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11 **IN THE UNITED STATES DISTRICT COURT**
12 **FOR THE NORTHERN DISTRICT OF CALIFORNIA**

13 *In re LinkedIn ERISA Litigation*

14 Case No:
15 5:20-cv-05704-EJD

16 **SECOND AMENDED CLASS ACTION**
17 **COMPLAINT**

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21 **I. INTRODUCTION**

22 1. Plaintiffs, Douglas G. Bailey (“Bailey”), Jason J. Hayes (“Hayes”) and Marianne
23 Robinson (“Robinson”) (collectively, “Plaintiffs”), individually and as participants of the LinkedIn
24 Corporation 401(k) Profit Sharing Plan and Trust (“Plan”), bring this action under 29 U.S.C. §
25 1132, on behalf of the Plan and a class of similarly-situated participants and beneficiaries of the
26 Plan, against Defendants, LinkedIn Corporation (“LinkedIn”), the Board of Directors of LinkedIn
27 Corporation (“Board”), and the 401(k) Committee a/k/a LinkedIn Corporation 401(k) Committee
28 (“Administrative Committee” or “Committee”) (collectively, “Defendants”) for breach of their
fiduciary duties under the Employee Retirement Income Security Act (“ERISA”), 29 U.S.C. § 1001,
et seq., and related breaches of applicable law beginning six years from the date this action was
filed and continuing to the date that the Plan was merged into a defined contribution plan (the
Microsoft 401k Plan) maintained by LinkedIn’s parent company, Microsoft Corporation on July 1,

1 2020 (the “Class Period”). This Second Amended Class Action Complaint (“SAC” or
2 “Complaint”) is filed pursuant to Fed.R.Civ.P. 15(a)(2) and the Court’s Order dated November 16,
3 2021.

4 2. Defined contribution plans that are qualified as tax-deferred vehicles under Section
5 401 of the Internal Revenue Code, 26 U.S.C. §§ 401(a) and (k) (i.e., 401(k) plans), have become the
6 primary form of retirement savings in the United States and, as a result, America’s *de facto*
7 retirement system. Unlike traditional defined benefit retirement plans, in which the employer
8 typically promises a calculable benefit and assumes the risk with respect to high fees or under-
9 performance of pension plan assets used to fund defined benefits, 401(k) plans operate in a manner
10 in which participants bear the risk of high fees and investment underperformance.

11 3. The importance of defined contribution plans to the United States retirement system
12 has become pronounced as employer-provided defined benefit plans have become increasingly rare
13 as an offered and meaningful employee benefit.

14 4. As of December 31, 2018, the Plan had 11,411 participants with account balances
15 and assets totaling approximately \$818 million, placing it in the top 0.2% of all 401(k) plans by plan
16 size.¹ Defined contribution plans with substantial assets, like the Plan, have significant bargaining
17 power and the ability to demand low-cost administrative and investment management services
18 within the marketplace for administration of 401(k) plans and the investment of 401(k) assets. The
19 marketplace for 401(k) retirement plan services is well-established and can be competitive when
20 fiduciaries of defined contribution retirement plans act in an informed and prudent fashion.

21 5. Defendants maintain the Plan, and are responsible for selecting, monitoring, and
22 retaining the service provider(s) that provide investment, recordkeeping, and other administrative
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¹The BrightScope/ICI Defined Contribution Plan Profile: A Close Look at 401(k) Plans, 2017 (pub.
August 2020).

1 services. Defendants are fiduciaries under ERISA, and, as such, are obligated to (a) act for the
2 exclusive benefit of participants, (b) ensure that the investment options offered through the Plan are
3 prudent and diverse, and (c) ensure that Plan expenses are fair and reasonable.

4
5 6. Defendants have breached their fiduciary duties to the Plan and, as detailed below,
6 have engaged in, *inter alia*, the following fiduciary breaches: (1) allowed unreasonable expenses to
7 be charged to participants; and (2) selected, retained, and/or otherwise ratified high-cost and poorly-
8 performing investments, instead of offering more prudent alternative investments when such
9 prudent investments were readily available at the time that they were chosen for inclusion within the
10 Plan and throughout the Class Period (defined below).

11
12 7. To remedy these fiduciary breaches and other violations of ERISA, Plaintiffs bring
13 this class action under ERISA Sections 404, 409 and 502, 29 U.S.C. §§ 1104, 1109 and 1132, to
14 recover and obtain all losses resulting from each breach of fiduciary duty. In addition, Plaintiffs
15 seek such other equitable or remedial relief for the Plan and the proposed class defined below (the
16 “Class”) as the Court may deem appropriate and just under all of the circumstances.

17 8. Plaintiffs specifically seek the following relief on behalf of the Plan and the Class:

- 18 a. A declaratory judgment holding that the acts of Defendants described herein
19 violate ERISA and applicable law;
20
21 b. A permanent injunction against Defendants prohibiting the practices
22 described herein and affirmatively requiring them to act in the best interests
23 of the Plan and its participants;
24
25 c. Equitable, legal or remedial relief for all losses and/or compensatory
26 damages;
27
28 d. Attorneys’ fees, costs and other recoverable expenses of litigation; and

1 e. Such other and additional legal or equitable relief that the Court deems
2 appropriate and just under all of the circumstances.

3 **II. THE PARTIES**

4 9. Bailey is a former employee of LinkedIn and current participant in the Plan under 29
5 U.S.C. § 1002(7). During the Class Period, Bailey maintained an investment through the Plan in the
6 Fidelity Freedom 2010 Fund. Bailey is a resident of Raleigh, North Carolina.

7
8 10. Hayes is a former employee of LinkedIn and former participant in the Plan under 29
9 U.S.C. § 1002(7). During the Class Period, Hayes maintained an investment through the Plan in the
10 Fidelity Freedom 2050 Fund. Hayes is a resident of Wappingers Falls, New York.

11 11. Robinson is a former employee of LinkedIn and former participant in the Plan under
12 29 U.S.C. § 1002(7). During the Class Period, Robinson maintained an investment through the Plan
13 in the Fidelity Freedom 2030 Fund. Robinson is a resident of Thousand Oaks, California.

14 12. LinkedIn is a public Delaware corporation headquartered in Mountain View,
15 California. LinkedIn is “the world’s largest professional network with 706+ million users in more
16 than 200 countries and territories worldwide.”

17
18 13. The Board appointed “authorized representatives” of LinkedIn, including the
19 Administrative Committee, as plan fiduciaries.

20 14. The Administrative Committee is the Plan Administrator and is a fiduciary under
21 ERISA pursuant to 29 U.S.C. §§ 1002 and 1102. The Administrative Committee maintains its
22 address at LinkedIn’s corporate headquarters in Mountain View, California. The Administrative
23 Committee and its members are appointed by LinkedIn’s Chief Executive Officer to administer the
24 Plan on LinkedIn’s behalf.
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1 **III. JURISDICTION AND VENUE**

2 15. Plaintiffs seek relief on behalf of the Plan pursuant to ERISA’s civil enforcement
3 remedies with respect to fiduciaries and other interested parties and, specifically, under 29 U.S.C. §
4 1109 and 29 U.S.C. § 1132.

5 16. This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. §
6 1331 because this action arises under the laws of the United States.

7 17. Venue is proper in this District pursuant to ERISA Section 502(e), 29 U.S.C. §
8 1332(e), and 28 U.S.C. § 1391 because LinkedIn’s principal place of business is in this District and
9 the Plan is administered from this judicial district. Furthermore, a substantial part of the acts and
10 omissions giving rise to the claims asserted herein occurred in this District.

11 18. Plaintiffs have standing to bring this action. ERISA Section 502(a)(2), 29 U.S.C. §
12 1132(a)(2), authorizes any participant, fiduciary or the Secretary of Labor to bring suit as a
13 representative of a plan, with any recovery necessarily flowing to a plan. As explained herein, the
14 Plan has suffered millions of dollars in losses resulting from Defendants’ fiduciary breaches and
15 remains vulnerable to continuing harm, all redressable by this Court. In addition, although standing
16 under ERISA Section 502(a)(2), 29 U.S.C. § 1132(a)(2), is established by these Plan-wide injuries,
17 Plaintiffs and all Plan participants suffered financial harm as a result of the Plan’s imprudent
18 investment options and excessive fees, and were deprived of the opportunity to invest in prudent
19 options with reasonable fees, among other injuries.
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23 **IV. FACTUAL ALLEGATIONS**

24 **A. Background And Plan Structure**

25 19. The Plan is a participant-directed 401(k) plan, in which participants direct the
26 investment of their contributions into various investment options offered by the Plan. Each
27 participant’s account is credited with the participant contributions, employer matching
28

1 contributions, any discretionary contributions, and earnings or losses thereon. The Plan pays Plan
2 expenses, including administrative and recordkeeping costs, from Plan assets. Each participant's
3 account is charged with the amount of distributions taken and an allocation of administrative
4 expenses. The available investment options for participants of the Plan include various mutual
5 funds, a collective investment trust, and a self-directed brokerage account.
6

7 20. Mutual funds are publicly-traded investment vehicles consisting of a pool of
8 monetary contributions collected from many investors for the purpose of investing in a portfolio of
9 equities, bonds, and other securities. Mutual funds are operated by professional investment
10 advisers, who, like the mutual funds, are registered with the Securities and Exchange Commission
11 ("SEC"). Mutual funds are subject to SEC regulation, and are required to provide certain
12 investment and financial disclosures and information in the form of a prospectus.
13

14 21. Collective trusts are, in essence, mutual funds without the SEC regulation.
15 Collective trusts fall under the regulatory purview of the Office of the Comptroller of the Currency
16 or individual state banking departments. Collective trusts were first organized under state law in
17 1927 and were blamed for the market crash in 1929. As a result, collective trusts were severely
18 restricted, giving rise to the more transparent and publicly-traded mutual funds. Today, banks
19 create collective trusts only for their trust clients and for employee benefit plans, like the Plan. The
20 main advantage of opting for a collective trust, rather than a mutual fund, is the negotiability of the
21 fees, so that larger retirement plans should be able to leverage their size for lower fees.
22

23 22. During the Class Period, Plan assets were held in a trust by the Plan Trustee, Fidelity
24 Management Trust Company. All investments and asset allocations are performed through this
25 trust instrument.
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1 **B. Defendants’ Breaches of Fiduciary Duties**

2 23. As discussed in detail below, Defendants have severely breached their fiduciary
3 duties of prudence and/or loyalty to the Plan. Plaintiffs did not acquire actual knowledge regarding
4 Defendants’ breaches at issue here until shortly before the complaint initiating this action was filed.
5

6 **1. The Plan’s Investment in the Fidelity Freedom Funds**

7 24. Among other investments, the Plan lineup offers a suite² of thirteen target date funds.
8 A target date fund is an investment vehicle that offers an all-in-one retirement solution through a
9 portfolio of underlying funds that gradually shifts to become more conservative as the assumed
10 target retirement year approaches. Target date funds offer investors dynamic, easy asset allocation,
11 while providing both long-term growth and capital preservation. All target date funds are inherently
12 actively managed, because managers make changes to the allocations to stocks, bonds and cash over
13 time. These allocation shifts are referred to as a fund’s glide path. The underlying mutual funds
14 that target date fund managers choose to represent each asset class can be actively or passively
15 managed.
16

17 25. According to the Plan’s Form 5500s,³ from at least December 31, 2012⁴ through at
18 least December 31, 2018,⁵ the Plan has offered the Fidelity Freedom fund target date suite. Fidelity
19 Management & Research Company (“Fidelity”) is the second largest target date fund provider by
20

21 ²Target date funds are offered in defined contribution plans as a full set, or suite, rather than on an
22 individual basis. In other words, plan fiduciaries do not select for their investment menus a 2030
23 target date fund offered by one manager and a 2035 target date fund offered by another manager.
24 Rather, decisions to add, retain, and remove target date funds from plan lineups are made at the suite
25 level.

26 ³The Form 5500 is the annual report that 401(k) plans are required to file pursuant to the reporting
27 requirements of ERISA.

28 ⁴The Form 5500 provides a detailed schedule of the Plan’s holdings at the end of each calendar year.
The suite of Fidelity Freedom funds appears as a Plan investment option as far back as the 2012 Form
5500.

⁵At some point in 2019, Defendants replaced the Fidelity Freedom fund suite with the FIAM Blend
Target Date Commingled Pool suite (the “FIAM Blend suite”) – a choice which also was an
independent breach of fiduciary duty.

1 total assets. Among its several target date offerings, Fidelity offers the riskier and more costly
2 Freedom funds (the “Active suite”) and the substantially less costly and less risky Freedom Index
3 funds (the “Index suite”). Defendants were responsible for crafting the Plan lineup and could have
4 chosen any of the target date families offered by Fidelity, or those of any other target date provider.
5 Defendants failed to compare the Active and Index suites and consider their respective merits and
6 features. A simple weighing of the benefits of the two suites indicates that the Index suite is and
7 has been a far superior option, and consequently the more appropriate choice for the Plan. Had
8 Defendants carried out their responsibilities in a single-minded manner with an eye focused solely
9 on the interests of the participants, they would have come to this conclusion and acted upon it.
10 Instead, Defendants failed to act in the sole interest of Plan participants, and breached their
11 fiduciary duty by imprudently selecting and retaining the Active suite for the majority of the
12 relevant period.
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15 26. The two fund families (meaning the Active suite and the Index suite) have nearly
16 identical names and share a management team.⁶ But while the Active suite invests predominantly
17 in actively managed Fidelity mutual funds,⁷ the Index suite places no assets under active
18 management, electing instead to invest in Fidelity funds that simply track market indices. The
19 Active suite is also dramatically more expensive than the Index suite, and riskier in both its
20 underlying holdings and its asset allocation strategy. Defendants’ decision to add the Active suite
21 over the Index suite, and their failure to replace the Active suite with the Index suite at any point
22 during the Class Period, constitutes a glaring breach of their fiduciary duties.
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26 ⁶Both target date suites have been managed by Brett Sumsion and Andrew Dierdorf since 2014.
27 Finola McGuire Foley was added to the Index suite team in 2018.

28 ⁷Per Morningstar, the Active suite’s underlying holdings are 88.8% actively managed, by asset weight.

1 27. Given that the vast majority of plan participants are not sophisticated investors, many
2 of the Plan participants, by default, concentrate their retirement assets in target date funds. As such,
3 the impact of Defendants' imprudent selection of target date funds is magnified vis-à-vis other asset
4 categories. Indeed, by December 31, 2018, approximately 56% of the Plan's assets were invested in
5 the Active suite.
6

7 i. The Active Suite is High-Risk and Unsuitable for Plan Participants

8 28. The Active suite chases returns by taking levels of risk that render it unsuitable for
9 the average retirement investor, including participants in the Plan. At first glance, the equity glide
10 paths of the two fund families (meaning the Active suite and Index suite) appear nearly identical,
11 which would suggest both target date options have a similar risk profile. However, the Active suite
12 subjects its assets to significantly more risk than the Index suite, through multiple avenues. At the
13 underlying fund level, where the Index suite invests only in index funds that track segments of the
14 market, the Active suite primarily features funds with a manager deciding which securities to buy
15 and sell, and in what quantities.
16

17 29. The goal of an active manager is to beat a benchmark—usually a market index or
18 combination of indices—by taking on additional risk. Market research has indicated that investors
19 should be very skeptical of an actively managed fund's ability to consistently outperform its index,
20 which is a significant concern for long-term investors saving for retirement, like the Plan
21 participants in this action. Actively managed funds tend to charge higher fees than index funds
22 (which are passed on to the target date fund investor through higher expense ratios). These extra
23 costs present an additional hurdle for active managers to clear in order to provide value and
24 compensate investors for the added risk resulting from their decision-making. Indeed, Morningstar
25 has repeatedly concluded that “in general, actively managed funds have failed to survive and beat
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1 their benchmarks, especially over longer time horizons.”⁸ Although they may experience success
2 over shorter periods, active fund managers are rarely able to time the market efficiently and
3 frequently enough to outperform the market. The Active suite’s allocation to primarily actively
4 managed funds subjects investor dollars to the decision-making skill and success, or lack thereof, of
5 the underlying managers and the concomitant risk associated with these investments.
6

7 30. At all times across the glide path, the Active suite’s top three domestic equity
8 positions were and are in Fidelity Series funds (funds created for exclusive use in the Freedom
9 funds), two of which have dramatically trailed their respective indices over their respective
10 lifetimes. The Intrinsic Opportunities Fund, which is currently allocated 7.95% of the total assets in
11 the 2040-2060 Funds, has, over its lifetime, missed its benchmark, the Russell 3000 Index, by an
12 astonishing 299 basis points (2.99%) on an annualized basis. The Large Cap Stock Fund, which is
13 currently allocated 6.99% of the total assets in the 2040-2060 Funds, has suffered even worse
14 underperformance; its annualized lifetime returns trail that of its benchmark, the S&P 500 Index, by
15 369 basis points (3.69%). The portfolio of the Active suite is diversified among 32 underlying
16 investment vehicles; the two aforementioned series funds represent over 15% of the 2040 through
17 2060 vintages, meaning for at least 20 years (because those target date funds have an associated
18 target retirement date of at least twenty years from now), 15% of investor dollars are subject to the
19 poor judgment exercised by just those two managers.
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21

22 31. Compounding the level of risk inherent in the Active suite’s underlying holdings is
23 the suite’s managers’ approach to portfolio construction and asset allocation decisions. Returning to
24 the equity glide paths discussed above, the Active and Index suites appear to follow essentially the
25 same strategy. The chart below shows the percentage of assets devoted to equities in each vintage.
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27

28 ⁸“How Actively and Passively Managed Funds Performed: Year-End 2018”;
<https://www.morningstar.com/insights/2019/02/12/active-passive-funds>.

Equity Glide Path													
	Years to Target Retirement Year												
Series	40	35	30	25	20	15	10	5	0	-5	-10	-15	-20
Fidelity Freedom	90	90	90	90	89	78	65	58	53	43	35	24	24
Fidelity Freedom Index	90	90	90	90	90	80	65	59	52	43	34	24	24

This chart only considers the mix of the portfolio at the level of stocks, bonds and cash. A deeper examination of the sub-asset classes of the Active suite’s portfolio, however, exposes the significant risks its managers take to boost returns. Across the glide path, the Active suite allocates approximately 1.5% more of its assets to riskier international equities than the Index suite. The Active suite also has higher exposure to classes like emerging markets and high yield bonds.

32. Since the Active suite series underwent a strategy overhaul in 2013 and 2014, its managers have had the discretion to deviate from the glide path allocations by 10 percentage points in either direction. In a departure from the accepted wisdom that target date funds should maintain pre-set allocations, Fidelity encouraged its portfolio managers to attempt to time market shifts in order to locate underpriced securities, which the firm dubs “active asset allocation.” This strategy heaps further unnecessary risk on investors, such as Plan participants, in the Active suite. A March 2018 Reuters special report⁹ on the Fidelity Freedom funds (the “Reuters Report”) details how many investors lost confidence in the Active suite “because of their history of underperformance, frequent strategy changes and rising risk.” The report quotes a member of Longfellow Advisors, who told Reuters that, after the 2014 changes, “it was not clear to us that [the managers of the Active suite] knew what they were doing.” While many target date fund managers are increasing exposure to riskier investments in an effort to augment performance by taking on additional risk, the president of research firm, Target Date Solutions, states that the Active suite has gone further down

⁹“Special Report: Fidelity puts 6 million savers on risky path to retirement”, <https://www.reuters.com/article/us-funds-fidelity-retirement-special-rep/special-report-fidelity-puts-6-million-savers-on-risky-path-to-retirement-idUSKBN1GHISI>.

1 this path than its peers.¹⁰ Morningstar has noted in the past that active management has hindered
2 the Active suite’s performance, criticizing a previous poor decision to heavily weight to
3 commodities. Morningstar similarly characterized Fidelity’s shifts in the allocation of stocks
4 between 1996 and 2010 as “shocking” and “seemingly chaotic.” Yet, since 2014, a fund family
5 with a history of poor decisions has been given “carte blanche” to take further risks, to the severe
6 detriment of the Plan and its participants.
7

8 33. This desire and latitude to assume more risk exposes investors in what Fidelity
9 brands “a lifetime savings solution” to significant losses in the event of volatility similar to the
10 downturn experienced during the COVID-19 epidemic. Morningstar analyst Jeff Holt opines that
11 the popularity of target date funds derives from investors’ belief that the funds are designed to “not
12 lose money.” As a result, the average unsophisticated investor, such as the typical participant in the
13 Plan, tends to gravitate toward the all-in-one savings solution a target date fund offers. Given this
14 reality, Plan participants should be shielded from the riskiest fund families where active manager
15 decisions could amplify losses in periods of market decline. The Active suite’s lack of downside
16 protection has been magnified by the current COVID-19 crisis, and has been felt most sharply by
17 Plan participants approaching their target date, because Plan participants close to retirement age do
18 not have ample time to recoup significant losses before they start withdrawing their retirement
19 savings. The more conservative Fidelity Freedom Index 2020 Fund has handled the current
20 volatility exceptionally well, with year to date returns through August 11, 2020 ranking in the 19th
21 percentile among other 2020 target date funds.¹¹ In stark contrast, the Fidelity Freedom 2020 Fund
22 (i.e., part of the Active suite), in which the Plan had approximately \$3.8 million at the end of 2018,
23 ranks in the 56th percentile among the same peer group.
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28 ¹⁰*Id.*

¹¹For Morningstar’s peer group rankings, 1st percentile is the best performers.

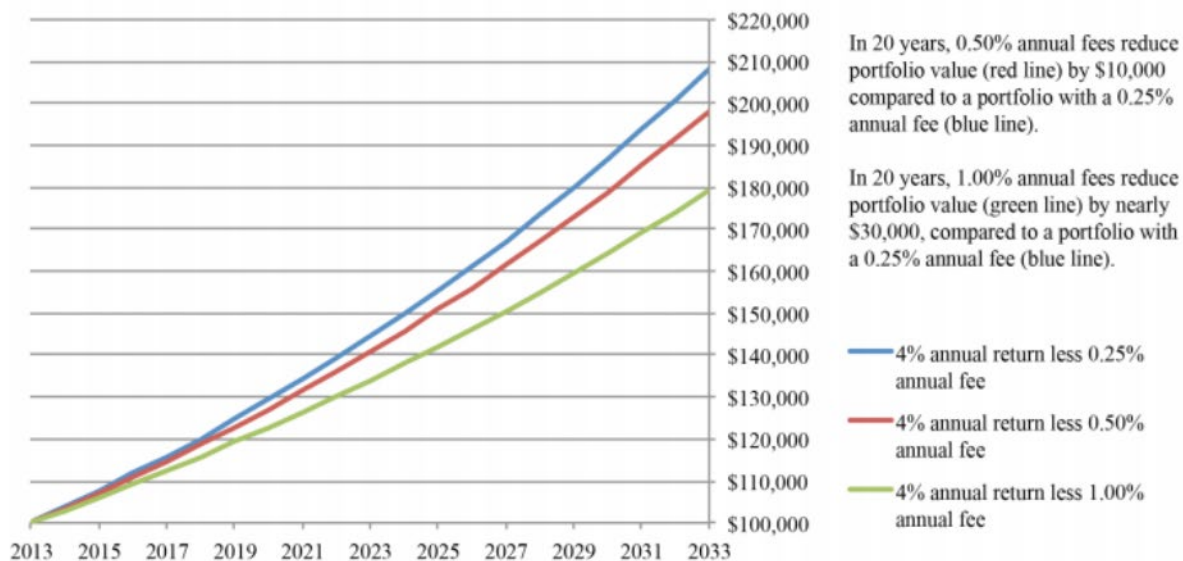
ii. The Active Suite's Considerable Cost

34. Even a minor increase in a fund's expense ratio (the total annual cost to an investor, expressed as a percentage of assets) can considerably reduce long-term retirement savings. The fees charged by the Active suite are many multiples higher than the Index suite's industry-leading low costs. While the Institutional Premium share class for each target year of the Index suite charges a mere 8 basis points (0.08%), the K share class of the Active suite—which the Plan offers—has expense ratios ranging from 42 basis points (0.42%) to 65 basis points (0.65%).

Cost Comparison						
Freedom Suite	Ticker	Exp Rat	Freedom Index Suite	Ticker	Exp Rat	Difference
Income K	FNSHX	0.42%	Income Inst Prem	FFGZX	0.08%	-0.34%
2005 K	FSNJX	0.42%	2005 Inst Prem	FFGFY	0.08%	-0.34%
2010 K	FSNKX	0.46%	2010 Inst Prem	FFWTX	0.08%	-0.38%
2015 K	FSNLX	0.49%	2015 Inst Prem	FIWFX	0.08%	-0.41%
2020 K	FSNOX	0.53%	2020 Inst Prem	FIWTX	0.08%	-0.45%
2025 K	FSNPX	0.56%	2025 Inst Prem	FFEDX	0.08%	-0.48%
2030 K	FSNQX	0.60%	2030 Inst Prem	FFEGX	0.08%	-0.52%
2035 K	FSNUX	0.63%	2035 Inst Prem	FFEZX	0.08%	-0.55%
2040 K	FSNVX	0.65%	2040 Inst Prem	FFIZX	0.08%	-0.57%
2045 K	FSNZX	0.65%	2045 Inst Prem	FFOLX	0.08%	-0.57%
2050 K	FNSBX	0.65%	2050 Inst Prem	FFOPX	0.08%	-0.57%
2055 K	FNSDX	0.65%	2055 Inst Prem	FFLDX	0.08%	-0.57%
2060 K	FNSFX	0.65%	2060 Inst Prem	FFLEX	0.08%	-0.57%

35. The higher fee, charged by the 2040 through 2060 Active funds, represents an annual cost to investors that is over eight times higher than what shareholders of the corresponding Index fund pay. The impact of such high fees on participant balances is aggravated by the effects of compounding, to the significant detriment of participants over time. This effect is illustrated by the below chart, published by the SEC, showing the 20-year impact on a balance of \$100,000 by fees of 25 basis points (0.25%), 50 basis points (0.50%), and 100 basis points (1.00%).

Portfolio Value From Investing \$100,000 Over 20 Years



36. Higher fees significantly reduce retirement account balances over time. Considering just the gap in expense ratios from the Plan's investment in the Active suite to the Institutional Premium share class of the Index suite, in 2018 alone, the Plan could have saved approximately \$2.55 million in costs. This tremendous cost difference goes straight into Fidelity's pockets and is paid for by Plan participants. As the costs for recordkeeping services have dropped precipitously over the past decade,¹² recordkeepers like Fidelity have been forced to chase profits elsewhere. The management fees derived from a plan's use of a provider's investment offerings substantially trump any compensation for recordkeeping services. Thus, Fidelity is heavily incentivized to promote its own investment products, specifically those that charge the highest fees, to each plan for which it recordkeeps, including the Plan.

iii. Investors Have Lost Faith in the Active Suite

37. The flow of funds to, or from, target date families constitutes one indicator of the preferences of investors at large. According to Morningstar's report on the 2019 Target Date Fund

¹²“NEPC: Corporate Defined Contribution Plans Report Flat Fees,” <https://www.nepc.com/press/nepc-corporate-defined-contribution-plans-report-flat-fees>.

1 Landscape,¹³ investor demand for low-cost target date options has skyrocketed in recent years.
 2 Following suit, the Index suite has seen significant inflows, receiving an estimated \$4.9 billion in
 3 new funds in 2018 alone. At the same time, investor confidence in the Active suite has deteriorated;
 4 2018 saw the series experience an estimated \$5.4 billion in net outflows. The movement of funds
 5 out of the Active suite has been substantial for years; the Reuters Report notes that nearly \$16
 6 billion has been withdrawn from the fund family over the prior four years. Defendants' act, in
 7 offering and maintaining the Active suite in the Plan through the majority of the Class Period,
 8 evidences their failure to acknowledge, or act upon, investors' crumbling confidence in the Active
 9 suite, while ignoring the simultaneous and justified surge in faith in the Index suite.
 10

11 iv. The 5-Star Index Suite

12 38. Morningstar assigns each mutual fund in its extensive database a star rating, which is
 13 a "purely mathematical measure that shows how well a fund's past returns have compensated
 14 shareholders for the amount of risk it has taken on." This measurement emphatically favors the
 15 Index suite. Each Fidelity Freedom Index fund bears a higher star rating than the corresponding
 16 Active fund (other than the Income and 2005 Index Funds, which have the same 3 stars as the
 17 Income and 2005 Active Funds). With the exception of the Income, 2005, and 2060 iterations, the
 18 full Index suite is assigned 5 stars, Morningstar's highest rating. The risk-adjusted returns of funds
 19 with a 5-star rating rank in the top 10% of their peers. The Active suite does not achieve a single 5-
 20 star rating, and only receives one 4-star rating. Defendants were likely aware, or should have been
 21 aware, of the higher ratings of the Index suite, yet continued to offer the Active suite, to the
 22 detriment of Plan participants.
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 24
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28 ¹³"2019 Target-Date Fund Landscape: Simplifying the Complex."

Morningstar Ratings

Freedom Suite	Ticker	Stars	Freedom Index Suite	Ticker	Stars
Income K	FNSHX	3	Income Inst Prem	FFGZX	3
2005 K	FSNJX	3	2005 Inst Prem	FFGFX	3
2010 K	FSNKX	3	2010 Inst Prem	FFWTX	5
2015 K	FSNLX	3	2015 Inst Prem	FIWFX	5
2020 K	FSNOX	4	2020 Inst Prem	FIWTX	5
2025 K	FSNPX	3	2025 Inst Prem	FFEDX	5
2030 K	FSNQX	3	2030 Inst Prem	FFEGX	5
2035 K	FSNUX	3	2035 Inst Prem	FFEZX	5
2040 K	FSNVX	3	2040 Inst Prem	FFIZX	5
2045 K	FSNZX	3	2045 Inst Prem	FFOLX	5
2050 K	FNSBX	3	2050 Inst Prem	FFOPX	5
2055 K	FNSDX	3	2055 Inst Prem	FFLDX	5
2060 K	FNSFX	3	2060 Inst Prem	FFLEX	4

v. The Active Suite's Inferior Performance

39. In the period following the strategy overhaul in 2013 and 2014, the Active suite's higher levels of risk have failed to produce substantial outperformance when compared to the Index suite. While assuming significantly higher levels of risk with investor dollars (and among them, the Plan participants' hard-earned savings), the Active suite has simply failed to measure up to the returns produced by its index cousin, in which the Plan participants' assets would be significantly better off.¹⁴ Since the strategic changes took effect in 2014, the Index suite has outperformed the Active suite in four out of six calendar years. Broadening the view to historical measures that

¹⁴It bears noting that that Defendants' swap of the Active suite for the FIAM Blend suite does not remedy any of the above identified breaches. The FIAM Blend suite, while less expensive than the Active suite, is still at least three times as costly as the Index suite across the glide path, despite achieving inferior performance. The FIAM Blend suite's use of both actively and passively managed strategies renders it a riskier investment option than the Index suite. Moreover, investors have not "voted with their dollars" by identifying the FIAM Blend pools at nearly the rate they are investing in the Index suite. And, while historical performance data for the FIAM Blend suite is generally not publicly available, its annualized returns from the end of the second quarter of 2020 lag those of the Index suite on a 1-, 3-, and 5-year basis across the glide path, thereby indicating that the choice of the FIAM Blend suite was illogical and a breach of fiduciary duty at the time that Defendants selected it for the Plan.

1 encompass a period closer to a full market cycle, the Active suite has substantially underperformed
 2 the Index suite on a trailing three- and five-year annualized basis.¹⁵

3 **3-Year Trailing Performance as of 9/30/20**

Freedom Suite	Return	Freedom Index Suite	Return	Difference
Income K	4.86%	Income Inst Prem	5.50%	-0.64%
2005 K	5.24%	2005 Inst Prem	5.90%	-0.66%
2010 K	5.66%	2010 Inst Prem	6.34%	-0.68%
2015 K	6.01%	2015 Inst Prem	6.77%	-0.76%
2020 K	6.32%	2020 Inst Prem	7.12%	-0.80%
2025 K	6.55%	2025 Inst Prem	7.37%	-0.82%
2030 K	6.91%	2030 Inst Prem	7.80%	-0.89%
2035 K	7.08%	2035 Inst Prem	8.03%	-0.95%
2040 K	7.06%	2040 Inst Prem	8.02%	-0.96%
2045 K	7.04%	2045 Inst Prem	8.03%	-0.99%
2050 K	7.03%	2050 Inst Prem	8.04%	-1.01%
2055 K	7.03%	2055 Inst Prem	8.02%	-0.99%
2060 K	7.05%	2060 Inst Prem	8.06%	-1.01%

13 **5-Year Trailing Performance as of 9/30/20**

Freedom Suite	Return	Freedom Index Suite	Return	Difference
Income K	5.43%	Income Inst Prem	5.22%	0.21%
2005 K	6.28%	2005 Inst Prem	6.15%	0.13%
2010 K	7.04%	2010 Inst Prem	6.94%	0.10%
2015 K	7.71%	2015 Inst Prem	7.71%	0.00%
2020 K	8.22%	2020 Inst Prem	8.27%	-0.05%
2025 K	8.65%	2025 Inst Prem	8.78%	-0.13%
2030 K	9.59%	2030 Inst Prem	9.83%	-0.24%
2035 K	10.15%	2035 Inst Prem	10.50%	-0.35%
2040 K	10.16%	2040 Inst Prem	10.53%	-0.37%
2045 K	10.14%	2045 Inst Prem	10.54%	-0.40%
2050 K	10.15%	2050 Inst Prem	10.55%	-0.40%
2055 K	10.15%	2055 Inst Prem	10.53%	-0.38%
2060 K	10.14%	2060 Inst Prem	10.55%	-0.41%

23 40. It is unclear at what point in 2014 the Active suite's major strategic changes were
 24 implemented, but using a start date of January 1, June 30, or December 31, 2014, the Index suite has
 25

26 _____
 27 ¹⁵Investment professionals and investment policy statements for virtually all competently managed
 28 defined contribution retirement plans appropriately recognize that the three-year and five-year
 annualized returns are important metrics for evaluating whether investment options should be
 maintained in a retirement plan lineup.

1 outperformed the Active suite to date. Investing research and information websites commonly
 2 show the growth of \$10,000 invested in a mutual fund and a benchmark over a period to provide a
 3 comparison of returns in a simple-to-understand format. Using this method to compare the two
 4 suites, at each proposed start date, across every vintage of the fund families, the Index suite would
 5 have earned investors significantly greater sums on a \$10,000 investment. Defendants breached
 6 their fiduciary duty to Plan participants by choosing to select and retain the Active suite, thus
 7 causing Plan participants to miss out on greater investment returns for their retirement savings.
 8

9 **2. Defendants Ignored Basic Investment Theory by Maintaining the**
 10 **Active Suite During the Class Period**

11 41. It is a basic principle of investment theory that the risks associated with an
 12 investment must first be justified by its potential returns for that investment to be rational. This
 13 principle applies even before considering the purpose of the investment and the needs of the
 14 investor, such as the retirement assets here. The Capital Asset Pricing Model (“CAPM”), which is
 15 used for pricing securities and generating expected returns for assets given the risk of those assets
 16 and the cost of capital, provides a mathematical formula distilling this principle:
 17

18 $ER_i = R_f + \beta_i(ER_m - R_f)$, where:

19 ER_i =expected return of investment

20 R_f =risk-free rate

21 β_i =beta of the investment

$(ER_m - R_f)$ =market risk premium

22 Applied here and put simply, the β_i is the risk associated with an actively-managed mutual fund or
 23 collective trust, which can only be justified if the ER_i of the investment option is, at the very least,
 24 above that of its benchmark, R_f .¹⁶ Otherwise, the model collapses, and it would be imprudent to
 25 assume any risk without achieving associated return above the benchmark returns. Defendants’
 26 inclusion and maintenance of the Active suite during the Class Period ignored this basic principle of
 27

1 investment theory which any responsible fiduciary must understand to perform their or its duties.³

2 **The Active Suite Also Was Excessively Expensive**

3 42. In another obvious and related breach of their fiduciary duties, in light of the poor
4 performance of the Active suite, as discussed above, Defendants also failed to ensure that the
5 expense ratios associated with the Active suite were reasonable when compared to the expense
6 ratios of other TDFs, which excessive expense ratios (when viewed in light of the performance of
7 the Active suite) could not be justified by any reasonable fiduciary performing their or its duties.
8

9 The following is a comparison of the expense ratios for the Active suite and the average expense
10 ratio for a TDF,, according to the Brightscope/ICI study published in August 2020:

11

Fund	Expense Ratio	Category	ICI Average Fee
Fidelity Freedom Income K	0.42%	Target Date	0.39%
Fidelity Freedom 2005 K	0.42%	Target Date	0.39%
Fidelity Freedom 2010 K	0.46%	Target Date	0.39%
Fidelity Freedom 2015 K	0.49%	Target Date	0.39%
Fidelity Freedom 2020 K	0.53%	Target Date	0.39%
Fidelity Freedom 2025 K	0.56%	Target Date	0.39%
Fidelity Freedom 2030 K	0.60%	Target Date	0.39%
Fidelity Freedom 2035 K	0.63%	Target Date	0.39%
Fidelity Freedom 2040 K	0.65%	Target Date	0.39%
Fidelity Freedom 2045 K	0.65%	Target Date	0.39%
Fidelity Freedom 2050 K	0.65%	Target Date	0.39%
Fidelity Freedom 2055 K	0.65%	Target Date	0.39%
Fidelity Freedom 2060 K	0.65%	Target Date	0.39%

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1 A reasonable fiduciary only would have agreed to pay such significant fees in return for proven
2 performance, as dictated by the CapM pricing model described above.

3 **V. ERISA’S FIDUCIARY STANDARDS**

4
5 43. ERISA imposes strict fiduciary duties of loyalty and prudence upon the Defendants
6 as fiduciaries of the Plan. 29 U.S.C. § 1104(a), states, in relevant part, as follows:

7 [A] fiduciary shall discharge his duties with respect to a plan solely
8 in the interest of the participants and beneficiaries and -

9 (A) for the exclusive purpose of

10 (i) providing benefits to participants and their beneficiaries;
11 and

(ii) defraying reasonable expenses of administering the plan;

12 [and]

13 (B) with the care, skill, prudence, and diligence under the circumstances
14 then prevailing that a prudent man acting in a like capacity and
15 familiar with such matters would use in the conduct of an enterprise
of like character and with like aims.

16 44. Under 29 U.S.C. § 1103(c)(1), with certain exceptions not relevant here, the assets of
17 a plan shall never inure to the benefit of any employer and shall be held for the exclusive purposes
18 of providing benefits to participants in a plan and their beneficiaries and defraying reasonable
19 expenses of administering the plan.

20
21 45. Under ERISA, fiduciaries that exercise any authority or control over plan assets,
22 including the selection of plan investments and service providers, must act prudently and solely in
23 the interest of participants in a plan.

24 46. ERISA’s fiduciary duties are “the highest known to the law” and must be performed
25 “with an eye single” to the interests of participants.

26 47. ERISA also imposes explicit co-fiduciary liabilities on plan fiduciaries. 29 U.S.C. §
27 1105(a) provides a cause of action against a fiduciary for knowingly participating in a breach by
28

1 another fiduciary and knowingly failing to cure any breach of duty. ERISA states, in relevant part,
2 as follows:

3 In addition to any liability which he may have under any other provision
4 of this part, a fiduciary with respect to a plan shall be liable for a breach
5 of fiduciary responsibility of another fiduciary with respect to the same
plan in the following circumstances:

- 6 (1) if he participates knowingly in, or knowingly undertakes
7 to conceal, an act or omission of such other fiduciary,
8 knowing such act or omission is a breach; or
9 (2) if, by his failure to comply with section 404(a)(1) in the
10 administration of his specific responsibilities which give
11 risk to his status as a fiduciary, he has enabled such other
12 fiduciary to commit a breach; or
13 (3) if he has knowledge of a breach by such other fiduciary,
14 unless he makes reasonable efforts under the circumstances
15 to remedy the breach.

14 48. 29 U.S.C. § 1132(a)(2) authorizes a plan participant to bring a civil action to enforce
15 a breaching fiduciary's liability to the plan under 29 U.S.C. § 1109. Section 1109(a) provides, in
16 relevant part:

17 **VI. CLASS ALLEGATIONS**

18 49. This action is brought as a class action by Plaintiffs on behalf of themselves and the
19 following proposed Class:

20 All participants and beneficiaries in the LinkedIn Corporation 401(k) Profit
21 Sharing Plan and Trust (the "Plan") at any time on or after August 14, 2014
22 to July 1, 2020 (the "Class Period"), including any beneficiary of a deceased
23 person who was a participant in the Plan at any time during the Class Period.

24 Excluded from the Class are Defendants and the Judge to whom this case is assigned or any other
25 judicial officer having responsibility for this case who is a beneficiary.

26 50. This action may be maintained as a class action pursuant to Rule 23 of the Federal
27 Rules of Civil Procedure.

1 51. **Numerosity.** Plaintiffs are informed and believe that there are at least thousands of
2 Class members throughout the United States. As a result, the members of the Class are so
3 numerous that their individual joinder in this action is impracticable.

4 52. **Commonality.** There are numerous questions of fact and/or law that are common to
5 Plaintiffs and all the members of the Class, including, but not limited to the following:
6

7 (a) Whether Defendants failed and continue to fail to discharge their duties with respect
8 to the Plan solely in the interest of the Plan’s participants for the exclusive purpose of providing
9 benefits to participants and their beneficiaries;

10 (b) Whether Defendants breached their fiduciary duties under ERISA by failing to
11 defray the reasonable expenses of administering the Plan; and

12 (c) Whether and what form of relief should be afforded to Plaintiffs and the Class.
13

14 53. **Typicality.** Plaintiffs, who are members of the Class, have claims that are typical of
15 all of the members of the Class. Plaintiffs’ claims and all of the Class members’ claims arise out of
16 the same uniform course of conduct by Defendants and arise under the same legal theories that are
17 applicable as to all other members of the Class.

18 54. **Adequacy of Representation.** Plaintiffs will fairly and adequately represent the
19 interests of the members of the Class. Plaintiffs have no conflicts of interest with or interests that
20 are any different from the other members of the Class. Plaintiffs have retained competent counsel
21 experienced in class action and other complex litigation, including class actions under ERISA.
22

23 55. **Potential Risks and Effects of Separate Actions.** The prosecution of separate
24 actions by or against individual Class members would create a risk of: (A) inconsistent or varying
25 adjudications with respect to individual Class members that would establish incompatible standards
26 of conduct for the party opposing the Class; or (B) adjudications with respect to individual class
27 members that, as a practical matter, would be dispositive of the interests of the other members not
28

1 parties to the individual adjudications or would substantially impair or impede their ability to
2 protect their interests.

3 56. **Predominance**. Common questions of law and fact predominate over questions
4 affecting only individual Class members, and the Court, as well as the parties, will spend the vast
5 majority of their time working to resolve these common issues. Indeed, virtually the only
6 individual issues of significance will be the exact amount of damages recovered by each Class
7 member, the calculation of which will ultimately be a ministerial function and which does not bar
8 Class certification.

9
10 57. **Superiority**. A class action is superior to all other feasible alternatives for the
11 resolution of this matter. The vast majority, if not all, of the Class members are unaware of
12 Defendants' breaches of fiduciary duty and prohibited transactions such that they will never bring
13 suit individually. Furthermore, even if they were aware of the claims they have against
14 Defendants, the claims of virtually all Class members would be too small to economically justify
15 individual litigation. Finally, individual litigation of multiple cases would be highly inefficient, a
16 gross waste of the resources of the courts and of the parties, and potentially could lead to
17 inconsistent results that would be contrary to the interests of justice.

18
19 58. **Manageability**. This case is well-suited for treatment as a class action and easily
20 can be managed as a class action since evidence of both liability and damages can be adduced, and
21 proof of liability and damages can be presented, on a Class-wide basis, while the allocation and
22 distribution of damages to Class members would be essentially a ministerial function.

23
24 59. Defendants have acted on grounds generally applicable to the Class by uniformly
25 subjecting them to the breaches of fiduciary duty described above. Accordingly, injunctive relief,
26 as well as legal and/or equitable monetary relief (such as disgorgement and/or restitution), along
27 with corresponding declaratory relief, are appropriate with respect to the Class as a whole.
28

1 60. Plaintiffs' counsel will fairly and adequately represent the interests of the Class and
2 are best able to represent the interests of the Class under Rule 23(g) of the Federal Rules of Civil
3 Procedure. Moreover, treating this case as a class action is superior to proceeding on an individual
4 basis and there will be no difficulty in managing this case as a class action.
5

6 61. Therefore, this action should be certified as a class action under Rules 23(a) and
7 23(b)(1) and/or 23(b)(3).

8 **COUNT I**
9 **(For Breach of Fiduciary Duty)**

10 62. Plaintiffs incorporate by reference the allegations in the previous paragraphs of this
11 Complaint as if fully set forth herein.

12 63. Defendants' conduct, as set forth above, violates their fiduciary duties under ERISA
13 § 404(a)(1)(A), (B) and (D), 29 U.S.C. § 1104(a)(1)(A), (B) and (D), in that Defendants failed and
14 continue to fail to discharge their duties with respect to the Plan solely in the interest of the Plan's
15 participants and beneficiaries and (a) for the exclusive purpose of (i) providing benefits to
16 participants and their beneficiaries; and (ii) defraying reasonable expenses of administering the Plan
17 with (b) the care, skill, prudence, and diligence under the circumstances then prevailing that a
18 prudent man acting in a like capacity and familiar with such matters would use in the conduct of an
19 enterprise of a like character and with like aims, and (c) by failing to act in accordance with the
20 documents and instruments governing the Plan. In addition, as set forth above, Defendants violated
21 their respective fiduciary duties under ERISA to monitor other fiduciaries of the Plan in the
22 performance of their duties.
23

24 64. To the extent that any of the Defendants did not directly commit any of the foregoing
25 breaches of fiduciary duty, at the very minimum, each such Defendant is liable under 29 U.S.C. §
26 1105(a) because he, she, they or it was a co-fiduciary and knowingly participated in (or concealed)
27 a breach by another fiduciary, enabled another fiduciary to commit breaches of fiduciary duty in the
28

1 administration of his, her, their or its specific responsibilities giving rise to his, her, their or its
2 fiduciary status and/or knowingly failing to cure a breach of fiduciary duty by another fiduciary
3 and/or failed to take reasonable efforts to remedy the breach.

4 65. As a direct result of Defendants' breaches of duties, the Plan has suffered losses and
5 damages.

6 66. Pursuant to ERISA § 409, 29 U.S.C. § 1109, and ERISA § 502, 29 U.S.C. § 1132,
7 Defendants are liable to restore to the Plan the losses that have been suffered as a direct result of
8 Defendants' breaches of fiduciary duty and are liable for damages and any other available equitable
9 or remedial relief, including prospective injunctive and declaratory relief, and attorneys' fees, costs
10 and other recoverable expenses of litigation.

11
12
13 **COUNT II**
(Failure to Monitor Fiduciaries and Co-Fiduciary Breaches)

14 67. Plaintiffs incorporate the allegations in the previous paragraphs of this Complaint as
15 if fully set forth herein.

16 68. LinkedIn is responsible for appointing, overseeing, and removing members of the
17 Administrative Committee, who, in turn, are responsible for appointing, overseeing, and removing
18 members of the Committee.

19 69. In light of its appointment and supervisory authority, LinkedIn had a fiduciary
20 responsibility to monitor the performance of the Committee and its members. In addition,
21 LinkedIn, and the Administrative Committee had a fiduciary responsibility to monitor the
22 performance of the members of the Committee.

23 70. A monitoring fiduciary must ensure that the monitored fiduciaries are performing
24 their fiduciary obligations, including those with respect to the investment and holding of Plan
25 assets, and must take prompt and effective action to protect the Plan and participants when they are
26 not.

1 71. To the extent that fiduciary monitoring responsibilities of LinkedIn or the Committee
2 was delegated, each Defendant's monitoring duty included an obligation to ensure that any
3 delegated tasks were being performed prudently and loyally.

4 72. LinkedIn and the Committee breached their fiduciary monitoring duties by, among
5 other things:
6

7 (a) Failing to monitor and evaluate the performance of their appointees or have a system
8 in place for doing so, standing idly by as the Plan suffered enormous losses as a result of
9 the appointees' imprudent actions and omissions with respect to the Plan;

10 (b) Failing to monitor their appointees' fiduciary processes, which would have alerted a
11 prudent fiduciary to the breaches of fiduciary duties described herein, in clear violation of
12 ERISA; and

13 (c) Failing to remove appointees whose performances were inadequate in that they
14 continued to maintain imprudent, excessively costly, and poorly performing investments
15 within the Plan, all to the detriment of the Plan and its participants' retirement savings.
16

17 73. As a consequence of these breaches of the fiduciary duty to monitor, the Plan
18 suffered substantial losses. Had LinkedIn and the Committee discharged their fiduciary monitoring
19 duties prudently as described above, the losses suffered by the Plan would have been minimized or
20 avoided. Therefore, as a direct result of the breaches of fiduciary duties alleged herein, the Plan and
21 its participants have lost millions of dollars of retirement savings.
22

23 74. LinkedIn and the Committee are liable under 29 U.S.C. § 1109(a) to make good to
24 the Plan any losses to the Plan resulting from the breaches of fiduciary duties alleged in this Count,
25 to restore to the Plan any profits made through use of Plan assets, and are subject to other equitable
26 or remedial relief as appropriate.

27 75. Each of the Defendants also knowingly participated in the breaches of the other
28

1 Defendants, knowing that such acts were a breach; enabled the other Defendants to commit a breach
2 by failing to lawfully discharge their own fiduciary duties; and knew of the breaches by the other
3 Defendants and failed to make any reasonable effort under the circumstances to remedy the
4 breaches. Defendants, thus, are liable for the losses caused by the breaches of their co-fiduciaries
5 under 29 U.S.C. § 1105(a).
6

7 **COUNT III**
8 **(In the Alternative, Liability for Knowing Breach of Trust)**

9 76. Plaintiffs incorporate the allegations in the previous paragraphs of this Complaint as
10 if fully set forth herein.

11 77. In the alternative, to the extent that any of the Defendants are not deemed a fiduciary
12 or co-fiduciary under ERISA, each such Defendant should be enjoined or otherwise subject to
13 equitable relief as a non-fiduciary from further participating in a knowing breach of trust.

14 78. To the extent any of the Defendants are not deemed to be fiduciaries and/or are not
15 deemed to be acting as fiduciaries for any and all applicable purposes, any such Defendants are
16 liable for the conduct at issue here, since all Defendants possessed the requisite knowledge and
17 information to avoid the fiduciary breaches at issue here and knowingly participated in breaches of
18 fiduciary duty by permitting the Plan to offer a menu of poor and expensive investment options that
19 cannot be justified in light of the size of the Plan and other expenses of the Plan.
20

21 **PRAYER FOR RELIEF**

22 WHEREFORE, Plaintiffs, on behalf of themselves, the Class and the Plan, demand
23 judgment against Defendants for the following relief:

- 24 (a) Declaratory and injunctive relief pursuant to ERISA § 502, 29 U.S.C. § 1132, as
25 detailed above;
26
27 (b) Equitable, legal or remedial relief to return all losses to the Plan and/or for restitution
28 and/or damages as set forth above, plus all other equitable or remedial relief as the Court

1 may deem appropriate pursuant to ERISA §§ 409 and 502, 29 U.S.C. §§ 1109 and 1132;

2 (c) Pre-judgment and post-judgment interest at the maximum permissible rates, whether
3 at law or in equity;

4 (d) Attorneys' fees, costs and other recoverable expenses of litigation; and

5 (e) Such further and additional relief to which the Plan may be justly entitled and the
6 Court deems appropriate and just under all of the circumstances.
7

8 **NOTICE PURSUANT TO ERISA § 502(h)**

9 To ensure compliance with the requirements of ERISA § 502(h), 29 U.S.C. § 1132(h), the
10 undersigned hereby affirms that, on this date, a true and correct copy of this Second Amended
11 Complaint was served upon the Secretary of Labor and the Secretary of the Treasury by certified
12 mail, return receipt requested.
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1 DATED: December 16, 2021

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