behavior, insisting on November 1, 2016 that ***"JPMorgan did not make 'self-interested' investments with Trust funds."***[52] JPMorgan's concealment of its wrongdoing would prove to be fraudulent when, in January 2017, JPMorgan admitted that it had overcharged the Penney Trust and pleaded for a release from liability. JPMorgan's fraudulent concealment, perpetrated from a position of trust and confidence as Plaintiffs' fiduciary, prevented Plaintiffs from discovering their claims and tolled any applicable statute of limitations.

70. Equitable tolling is further justified here by Plaintiffs' reasonable exercise of diligence in investigating and prosecuting their claims. As discussed above, Plaintiffs went to

---

[52] Letter, Nov. 1, 2016 (emphasis added).

extraordinary lengths to investigate their claims by repeatedly demanding an accounting from JPMorgan and preparing a forty-nine page presentation detailing their concerns for their June 9, 2016. Plaintiffs' diligence was especially laudable given that they were passive beneficiaries of a discretionary account, which JPMorgan managed as their fiduciary. JPMorgan flatly denied any wrongdoing in its November 1, 2016 to Plaintiffs' Demand Letter, only to inform Mary Frances on January 20, 2017 that the bank had improperly overcharged the Trust by $188,245.72, Plaintiffs filed a petition alleging breach of fiduciary duty and requesting an accounting ***just 18 days later***, on February 20, 2017. Even though Plaintiffs, including the now 91-year-old Mary Frances, were entitled to rely on JPMorgan's representations as their longstanding fiduciary, they wasted no time in diligently investigating the performance of the Trust, raising their concerns with JPMorgan, repeatedly seeking further information in meetings, e-mails, and successive demand letters, and sought judicial relief the moment it became clear further discussions with JPMorgan were futile. For these reasons, any statute of limitations affecting or limiting the rights of action by Plaintiffs was equitably tolled.

FIRST CAUSE OF ACTION
(Breach of Fiduciary Duty)

71. Plaintiffs reallege each allegation above as if fully set forth herein.

72. As Trustee of the Penney Trust, JPMorgan owed fiduciary duties to Plaintiffs, as beneficiaries of the Penney Trust.

73. JPMorgan owed Plaintiffs duties to comply with all lawful instructions received from Plaintiffs and to act loyally for Plaintiffs' benefit in all matters connected with the management of the Penney Trust.

74. JPMorgan has breached these duties by:

a. failing to follow the agreed-upon investment strategy;

b. investing the Penney Trust assets in self-interested transactions, including but not limited to Proprietary Funds and Proprietary Hedge Funds;

c. upon information and belief, investing the Penney Trust assets in funds in exchange for retrocessions or placement fees;

d. upon information and belief, investing the Penney Trust assets in unsuitable products and securities, including Highbridge, to artificially prop up the hedge fund's assets and produce more revenue for the bank; and

e. executing a high volume of trades in a manner inconsistent with the objectives of the Penney Trust.

75. JPMorgan owed Plaintiffs a duty to act with the care, competence, and diligence normally exercised by trustees in similar circumstances.

76. JPMorgan has breached its duty of competence by failing to invest as a prudent investor. Instead of investing in growth-oriented funds with low expense ratios, JPMorgan has funneled Penney Trust assets into an unbalanced portfolio of alternative, risky, and exotic investments to the detriment of the Penney Trust and its objective of principal growth.

77. JPMorgan owed Plaintiffs duties to keep and render accounts to Plaintiffs and to use reasonable effort to provide Plaintiffs with facts that JPMorgan knew, had reason to know, or should have known, that Plaintiffs would wish to know or that were material to JPMorgan's duties to Plaintiffs.

78. JPMorgan breached its duties of full disclosure by failing to comply with repeated requests by Plaintiffs, and their representatives, to fully disclose all benefits JPMorgan has gained by acting as the Trustee of the Penney Trust. Such ignored requests for disclosure include: requests for rationale behind certain investments; requests for an accounting of all fees, including placement

fees and retrocessions, and revenue JPMorgan has received as a result of being the Trustee of the Penney Trust; request for identification of all self-interested investments.

79. As a direct, proximate, and foreseeable result of JPMorgan's breach of its fiduciary duties, Plaintiffs have been injured and suffered damages, while JPMorgan has benefitted.

80. JPMorgan should be ordered to disgorge, and Plaintiffs are entitled to recover, all commissions, fees, gains, profits, revenues, and other advantages JPMorgan has gained directly or indirectly through its position as Trustee of the Penney Trust.

81. On information and belief, JPMorgan's breach of its fiduciary duties to Plaintiffs formed part of a pattern of egregious misconduct directed at the public at large, warranting an award of punitive damages to Plaintiffs.

SECOND CAUSE OF ACTION
(Deceptive Practices in Violation of New York General Business Law § 349)

82. Plaintiffs reallege each allegation above as if fully set forth herein.

83. JPMorgan violated New York General Business Law Section 349 by using deceptive acts and practices in the conduct of its business of administering the investments of its asset management clients.

84. JPMorgan imprudently invested the assets of the Penney Trust and other fiduciary clients into proprietary funds and in exchange for third-party retrocessions and other revenues, without disclosing its policy of systematic self-dealing and the specific conflicts of interest that arose in the investment process. JPMorgan's wrongful and deceptive acts include, but are not limited to: systematically preferring investments from which JPMorgan stood to earn fees and other advantages, directly or indirectly, without disclosing that policy and the resulting conflicts of interest; and entering into unsuitably speculative transactions and unjustifiably high volumes of

trades in order to generate revenues while assuring Plaintiffs that its activities were in keeping with the Penney Trust's investment objectives.

85. JPMorgan committed the deceptive acts and practices willfully and knowingly, aware of the fees, retrocessions, and other advantages it was reaping from its administration of the Penney Trust, and aware that its undisclosed policy placed its interests in conflict with those of its clients.

86. JPMorgan's conduct was directed at consumers and has had a broad impact on New York consumers at large, including but not limited to the asset management clients identified in the SEC Order.

87. As a direct and proximate result of these violations of Section 349 of New York's General Business Law, JPMorgan caused actual injury and damages to Plaintiffs by inhibiting the growth and diminishing the principal value of the Penney Trust. Plaintiffs are entitled to recover treble damages, costs, and attorney's fees.

THIRD CAUSE OF ACTION
(Common-law fraud)

88. Plaintiffs reallege each allegation above as if fully set forth herein.

89. JPMorgan made representations to Plaintiffs that were fraudulent, and fraudulently omitted statements of fact, that were material to the management of the Penney Trust and Plaintiffs' decision to keep the administration of the Penney Trust with JPMorgan.

90. JPMorgan's material misstatements and omissions included failing to disclose its preference for proprietary investments or third-party investments from which it received payments of retrocessions, and the revenues and other benefits JPMorgan received for its trading activity on behalf of the Penney Trust; and insisting to Plaintiffs that its investment decisions were the product of an extensive due diligence process, were consistent with the investment objectives of the Penney

Trust, and did not generate additional revenues for JPMorgan over and above its trust management fees.

91. JPMorgan knew its representations and omissions were false and/or misleading at the time they were made. JPMorgan made these misleading statements and omitted these material facts with an intent to defraud Plaintiffs.

92. Plaintiffs justifiably relied on JPMorgan's false representations and misleading omissions because JPMorgan, as Plaintiffs' longstanding fiduciary, was accorded a special degree of trust and held itself out as an expert in asset management.

93. Had Plaintiffs known the true facts regarding JPMorgan's conflicts of interest in the administration of the Penney Trust, they would not have kept the Penney Trust with JPMorgan.

94. As a result of the foregoing, Plaintiffs have suffered damages according to proof.

FOURTH CAUSE OF ACTION
(Negligent Misrepresentation)

95. Plaintiffs reallege each allegation above as if fully set forth herein.

96. As Trustee of the Penney Trust, JPMorgan owed fiduciary duties to Plaintiffs, as beneficiaries of the Penney Trust. Plaintiffs lacked visibility into JPMorgan's investment process and were entirely reliant on JPMorgan to provide them with accurate information regarding its placement of Penney Trust assets and any resulting conflicts of interest, including any fee income or other advantages derived by JPMorgan from the administration of trust assets.

97. As Plaintiff Mary Frances had since the establishment of the Penney Trust in 1934, Plaintiffs have reasonably relied on JPMorgan's role as Trustee to invest prudently on their behalf and to fully and accurately disclose conflicts of interest and other facts affecting its fiduciary responsibilities. JPMorgan's longstanding relationship with Plaintiffs, coupled with its unique

visibility into its investment process, created a special relationship of trust, confidence, and dependence of Plaintiffs on JPMorgan.

98. JPMorgan was in the business of investing on behalf of its asset management clients and providing appropriate disclosures. JPMorgan was aware that Plaintiffs, like its other fiduciary clients, relied on the bank to provide accurate and truthful information that Plaintiffs depended on in maintaining the Penney Trust with JPMorgan. JPMorgan knew these facts were exclusively within its knowledge.

99. JPMorgan owed Plaintiffs a duty to provide complete, accurate, and timely information regarding its investment process and to specifically identify any conflicts of interest that arose.

100. JPMorgan breached its duty to provide such information to Plaintiffs by the misstatements and omissions identified above, including by failing to disclose its preference for proprietary investments or third-party investments from which it received payments of retrocessions, and the revenues and other benefits JPMorgan received for its trading activity on behalf of the Penney Trust; and by insisting to Plaintiffs that its investment decisions were the product of an extensive due diligence process, were consistent with the investment objectives of the Penney Trust, and did not generate additional revenues for JPMorgan over and above its trust management fees.

101. JPMorgan was, at a minimum, negligent in breaching its duties of disclosure and of making statements that were false, and it knew that Plaintiffs were acting in reliance on its misleading representations and omissions.

102. On December 18, 2015, the Securities and Exchange Commission found – and JPMorgan and admitted and acknowledged – "negligent failure [by] . . . JPMorgan Chase Bank,

N.A. . . . to disclose conflicts of interest arising from, as applicable, preferences for (i) JPMorgan-managed mutual funds . . . (ii) JPMorgan-managed private hedge funds . . . and (iii) third-party-managed private hedge funds that shared client fees with a JPMorgan affiliate."[53]

103. Plaintiffs reasonably relied on the information provided by JPMorgan and kept the Penney Trust at JPMorgan despite its underperformance of market benchmarks. Had Plaintiffs known the extent of JPMorgan's conflicts of interest, it would have demanded that JPMorgan withdraw as Trustee of the Penney Trust.

104. As a result of the foregoing, Plaintiffs have suffered damages according to proof.

FIFTH CAUSE OF ACTION
(Unjust Enrichment and Restitution)

105. Plaintiffs reallege each allegation above as if fully set forth herein.

106. JPMorgan has benefited from and been enriched by its unlawful conduct, including by receiving the gains, profits, and other advantages including fees, retrocessions, and other revenues described herein.

107. JPMorgan's management of the Penney Trust conferred no wrongful or uncompensated benefit on Plaintiffs, but injured and damaged Plaintiffs by inhibiting the growth and diminishing the principal value of the Penney Trust.

108. JPMorgan has extracted a windfall at the expense and detriment of Plaintiffs, and equity and good conscience require that JPMorgan make restitution to Plaintiffs.

PRAYER FOR RELIEF

WHEREFORE Plaintiffs pray for relief as follows:

---

[53] *JPMorgan Chase Bank, N.A. & J.P. Morgan Sec. LLC, Respondents.*, Investment Advisers Act of 1940 Release No. 4295, 113 SEC Docket 26, ¶ 1 (Dec. 18, 2015).

a. Compensatory damages in an amount to be determined at trial;

b. Treble damages pursuant to Section 349(f) of New York's General Business Law;

c. An order directing JPMorgan to fully account for all gains, profits, and other advantages, including the fees, retrocessions, and other revenues described herein, derived from its wrongful acts and omissions;

d. Forfeiture of fees that JPMorgan received for its activities as a faithless servant of the Penney Trust;

e. Disgorgement of all such gains, profits, and other advantages received by JPMorgan as a result of the breaches of fiduciary duties described herein;

f. Attorneys' fees and costs;

g. Prejudgment interest at the maximum legal rate; and

h. Such other and further relief as the Court may deem just and proper.

DEMAND FOR JURY TRIAL

Plaintiffs hereby demand a trial by jury on all issues so triable.

DATED: New York, New York
September 14, 2018

QUINN EMANUEL URQUHART & SULLIVAN, LLP

By: */s/ Andrew J. Rossman*

Andrew J. Rossman
Alex Spiro
Nathan Goralnik

51 Madison Avenue, 22nd Floor
New York, New York 10010
Telephone: (212) 849-7000
Facsimile: (212) 849-7100

andrewrossman@quinnemanuel.com
alexspiro@quinnemanuel.com
nathangoralnik@quinnemanuel.com

