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

Charles Baird and Lauren Slayton, as
individuals, and on behalf of all others
similarly situated, and on behalf of the
BlackRock Retirement Savings Plan,

Plaintiffs,

vs.

BlackRock Institutional Trust Company,
N.A.; BlackRock, Inc.; The BlackRock, Inc.
Retirement Committee; The Investment
Committee of the Retirement Committee;
Catherine Bolz, Chip Castille, Paige Dickow,
Daniel A. Dunay, Jeffrey A. Smith; Anne
Ackerley, Amy Engel, Nancy Everett, Joseph
Feliciani Jr., Ann Marie Petach, Michael
Fredericks, Corin Frost, Daniel Gamba, Kevin
Holt, Chris Jones, Philippe Matsumoto, John
Perlowski, Andy Phillips, Kurt Schansinger,
and Tom Skrobe.

Defendants.

AMENDED CLASS ACTION COMPLAINT

No. 4:17-cv-01892-HSG

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I. NATURE OF THE ACTION

1. This is a civil enforcement action brought pursuant to Sections 502(a)(2) and (a)(3) of the Employee Retirement Income Security Act of 1974, as amended, (“ERISA”), 29 U.S.C. § 1132(a)(2) & (a)(3), for violations of ERISA’s fiduciary duty and prohibited transactions provisions. It is brought by Charles Baird and Lauren Slayton on behalf of two classes: the “BlackRock Plan Class,” which consists of all participants and beneficiaries in the BlackRock Retirement Savings Plan (the “BlackRock Plan” or the “Plan”); and the “CTI Class,” which consists of all participants (and their beneficiaries), whose individual accounts were invested directly or indirectly in certain BlackRock proprietary collective trust investment funds (CTIs),¹ each of which held ERISA plan assets and thus was governed by ERISA.²

¹ In this complaint, “**mutual fund**” refers to an investment fund governed by the Investment Company Act of 1940. A “**Collective Trust Investment**” refers to an investment vehicle, other than a mutual fund governed by the Investment Company Act of 1940, that is offered for investment to more than one investor. Such funds are typically offered by financial institutions such as banks, are usually cheaper than mutual funds, and are only available to high net worth investors such as institutional investors or retirement plans. A “**Separate Account**” refers to a segregated account for the purpose of holding the invested assets of a retirement trust.

² As set forth in more detail below, the CTI Class involves the following ERISA-governed CTIs (collectively referred to herein as the “BlackRock CTIs”): Active Stock Fund E ; Asset-Backed Securities Fund B; Blackrock MSCI Canada Small Cap Equity Index Fund; Blackrock MSCI EAFE Small Cap Equity Index Fund; Blackrock MSCI US Real Estate Index Fund E; Commercial Mortgage-Backed Securities Index Fund B; Commodity Index Daily Fund E; Developed Ex-US Real Estate Index Fund; EAFE Equity Index Fund; EAFE Equity Index Fund F; Emerging Markets Equity Index Master Fund; Equity Index Fund; Extended Equity Market Fund; Intermediate Government Bond Index Fund; Intermediate Term Credit Bond Index Fund; Long Term Credit Bond Index Fund; Long Term Government Bond Index Fund; Mortgage-Backed Securities Index Fund; MSCI Equity Index Fund B-Brazil; MSCI Equity Index Fund B-Chile; MSCI Equity Index Fund B-China; MSCI Equity Index Fund B-Colombia; MSCI Equity Index Fund B-Czech Republic; MSCI Equity Index Fund B-Egypt; MSCI Equity Index Fund B-Hungary; MSCI Equity Index Fund B-India; MSCI Equity Index Fund B-Indonesia; MSCI Equity Index Fund B-Malaysia; MSCI Equity Index Fund B-Morocco; MSCI Equity Index Fund B-Peru; MSCI Equity Index Fund B-Poland; MSCI Equity Index Fund B-Russia; MSCI Equity Index Fund B-S Korea; MSCI Equity Index Fund B-South Africa; MSCI Equity Index Fund B-Taiwan; MSCI Equity Index Fund B-Thailand; MSCI Equity Index Fund-Canada; MSCI Equity Index Fund-Mexico; MSCI Equity Index Fund-

2. ERISA fiduciaries are bound to act with an “eye single” to the interests of the plan participants and beneficiaries to whom they owe a duty. *Donovan v. Bierwirth*, 680 F.2d 263, 271, 272 n.8 (2d Cir. 1982). Defendants violated that bedrock principle again and again by giving preferential treatment to their proprietary products and service providers for the retirement plan assets under their stewardship. This lawsuit seeks to remedy those violations.

3. This lawsuit alleges two discrete schemes whereby Defendants illegally profit off of participants’ investments in the BlackRock Plan and BlackRock proprietary funds³ holding almost entirely ERISA-governed retirement assets.

4. The two schemes reflect a common pattern and practice of self-dealing and other ERISA violations by the Defendants. As the allegations below demonstrate, at every turn, BlackRock and BTC selects themselves and their affiliates to provide services to the BlackRock Plan and to its BlackRock proprietary CTIs. Not coincidentally, BlackRock, BTC and its affiliates profit handsomely from such arrangements, while members of the BlackRock Plan Class and the CTI Class are harmed.

5. The first scheme relates to the 401(k) plan BlackRock sponsors for its own employees, where BlackRock offers an investment menu consisting almost entirely of BlackRock proprietary funds, and charges participants excessive, hidden fees, expenses and other compensation paid to BlackRock and its affiliates, through a layered fund structure. Through these excessive and undisclosed fees and expenses for investment in BlackRock proprietary funds, Defendants disloyally prop up BlackRock affiliate BTC; disloyally fail to disclose the true cost of plan investments;

Philippines; MSCI Equity Index Fund-Turkey; Russell 1000 Index Fund; and US Treasury Inflation Protected Securities Fund E.

³ BlackRock proprietary funds are investments that were or are owned, operated or managed by BlackRock, BlackRock Institutional Trust Company (“BTC”), or other BlackRock affiliates.

1 imprudently concentrate risk in the BlackRock Plan by choosing only funds managed by the same
2 company, BlackRock and its affiliates; improperly profit from the BlackRock Plan; and engage in
3 prohibited transactions and self-dealing. All of these violations harm participants in the BlackRock
4 Plan by eroding participants' investment earnings and diminishing their retirement savings.

5
6 6. The second scheme relates to certain CTIs that BTC managed. The assets in these
7 CTIs are plan assets, as defined by applicable regulations, and therefore governed by ERISA because
8 at all relevant times more than 25% of the assets of each CTI were derived from investments by
9 ERISA-covered employee benefit plans. BTC manages the assets of all CTIs and thus is a fiduciary
10 to the numerous other employee benefits plans which invest directly or indirectly in BlackRock CTIs
11 (hereinafter, the "CTI Plans"). BTC has a duty to act prudently and with undivided loyalty to the
12 participants in the CTI Plans. However, in contravention of its fiduciary duties, BTC gives itself and
13 its affiliates preferential treatment with respect to receiving compensation paid by from the
14 BlackRock CTIs. This compensation paid to BTC affiliates includes trading fees, securities lending
15 fees, brokerage commissions, and research. For example, BTC self-servingly hires and retains itself
16 to act as the securities lending agent for all the CTIs it manages and pays itself excessive fees for
17 securities lending services.
18

19
20 7. In this way, Defendants engage in a pattern of prohibited transactions, self-dealing,
21 and breach their fiduciary duties under ERISA. Investors in these BlackRock CTIs, including the
22 Plaintiffs, are harmed by BTC's self-interested decision making, which results in the payment of
23 various compensation to BTC and its affiliates. Had BTC not acted in a conflicted manner by giving
24 itself preferential treatment, BTC could have and should have obtained a more favorable securities
25 lending arrangement that allowed the CTI Class members to retain a greater share of the profits from
26 the lending of the securities held by their retirement plans.
27
28

8. Plaintiffs seek relief including disgorgement of all investment advisory fees and expenses paid to BlackRock and/or its subsidiaries from the plan assets held in the BlackRock CTIs and the Blackrock Plan, the losses caused to their retirement accounts from the many fiduciary breaches and prohibited transactions, and injunctive relief to prohibit future self-dealing by the fiduciaries of the BlackRock Plan and BTC, the fiduciary to the CTI Plans.

9. The allegations in this amended complaint are based upon counsel's investigation of public documents, including filings with the U.S. Department of Labor and the U.S. Securities and Exchange Commission, as well as documents produced by Defendants since the commencement of this lawsuit.

II. JURISDICTION AND VENUE

10. This Court has subject matter jurisdiction pursuant to ERISA § 502(e)(1), 29 U.S.C. § 1132(e)(1).

11. Venue is proper in this district pursuant to ERISA § 502(e)(2), 29 U.S.C. § 1132(e)(2), because: (1) Defendant BlackRock Institutional Trust Company, N.A., has its principal office in this District; (2) Defendant BlackRock, Inc. also maintains an office in this District; and/or (3) many of the breaches occurred in this District.

III. PARTIES

A. Plaintiffs

12. Plaintiff Charles Baird was an employee of Barclays Global Investors ("BGI") from 2000 until 2009, when BGI was acquired by BlackRock, and an employee of BlackRock from 2009 until July 2016.

13. Plaintiff Baird resides in San Francisco, California, within this District.

14. Plaintiff Baird is a participant in the BlackRock Plan.

1 15. Plaintiff Baird's individual account in the BlackRock Plan was invested in various
2 investment options offered by the Plan during the Class Period.

3 16. Plaintiff Baird's individual account in the Plan is currently or was invested in one or
4 more of the BlackRock proprietary funds offered by the BlackRock Plan, including the following
5 proprietary mutual funds: BlackRock Large Cap Core (MKLRX); BlackRock Global Allocation
6 Fund (MALOX); and the BlackRock Total Return Bond Fund (MPHGX). Plaintiff Baird is also
7 invested in the following BlackRock CTIs: BlackRock Russell 1000 Class F; BlackRock Active
8 Stock Fund Class F; BlackRock MSCI ACWI EX Fund Class F; BlackRock US TIPs Fund Class F;
9 and BlackRock US Debt Index Fund Class F.
10

11 17. Plaintiff Lauren Slayton was an employee of BGI from 2006 until 2009, when BGI
12 was acquired by BlackRock, and an employee of BlackRock from 2009 until March 2012.
13

14 18. Plaintiff Slayton resides in Santa Clara, California, within this District.

15 19. Plaintiff Slayton is a participant in the BlackRock Plan.

16 20. During the Class Period, Plaintiff Slayton's individual account in the Plan was
17 invested in the BlackRock LifePath Index 2050 fund, a BlackRock proprietary CTI offered under the
18 Plan's investment menu.

19 21. Plaintiff Slayton is currently invested in one or more of the BlackRock proprietary
20 funds offered by the Plan.
21

22 22. ERISA §§ 409(a), 502(a)(2) & (a)(3), 29 U.S.C. §§ 1109, 1132(a)(2) & (a)(3),
23 authorize participants such as the Plaintiffs to sue in a representative capacity for losses suffered by
24 the Plan and the BlackRock CTIs as a result of breaches of fiduciary duties. Pursuant to that
25 authority, Plaintiffs bring this action as a class action under Fed. R. Civ. P. 23 on behalf of the
26 BlackRock Plan Class and the CTI Class.
27
28

B. Defendants

1. Defendant BlackRock Institutional Trust Company, N.A. (“BTC”)

23. Defendant BlackRock Institutional Trust Company, N.A. is a national banking association organized under the laws of the United States that operates as a limited purpose trust company. BTC provides investment management services to institutional investors and collective investment vehicles, and it is a bank as defined by the Investment Advisors Act of 1940.

24. Defendant BTC has its principal office in San Francisco, California.

25. Defendant BTC was known as Barclays Global Investors, or “BGI,” before it was acquired by BlackRock in 2009.

26. Throughout the Class Period BTC was and is a wholly owned subsidiary of BlackRock, Inc.

27. BTC is a fiduciary of the BlackRock Plan, as defined in ERISA § 3(38), 29 U.S.C. § 1002(38), with full discretionary authority to manage and invest the BlackRock Plan’s assets as alleged in further detail below.

28. This discretionary authority to manage and invest the BlackRock Plan’s assets includes but is not limited to the decisions regarding which investment options to select for, retain in, and/or remove from the BlackRock Plan.

29. As a fiduciary of the Plan, BTC was and continues to be a party-in-interest to the Plan under ERISA § 3(14)(A), 29 U.S.C. § 1002(14)(A).

30. As an employer of employees who participate in the Plan, BTC was and continues to be a party-in-interest to the Plan under ERISA § 3(14)(C), 29 U.S.C. § 1002(14)(C).

31. Defendant BTC also is a fiduciary to the CTI Plans, to the extent those CTI Plans directly or indirectly invest in the BlackRock CTIs which hold plan assets, based on its status as a trustee to the BlackRock CTIs and its management of the plan assets held in the BlackRock CTIs.

2. Defendant BlackRock, Inc. ("BlackRock")

32. Defendant BlackRock, the Plan Sponsor, is a Delaware company with its principal place of business in New York, New York. BlackRock and its affiliates operate various investment-related businesses, including securities lending, investment banking, brokerage, and investment management.

33. Defendant BlackRock is a Named Fiduciary under the BlackRock Plan document.

34. Section 1.51 of the BlackRock Plan Document states that BlackRock appoints the Retirement Committee and any sub-committee thereof, or, in the absence of any such appointment, serves as the plan administrator.

35. On information and belief, BlackRock had and has the authority to appoint and remove the Retirement Committee members, who are fiduciaries of the BlackRock Plan. This authority confers fiduciary status on BlackRock.

36. On information and belief, BlackRock appointed and removed the members of the Retirement Committee who served during the Class Period. This exercise confers fiduciary status on BlackRock.

37. Defendant BlackRock was and continues to be a party-in-interest to the BlackRock Plan as defined in ERISA § 3(14)(A) and (C), 29 U.S.C. § 1002(14)(A) and (C), because it is an employer of employees covered by the Plan and because it is a named fiduciary to the Plan.

38. Because BlackRock is at least a 50% owner of BTC (a fiduciary to the CTIs Plans), BlackRock is also a party-in-interest to the CTI Plans under ERISA § 3(14)(G), 29 U.S.C. § 1002(14)(G).

3. Defendant BlackRock, Inc. Retirement Committee and its Members
(collectively, the “Retirement Committee Defendants”)

39. Defendant Retirement Committee is the Plan Administrator and a Named Fiduciary of the BlackRock Plan, per § 11.2 of the Plan Document.

40. As such, during the Class Period, the Retirement Committee and its members were/are fiduciaries within the meaning of ERISA, § 3(21)(A)(i), 29 U.S.C. § 1002(21)(A)(i) by exercising discretionary authority or discretionary control respecting management of the BlackRock Plan.

41. The Retirement Committee Defendants were/are also fiduciaries within the meaning of ERISA, § 3(21)(A)(iii), 29 U.S.C. § 1002(21)(A)(iii) by virtue of their discretionary authority or discretionary responsibility in the administration of the BlackRock Plan.

42. Pursuant to Section 6.2 of the BlackRock Plan Document, the Retirement Committee has full discretionary authority to select, maintain and remove the investment options offered in the BlackRock Plan.

43. Therefore, during the Class Period the Retirement Committee Defendants exercised authority over the Plan’s assets by selecting the investments for the Plan and thus were/are fiduciaries within the meaning of ERISA, § 3(21)(A)(i), 29 U.S.C. § 1002(21)(A)(i) by exercising authority or control respecting the management or disposition of the BlackRock Plan’s assets.

44. The Retirement Committee Defendants appointed and maintained BTC as an investment manager (as that term is defined in Section 3(38) of ERISA, 29 U.S.C. § 1002(38)) to invest and manage the BlackRock Plan’s assets, during the Class Period.

1 45. The individual members of the Retirement Committee during the Class Period
2 include the following:

3 a) **Anne Ackerley.** Defendant Ackerley is the Managing Director of BlackRock's
4 U.S. & Canada Defined Contribution Group. Defendant Ackerley joined BlackRock in 2000.
5 Defendant Ackerley served on the Retirement Committee and the Investment Committee
6 during the Class Period.

7
8 b) **Catherine Bolz.** Defendant Bolz served as the Managing Director of Human
9 Resources at BlackRock from 2006 to 2011, when she left BlackRock. Defendant Bolz
10 served on the Retirement Committee during the Class Period; during this period, Defendant
11 Bolz also served as the Secretary to the Retirement Committee.

12
13 c) **Chip Castille.** Defendant Castille is a Managing Director at BlackRock, and is
14 also the Chief Retirement Strategist heading the Global Retirement Strategy Group.
15 Previously, Defendant Castille was head of BlackRock's U.S. Retirement Group, which
16 included the U.S. & Canada Defined Contribution Group. Defendant Castille worked for
17 Barclays Global Investors in 2009, when BlackRock acquired the company and renamed it
18 BTC. Defendant Castille served on the Retirement Committee and the Investment Committee
19 during the Class Period.

20
21 d) **Paige Dickow.** Defendant Dickow is the Managing Director, Global Head of
22 Reward and Infrastructure at BlackRock. Defendant Dickow worked for Barclays Global
23 Investors in 2009, when BlackRock acquired the company and renamed it BTC. Defendant
24 Dickow served on the Retirement Committee during the Class Period.

e) ***Daniel A. Dunay.*** Defendant Dunay joined BlackRock in 2013 and is currently a Managing Director, Global Head of Compensation and Benefits. Defendant Dunay served on the Retirement Committee during the Class Period.

f) ***Joseph Feliciani Jr.*** Defendant Feliciani has been with BlackRock since 1998, and has worked for the company as a Managing Director, Global Finance Director and Chief Accounting Officer. During the Class Period, Defendant Feliciani served on the Retirement Committee, and he currently serves as its Chair. Defendant Feliciani also served on the Investment Committee during the Class Period.

g) ***Ann Marie Petach.*** Defendant Petach served as BlackRock's Chief Financial Officer between 2007 and 2014. Defendant Petach served on the Retirement Committee and the Investment Committee during the Class Period.

h) ***Jeffrey A. Smith.*** Defendant Smith is BlackRock's Global Head of Human Resources and a member of the Global Executive Committee; in this capacity he oversees employee benefits and policies. Defendant Smith worked for Barclays Global Investors in 2009, when BlackRock acquired the company and renamed it BTC. Defendant Smith served on the Retirement Committee during the Class Period.

4. Defendant BlackRock, Inc. Investment Committee and its Members (collectively, the "Investment Committee Defendants")

46. Defendant Investment Committee was established effective January 1, 2008, and on information and belief, BlackRock appointed the members of the Investment Committee. The Retirement Committee delegated fiduciary responsibility for the selection of Plan investment options to the Investment Committee.

47. The Investment Committee Defendants exercised authority over the Plan's assets by selecting the investments for the Plan and thus were fiduciaries within the meaning of ERISA §

3(21)(A)(i), 29 U.S.C. § 1002(21)(A)(i) by exercising authority or control respecting the management or disposition of the BlackRock Plan's assets.

48. The individual members of the Investment Committee during the Class Period include the following:

a) **Anne Ackerley.** Plaintiffs incorporate by reference the allegations set forth at ¶ 45(a). Defendant Ackerley served on the Investment Committee during the Class Period.

b) **Chip Castille.** Plaintiffs incorporate by reference the allegations set forth at ¶ 45 (c). Defendant Castille served on the Investment Committee during the Class Period.

c) **Amy Engel.** Amy Engel is a Managing Director and Treasurer at BlackRock; Defendant Engel has worked for BlackRock since 2008. Defendant Engel served on the Investment Committee during the Class Period.

d) **Nancy Everett.** Nancy Everett was a Managing Director at BlackRock for three years between 2011 and 2014. Defendant Everett served on the Investment Committee during the Class Period.

e) **Joe Feliciani, Jr.** Plaintiffs incorporate by reference the allegations set forth at ¶ 45 (f). Defendant Feliciani served on the Investment Committee during the Class Period.

f) **Michael Fredericks.** Defendant Fredericks joined BlackRock in 2011 and is a Lead Portfolio Manager for several BlackRock proprietary funds. Defendant Fredericks served on the Investment Committee during the Class Period.

g) **Corin Frost.** Defendant Frost worked at BlackRock from 1998 to 2016 as a Senior Investment Strategist. Defendant Frost served on the Investment Committee during the Class Period.

h) ***Daniel Gamba.*** Defendant Gamba began at Barclay's in 2000. He is currently the Global Head of Active Equity Product Strategy at BlackRock. Defendant Gamba served on the Investment Committee during the Class Period.

i) ***Kevin Holt.*** Defendant Holt is BlackRock's Managing Director, Co-Head of the Americas Fixed Income. Defendant Holt served on the Investment Committee during the Class Period.

j) ***Chris Jones.*** Defendant Jones is the Co-Head of BlackRock Global Active Equities. He joined BlackRock in 2014. Defendant Jones served on the Investment Committee during the Class Period.

k) ***Philip Matsumoto.*** Defendant Matsumoto is BlackRock's Managing Director, Global Treasurer. He has worked at BlackRock since 2014. Defendant Matsumoto served on the Investment Committee during the Class Period.

l) ***John Perlowski.*** Defendant Perlowski is a Managing Director at BlackRock. Defendant Perlowski is a member of BlackRock's Global Operating Committee and he served on the Investment Committee during the Class Period.

m) ***Ann Marie Petach.*** Plaintiffs incorporate by reference the allegations set forth at ¶ 45 (g). Defendant Petach served on the Investment Committee during the Class Period.

n) ***Andy Phillips.*** Defendant Phillips worked for BlackRock Advisors, LLC from 1991 to 2015. Defendant Phillips served on the Investment Committee during the Class Period.

o) ***Kurt Schansinger.*** Defendant Schansinger worked for BlackRock from 1996 to 2011. He co-managed the BlackRock Basic Value Family of Funds and was the lead manager of the BlackRock Focus Value Fund. Defendant Schansinger served on the Investment Committee during the Class Period.

p) **Tom Skrobe.** Defendant Skrobe worked for BlackRock between 2006 and 2016. Defendant Skrobe served on the Investment Committee during the Class Period.

IV. FACTS

A. Facts Related to Claims of the BlackRock Plan Class

1. The BlackRock Plan

49. The BlackRock Plan is a tax-qualified defined contribution pension plan subject to the provisions of ERISA. At all relevant times, the Plan was an “employee pension benefit plan” within the meaning of ERISA § 3(2)(A), 29 U.S.C. § 1002(2)(A).

50. BlackRock is the sponsor of the BlackRock Plan. As Plan sponsor, BlackRock intended for the BlackRock Plan to encourage savings and provide retirement income for BlackRock employees and former employees and their beneficiaries.

51. The Plan covers eligible employees of BlackRock, Inc., including its domestic subsidiaries, such as BlackRock Institutional Trust Company, N.A.

52. The Plan’s administrator is the BlackRock, Inc. Retirement Committee.

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

54. Participants in the BlackRock Plan have the opportunity to direct the investment of all of the assets allocated to their individual accounts in the BlackRock Plan into the investment options offered by the Plan, and the returns on those investments are credited to each participant’s account.

55. The value of each participant’s individual account in the BlackRock Plan depends on contributions made on behalf of each employee by his or her employer, deferrals of employee compensation and employer matching contributions, and on the performance of investment options

1 net of fees and expenses. Participants pay fees and expenses (both direct and indirect) based on the
 2 fund options selected and maintained by the fiduciaries of the Plan.

3 56. As of December 31, 2015, the BlackRock Plan had approximately \$1.56 billion in
 4 assets and approximately 9,700 participants. Each year, thousands of BlackRock employees and
 5 former employees invest, on average and in the aggregate, \$125 million in the BlackRock Plan.
 6

7 57. Combined with the investment sophistication of all the Plan fiduciaries, the Plan and
 8 its fiduciaries have enormous leverage to demand and receive superior investment products and
 9 services.

10 2. BlackRock's Acquisition of BGI/BTC Causes Defendants to Shift the
 11 Majority of the BlackRock Plan's Assets to BTC-Sponsored Proprietary
 12 Investments

13 58. In 2009, BlackRock acquired Barclays Global Investors ("BGI"), the asset
 14 management arm of Barclays Bank. BGI was then renamed BlackRock Institutional Trust Company,
 15 N.A. or BTC.

16 59. After BlackRock acquired BTC, BTC entered into an Investment Management
 17 Agreement ("IMA") with the BlackRock Retirement Committee and BlackRock, Inc. dated
 18 November 23, 2010.

19 60. The IMA recognized that the Retirement Committee was and is a Named Fiduciary,
 20 with the authority under the BlackRock Plan terms to appoint investment managers to hold, invest
 21 and manage BlackRock Plan assets.
 22

23 61. Pursuant to that authority, the Retirement Committee appointed BTC as an
 24 investment manager (as that term is defined in Section 3(38) of ERISA, 29 U.S.C. § 1002(38)) to
 25 hold, invest, and manage the BlackRock Plan's assets together with all income proceeds and profit
 26 derived therefrom (collectively referred to as the "Account" in the IMA).
 27
 28

1 62. The Retirement Committee Defendants therefore had an ongoing duty to monitor
2 BTC's investment and management of the BlackRock Plan's assets and ensure that BTC was acting
3 in accordance with ERISA's fiduciary duties and not directing or allowing the BlackRock Plan to
4 engage in prohibited transactions.

5 63. BTC accepted this appointment as an investment manager and acknowledged that it
6 was a fiduciary of the BlackRock Plan with respect to the Account (i.e., the Plan's assets together
7 with all income, proceeds, and profit derived therefrom).

8 64. The IMA granted BTC "full discretionary authority to invest the Account [the
9 Blackrock Retirement Plan] subject to ERISA's fiduciary standards, in investments of any kind[.]"

10 65. Following the BGI/BTC acquisition, the Retirement Committee and Investment
11 Committee Defendants (collectively, the "Committee Defendants") and BTC gave preferential
12 treatment to BlackRock proprietary funds, including CTIs and other funds sponsored and managed
13 by the newly-acquired BTC.

14 66. Prior to the 2009 acquisition, there were no BGI investment funds offered as direct
15 investment options in the Plan. Similarly, prior to 2009, only five of the eleven investment options
16 on the Plan menu were BlackRock proprietary funds, and only 63% of the total Plan assets were
17 invested in BlackRock proprietary vehicles.

18 67. On December 31, 2009, 63% of the Plan's assets were invested in BlackRock
19 proprietary funds.

20 68. By December 31, 2015, more than 92% of the Plan's assets were invested in
21 BlackRock proprietary funds.

22 69. BlackRock, Inc. knew that BlackRock proprietary funds were given preferential
23 treatment for inclusion in the BlackRock Plan because its officers and directors served as Retirement
24 Committee Defendants.

1 and Investment Committee members and/or have access to the deliberations of the Committee
2 Defendants meetings.

3 70. The Committee Defendants knew that the BlackRock proprietary funds were given
4 preferential treatment for inclusion in the BlackRock Plan because they were present or involved in
5 the decision making to determine the Plan's investments and/or have access to the decision making
6 to determine the Plan's investments.

7 71. On information and belief, BTC knew that the BlackRock proprietary funds were
8 given preferential treatment for inclusion in the BlackRock Plan based on its role as the investment
9 manager to the Plan.
10

11
12 3. The Committee Defendants and BTC Violated ERISA Duties Owed to the
13 BlackRock Plan Class

14 72. The Committee Defendants, together with BTC, were all fiduciaries to the BlackRock
15 Plan and its participants because each had the authority, discretion, and responsibility to select,
16 monitor, and remove or replace the investment options in the BlackRock Plan.

17 73. Their specific responsibilities included, but were not limited to:

- 18
- 19 • Selecting investment options/funds for the Plan;
 - 20 • Making decisions with respect to removing or replacing investment options/fund for
21 the Plan;
 - 22 • Monitoring the performance of the Plan's investment options/funds on a regular basis
23 and removing any investment options that either alone or in the context of the entire
24 Plan portfolio were imprudent, disloyal and/or non-diversified;
 - 25 • Removing any investment options/funds that caused the Plan to engage in Prohibited
26 Transactions; and
 - 27 • Ensuring that the Plan did not engage in Prohibited Transactions.
- 28

1 74. The Retirement Committee Defendants held periodic meetings each year of the Class
2 Period to carry out the responsibilities described above. On information and belief, the Investment
3 Committee Defendants and BTC participated in these meetings.

4 75. ERISA's duty of prudence required the Committee Defendants and BTC to follow
5 reasonable standards of investment due diligence by giving appropriate consideration to those facts
6 and circumstances that, given the scope of their fiduciary investment duties, they knew or should
7 have known were relevant to the particular investments of the Plan, and then to act accordingly. 29
8 C.F.R. § 2550.404a-1.

9 76. The duty of prudence and loyalty required the Committee Defendants and BTC to
10 give adequate consideration to non-affiliated funds to be included in the BlackRock Plan and avoid
11 conflicts of interests.

12 77. Consistent with their duty of loyalty, the Committee Defendants were also required to
13 disclose material investment information to Plan participants.

14 78. According to applicable regulations, 29 C.F.R. § 2550.404a-5(a), "Fiduciary
15 requirements for disclosure in participant-directed individual account plans" (the "Disclosure
16 Regulation"), the administrator of a participant-directed retirement plan must disclose several types
17 of information to participants in such a plan, both prior to the initial investment and also on an
18 ongoing basis, if there are material changes to the plan's investment options.

19 79. Under the Disclosure Regulation, the plan administrator must ensure that participants
20 "are made aware of their rights and responsibilities with respect to the investment of assets held in,
21 or contributed to, their accounts and are provided sufficient information regarding the plan,
22 including fees and expenses, and regarding designated investment alternatives, including fees and
23

1 expenses attendant thereto, to make informed decisions with regard to the management of their
 2 individual accounts.” 29 C.F.R. § 2550.404a-5(a).

3 80. Pursuant to 29 C.F.R. § 2550.404a-5(d)(1)(iv)(A)(2), the Committee Defendants
 4 should have disclosed to participants, among other things, “the total annual operating expenses of the
 5 investment expressed as a percentage (i.e., expense ratio), calculated in accordance with paragraph
 6 (h)(5) of this section.”

7 81. Pursuant to 29 C.F.R. § 2550.404a-5(h)(5)(ii)(C), for investment options that are not
 8 registered under the Investment Company Act of 1940, the Committee Defendants were required to
 9 include in the aforementioned “total annual operating expenses” expense ratio “[a]ny other fees or
 10 expenses not included in paragraphs (h)(5)(ii)(A) or (B) of this section that reduce the alternative’s
 11 rate of return (e.g., externally negotiated fees, custodial expenses, legal expenses, accounting
 12 expenses, transfer agent expenses, recordkeeping fees, administrative fees, separate account
 13 expenses, mortality and expense risk fees), excluding brokerage costs described in Item 21 of
 14 Securities and Exchange Commission Form N-1A.”

15 82. All CTIs included in the BlackRock Plan are not registered under the Investment
 16 Company Act of 1940 and therefore the Retirement Committee Defendants (the Plan Administrator)
 17 are required to comply with 29 C.F.R. § 2550.404a-5(h)(5)(ii)(C).

18 83. The Committee Defendants and BTC also had ongoing monitoring duties with respect
 19 to the BlackRock Plan’s assets, which included/include reviewing, and re-evaluating the Plan’s
 20 investment fund options on a regular and frequent basis (at least as frequent as every quarter), to
 21 ensure that they were/are prudent investments for the BlackRock Plan based on performance metrics
 22 and cost/fee structure and not to give preferential treatment to the BlackRock proprietary funds.
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84. As part of their monitoring duties, the Committee Defendants and BTC had a duty to remove imprudent or disloyal options, or options that constituted prohibited transactions or that were initially selected based on preferential treatment for proprietary funds.

85. However, the Committee Defendants and BTC selected and monitored investments for the Plan in a manner that benefited BlackRock and the other Defendants rather than the Plan and its participants and beneficiaries, in dereliction of these ERISA fiduciary duties. This pattern and practice violated ERISA in a number of ways as described in further detail below.

a. The Committee Defendants and BTC Disloyally and Imprudently Favor BlackRock Proprietary Funds, a Prohibited Transaction

86. As of December 31, 2015, the Plan's investments had a reported value of \$1,496,651,702, with approximately 92.9%, or \$1,390,551,546, of assets invested in BlackRock proprietary funds.

87. BlackRock proprietary funds are investments that were or are owned, operated or managed by BlackRock, BTC or other BlackRock affiliates.

88. These proprietary investments include the: BlackRock Active Stock Fund; BlackRock Emerging Market Index; BlackRock Equity Dividend; BlackRock Global Allocation Collective Trust Fund; BlackRock LifePath 2020 Index; BlackRock LifePath 2025 Index; BlackRock LifePath 2030 Index; BlackRock LifePath 2035 Index; BlackRock LifePath 2040 Index; BlackRock LifePath 2045 Index; BlackRock LifePath 2050 Index; BlackRock LifePath 2055 Index; BlackRock LifePath 2060 Index; BlackRock LifePath Retirement Index; BlackRock Low Duration Bond Fund; BlackRock MSCI ACWI Ex. US CL F; BlackRock Russell 1000 Fund; BlackRock Russell 2000 Alpha Fund; BlackRock Short Term Investment Fund; BlackRock Total Return Fund; BlackRock

1 US Debt Index Fund; BlackRock US TIPS Fund; BlackRock Strategic Income Opportunities Fund,
 2 BlackRock, Inc. Common Stock; and the PNC Financial Services Group, Inc. Common Stock.⁴

3 89. BTC sponsors and manages the assets of all of the CTIs, offered through the Plan.

4 90. The Committee Defendants and BTC violated their fiduciary duties by employing
 5 disloyal and imprudent selection and monitoring processes, which included giving preferential
 6 treatment to BlackRock-proprietary funds.
 7

8 91. The BlackRock proprietary funds included the use of BlackRock's own proprietary
 9 mutual funds and CTIs, many of which had hidden fees, expenses and costs, excessive fund and fee
 10 layering, and poor-to-mediocre performance.

11 92. The Committee Defendants and BTC failed to loyally and prudently select and
 12 monitor the investments of the BlackRock Plan because they failed to adequately consider
 13 funds/investments that were not affiliated with BlackRock.
 14

15 93. The fact that the Committee Defendants and BTC failed to consider non BlackRock
 16 affiliated funds is apparent from the fact that from at least 2009 to the present, *not a single non-*
 17 *affiliated fund has been added to the BlackRock Plan.*

18 94. Comparing the concentration of BlackRock products in the BlackRock Plan to
 19 BlackRock's footprint in the broader retirement market makes this failure more apparent.
 20 BlackRock's retirement related products account for only 15% of the \$26.1 trillion retirement
 21 market. Yet, BlackRock proprietary funds account for nearly all of the BlackRock Plan's
 22 investments.
 23

24
 25 ⁴ During the Class Period, the Plan held positions in other BlackRock proprietary funds
 26 including the BlackRock LifePath 2015 Index Fund, the BlackRock Large Cap Core Fund, the
 27 BlackRock Equity Index Trust, the FFI Premier Institutional Fund, the FFI Government Fund, and
 28 the BlackRock Retirement Preservation Trust.

1 95. Another indication that the Committee Defendants failed to consider non BlackRock
2 proprietary funds is the fact that they selected several BlackRock proprietary funds that did not have
3 a three year track record, including but not limited to the BlackRock Equity Dividend Fund,
4 BlackRock Global Allocation Fund, Strategic Income Opportunities Bond Fund, BlackRock MSCI
5 ACWI Ex US IMI Index Fund, Total Return Bond Fund, and Emerging Markets Index Non-
6 Lendable Fund.
7

8 96. Further, during the Class Period, the Committee Defendants and BTC moved all
9 investments in certain non-proprietary investment options in the Plan to BlackRock proprietary
10 investments with comparable strategies.
11

12 97. For instance, the Plan assets in the Tamro Small Cap Collective Fund were moved to
13 the BlackRock Russell 2000 Alpha Tilts Fund. The Committee Defendants and BTC selected an
14 affiliated Russell 2000 product even though small-cap indices like the S&P 600 had a history of
15 outperforming the Russell 2000.

16 98. By selecting and maintaining virtually all BlackRock proprietary funds in the Plan,
17 the Committee Defendants and BTC ensured that BlackRock would receive the substantial fees and
18 expenses paid with Plan assets and would increase BlackRock affiliates' assets under management.
19

20 99. This strategy improved the marketability of BlackRock products and portrayed
21 confidence to the public in BlackRock's ability to manage assets.

22 100. The Committee Defendants and BTC selected, maintained, and failed to remove the
23 BlackRock proprietary funds in the Plan even though these funds charged several layers of hidden
24 fees and expenses which are not reported in the expense ratios for the funds and are thus not properly
25 disclosed to participants in accordance with ERISA regulations such as the Disclosure Regulation
26 described above.
27
28

1 101. In fact, the audited financial statements for the BlackRock Plan's CTIs disclose that
2 "the expenses incurred by underlying funds in which the fund [BlackRock proprietary CTI] invests
3 are not included in this [expense] ratio. The collective fund income allocated to the fund [BlackRock
4 proprietary CTI] from underlying funds is net of those expenses."

5
6 102. Because Defendants only disclose the expense ratios to participants and other fees,
7 expenses and compensation paid to BlackRock and its affiliates are not included in the expense
8 ratios, participants are not given adequate and accurate disclosures regarding the fees and expenses
9 they are being charged for investment in the BlackRock proprietary funds.

10 103. In addition, while the audited financial statements state that certain administrative
11 expenses have been capped at 2 basis points, or "bps," that cap does not apply to all the expenses
12 that are netted out of the income of the underlying funds. The audited financial statements state that
13 the 2 bps cap is "reflected in the statement of operations as operating expenses borne by BTC." Yet
14 the statement of operations expressly notes that certain other "expenses incurred by underlying funds
15 in which the fund invests are not included in this [expense] ratio. The collective fund income
16 allocated to the fund from underlying funds is net of those expenses." These non-capped expenses
17 include payments to BTC such as management fees for underlying CTIs and securities lending fees.
18

19 104. The fact that the Committee Defendants specified that BTC may invest the
20 BlackRock Total Return Bond Fund F and the Strategic Income Opportunities Bond Fund F only if
21 any Affiliated Funds embedded in those two funds do not charge investment advisory fees, but did
22 not provide the same limitation for the other BlackRock proprietary funds in the Plan, implies that
23 investment advisory fees may be charged by the underlying funds embedded into the BlackRock
24 proprietary funds (other than the BlackRock Total Return Bond Fund F and Strategic Income
25 Opportunities Bond Fund F).
26
27
28

105. Blackrock and its affiliates also earned many other types of compensation from the BlackRock Plan's investments in BlackRock proprietary funds, such as trading fees, brokerage commissions, dealer markups, soft dollars, agency and principal fees, and transaction costs. All of these types of compensation paid by the Plan to BlackRock and its affiliates constitute prohibited transactions in violation of ERISA § 406, 29 U.S.C. § 1106.

106. The imprudent and disloyal monitoring process employed by the Committee Defendants and BTC resulted in a plan menu loaded with relatively expensive and poor-to-mediocre investment options which substantially reduced the value of the retirement assets of the participants in the Plan during the Class Period.

107. The Committee Defendants and BTC selected, maintained and failed to remove the BlackRock proprietary funds in the Plan even though these funds underperformed their respective benchmarks and similar cheaper investment vehicles when hidden and/or indirect fees and expenses were taken into account.

(1) BTC Used Excessively Expensive Proprietary Short-Term Investment Funds to Hold the Plan's Cash

108. The BlackRock Plan's investments and all proprietary BlackRock funds layered therein hold a substantial amount of cash to provide liquidity for the Plan and the layered funds.

109. BTC selects BlackRock proprietary short-term investment funds ("STIFs"), including STIFs with embedded fees, to hold the Plan's cash.

110. The investment of cash in BlackRock proprietary STIFs occurs at all layers of the maze of investments BTC has constructed (discussed further below).

111. The Committee Defendants and BTC put no limit on which STIF BTC may select, or the fees it can take, from the BlackRock Plan's cash.

112. This allowed BTC to use its discretion to put a substantial amount of the Plan's cash in a BlackRock proprietary "Synthetic" STIF that charged 5.6 bps and exposed the BlackRock Plan to additional risk. This fee is substantially higher than a cash fund used by other market participants such as the Vanguard cash fund, which charges just one bp.

113. As a result, BTC is paid significant undisclosed fees/compensation from Plan assets, which is not disclosed to participants nor reported in the expense ratio of the BlackRock proprietary funds.

(2) BlackRock Global Allocation Trust

114. Until mid-2014, the Plan held the BlackRock proprietary Global Allocation Fund mutual fund, which has the ticker symbol "MALOX."

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

116. By investing in MALOX, the BlackRock Plan was subjected to excessive fees for the services rendered, when it could have sought a non-BlackRock-affiliated fund or Separate Account that used the same strategy, such as the American Funds Capital Income Builder fund (ticker RIRGX) and the DFA Global Allocation 60/40 Portfolio (ticker DGSIX). Both these non-proprietary funds were moderate-risk global allocation funds and charged 36 bps and 30 bps, respectively.

117. Between 2009 and mid-2014, the Plan paid approximately \$4.8 million in fees and expenses for MALOX.

118. The Committee Defendants and BTC exhibited preferential treatment for BlackRock proprietary funds when they selected and retained MALOX even though it subjected the Plan to excessive fees and expenses.

119. The Committee Defendants and BTC did remove MALOX from the Plan in 2014.

120. However, the Committee Defendants and BlackRock only replaced MALOX after BlackRock launched the newly-created, BlackRock-sponsored/managed Global Allocation CTI in 2014. Even though the Global Allocation CTI had only existed for a few months, BlackRock moved nearly \$200 million of BlackRock Plan assets into this proprietary Global Allocation CTI.

121. As of December 31, 2014, the BlackRock Plan's assets constituted over 25% of the Global Allocation CTI's assets. The BlackRock Plan's massive investment in the CTI was essential for BTC to market this new, untested investment to other investors, because it portrayed confidence in the product to unaffiliated plan sponsors and provided BTC with economies of scale.

122. As of December 31, 2015, the Plan's position in this trust was worth \$179,472,599.

123. The Global Allocation CTI has underperformed its benchmark since it was added to the BlackRock Plan. Between January 1, 2016 and January 1, 2017, the Global Allocation CTI underperformed its benchmark by 82 bps.

(3) BlackRock Low Duration Bond Mutual Fund

124. In 2013, the Committee Defendants and, on information and belief, BTC added to the BlackRock Plan the BlackRock Low Duration Bond Fund, a mutual fund. As of December 31, 2015, the Plan held a position in this fund worth \$6,951,559.38.

125. The Committee Defendants and BTC selected and failed to remove the BlackRock Low Duration Bond Fund despite a substantially higher expense ratio than comparable investments and a history of underperformance.

126. The BlackRock Low Duration Bond Fund charged between 61 and 36 bps throughout the Class Period. Vanguard offers a bond fund similar to this⁵ that charges only 7 bps. In other words, employees are paying 500% - 871% more than necessary for the Low Duration Bond Fund.

127. The investment manager for the BlackRock Low Duration Bond Fund is the BlackRock affiliate BlackRock Advisors, LLC (“BRAL”).

128. The BlackRock Low Duration Bond Fund uses the following strategy:

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

129. The Vanguard Short-Term Investment-Grade Fund implements a similar strategy:

“The Fund invests in a variety of high-quality and, to a lesser extent, medium-quality fixed income securities, at least 80% of which will be short- and intermediate-term investment-grade securities. ... The Fund is expected to maintain a dollar weighted average maturity of 1 to 4 years.”

130. The effective duration of Vanguard’s Short-Term Investment-Grade Fund falls within the guidelines set forth by BlackRock’s Low Duration Bond Fund.

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

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

⁵ The BlackRock Low Duration Bond Fund invests 80% of its assets in investment-grade short- to intermediate-term bonds. Vanguard offers the Short-Term Investment Grade Fund, which is similar to the BlackRock Low Duration Bond Fund in that it also invests 80% of its assets in investment-grade short- to intermediate-term bonds.

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

134. The substantially higher fee has not come with a commensurate performance improvement.

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

(4) The Selection and Maintenance of Mutual Funds and Other More Expensive Share Classes

136. The Committee Defendants and BTC selected and retained the BlackRock Total Return Fund, which is a mutual fund managed by BRAL, and which is more expensive than similar alternative non-proprietary funds. In October 2016, the Retirement Committee Defendants replaced this mutual fund with a BlackRock Total Return CTI managed by BTC that was created two months before it was added to the BlackRock Plan.

137. Rather than seek a cheaper alternative non-proprietary fund for the BlackRock Plan, the Committee Defendants waited until BTC had created a new CTI option for the total return strategy and provided BTC with seed money for the new CTI.

138. Additionally, often the BlackRock Plan participates in more expensive share classes than other available share classes.

139. For example, Department of Labor Form 5500 filings report that the BlackRock Plan participates in the M class of each LifePath Fund.

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

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

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

143. Likewise, the Plan participates in the W class of the US Debt Index Fund according to DOL Form 5500 reporting.

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

145. DOL Form 5500 reporting also discloses that the BlackRock Plan participates in a Short-Term Investment Fund with an embedded investment management fee near 10 bps. Participants are able to directly invest in this fund. Because STIFs generate relatively low returns, a 10 bps fee cannibalizes a substantial portion of the participant's return.

146. This Short-Term Investment Fund in which the BlackRock Plan participates is almost five times the 2 bps expense ratio disclosed to participants.

(5) Failure to Include Passively Managed Alternatives for Certain Asset Classes

147. The Committee Defendants and BTC not only defaulted BlackRock Plan participants into the LifePath Funds and its hidden cost structure; it also effectively forced participants into the LifePath Funds by limiting the investment options available outside the LifePath Funds.

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

149. Prior to BlackRock's acquisition of BTC, the BlackRock Plan offered the Equity Index Trust: an S&P 500 Index fund. S&P 500 index funds are one of the most popular investment strategies for retirement investors. Indeed, BTC's largest CTI is an S&P 500 index fund. Rather than

1 allowing participants to invest directly in this popular option, the Retirement Committee Defendants
 2 required participants to invest in a LifePath fund if they wanted exposure to the S&P 500 index.

3 150. While removing the popular index option from the BlackRock Plan, the Committee
 4 Defendants and BTC added an actively managed S&P 500 benchmarked product, the Active Stock
 5 Fund. This actively managed product has struggled to perform as well as its benchmark, but has
 6 remained an option in the BlackRock Plan. Over the ten year period ending January 31, 2017, the
 7 Active Stock Fund has underperformed the S&P 500 by 17 bps per year.

9 151. The Committee Defendants' and BTC's disloyal and imprudent decision-making
 10 process led them to remove the passively managed S&P 500 index fund and to put the BlackRock
 11 Plan's assets into an actively managed product in order to support the BlackRock LifePath Funds.

12 *b. The Committee Defendants and BTC Expose Participants to*
 13 *Unnecessary, Undisclosed and Imprudent Fees and Expenses through*
 14 *Fund Layering*

15 152. During the Class Period, the Committee Defendants and BTC selected for the
 16 BlackRock Plan menu several BlackRock proprietary funds to make up the investment options for
 17 the Plan. Participants may select from these options to direct the investment of their individual
 18 accounts.

19 153. Additionally, all the default investment options for BlackRock Plan participants are
 20 BlackRock proprietary funds, namely the BlackRock LifePath Funds (a set of target-date funds).
 21 Thus, a participant that enrolls in the Plan but does not select investments for her account will have
 22 her contributions automatically invested in a LifePath fund.

24 (1) BlackRock LifePath Funds Consist of a Maze of Layered
 25 Proprietary Funds

26 154. The LifePath Funds are collective investment trusts sponsored and managed by BTC.
 27 All of the underlying funds in which the LifePath Funds invest are also BlackRock proprietary

1 funds. The LifePath Funds are issued as a suite, with each fund in the suite investing in the same
 2 underlying BlackRock funds. The only difference between the individual LifePath Funds in the suite
 3 is the percentage of assets allocated to the underlying funds, based on how far the fund is from its
 4 respective retirement date.

5
 6 155. As of December 31, 2015, the BlackRock LifePath Funds made up \$509,916,830.00,
 7 or 34.07%, of the Plan's total assets.

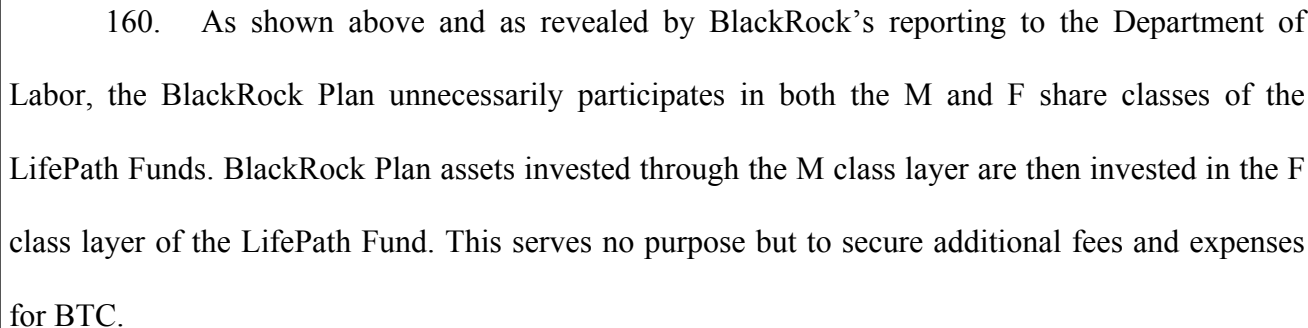
8 156. Each LifePath Fund unnecessarily invests in 27-51 additional BlackRock proprietary
 9 funds. In other words, with each investment into a single LifePath fund, employee retirement assets
 10 were funneled into a total of 28-52 distinct BlackRock funds (including the top investment layer).

11 157. This structure obscures the true cost of the BlackRock LifePath Funds in the Plan.
 12 BTC takes substantial compensation for itself and other BlackRock affiliates from these layered
 13 funds and imposes indirect fees and expenses on participants in the BlackRock Plan.
 14

15 158. The indirect nature of this expense structure enables BTC and the Committee
 16 Defendants to avoid reporting the true costs of the BlackRock LifePath Funds to BlackRock Plan
 17 participants in the stated expense ratio.

18 159. The structure of the LifePath Funds is illustrated below. Nearly all of the layers
 19 impose an indirect cost on the BlackRock Plan.⁶
 20

21
 22 ⁶ BTC modified the composition of the LifePath Funds during the relevant period. A number
 23 of country-specific CTIs, including the following, were removed from the composition and thus are
 24 not reflected on the illustration: Asset-Backed Securities Fund B; Commercial Mortgage-Backed
 25 Securities Index Fund B; EAFE Equity Index Fund; MSCI Equity Index Fund B-Brazil; MSCI
 26 Equity Index Fund B-Chile; MSCI Equity Index Fund B-China; MSCI Equity Index Fund B-
 27 Colombia; MSCI Equity Index Fund B-Czech Republic; MSCI Equity Index Fund B-Egypt; MSCI
 28 Equity Index Fund B-Hungary; MSCI Equity Index Fund B-India; MSCI Equity Index Fund B-
 Indonesia; MSCI Equity Index Fund B-Malaysia; MSCI Equity Index Fund B-Morocco; MSCI
 Equity Index Fund B-Poland; MSCI Equity Index Fund B-Peru; MSCI Equity Index Fund B-Russia;
 MSCI Equity Index Fund B-S Korea; MSCI Equity Index Fund B-South Africa; MSCI Equity Index
 Fund B-Taiwan; MSCI Equity Index Fund B-Thailand; MSCI Equity Index Fund-Mexico; MSCI



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1 161. The F class of the LifePath Funds then feeds into seven other BlackRock proprietary
 2 funds: the MSCI ACWI Ex-US IMI Index Fund E; the Commodity Daily Index Fund E; the
 3 Developed Real Estate Index Fund E; the Equity Index Fund E; the Extended Equity Market Fund E;
 4 the US Debt Index Fund E; and the US TIPS Fund E.

5 162. From there, as shown in the chart above, five of those seven underlying funds each
 6 feeds into yet other BlackRock proprietary fund.

7 163. For example, the BlackRock MSCI ACWI Ex-US IMI Index Fund E, then feeds into
 8 five more BlackRock proprietary funds: the MSCI Canada IMI Index Fund; the MSCI EAFE Small
 9 Cap Equity Index Fund E; the EAFE Equity Fund F; the Emerging Markets Equity Index Master
 10 Fund; and the Emerging Markets Small Capitalization Equity Index NL Fund.

11 164. Another example is the US Debt Index Fund E, which feeds six other BlackRock
 12 proprietary funds: the Intermediate Government Bond Index Fund; the Intermediate Term Credit
 13 Bond Index Fund; the Long Term Credit Bond Index Fund; the Long Term Government Bond Index
 14 Fund; MBS Index Fund; and the US Sec Credit Ex-MBS Index NL Fund E.

15 165. Through this complex layered structure, BlackRock charges unnecessary and
 16 undisclosed fees and expenses for the management of each LifePath Fund.

17 166. Nearly all of the costs imposed by the layered funds are deducted from each fund's
 18 assets and are not captured by the expense ratio reported to BlackRock Plan participants. Thus, they
 19 are not properly disclosed in accordance with ERISA regulations.

20 167. Moreover, all costs imposed through this structure lower the investments'
 21 performance and therefore diminish the retirement savings of the BlackRock Plan's participants.

168. The LifePath Funds selected and maintained for the Plan by the Committee Defendants and BTC underperformed comparable investments and subjected the Plan to a mire of unnecessary and undisclosed expenses through excessive fund layering.

169. Despite this, the LifePath Funds have remained the Plan's default options since at least 2010. Similar investments offered by non-BlackRock entities exhibit significantly less fee/expense layering (if any), and as a result, outperformed the LifePath Funds.

170. The Vanguard Group ("Vanguard") is a reputable, low-cost asset manager that offers comparable alternative investments to the LifePath Funds.

171. For instance, Vanguard manages the Vanguard Target Retirement Income Trust I target date funds (the "Vanguard Target Date funds"), which are comparable in investment strategy to the BlackRock LifePath Funds.

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

173. The LifePath funds performed even worse compared to the Dow Jones Target Date benchmark indices. Specifically, after taking into account the compounding of returns realized every year, the LifePath funds underperformed the Dow Jones Target Date indices by almost 20% during this period.

174. The Vanguard Target Date funds do not have extensive expense layering like the LifePath Funds.

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

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

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

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

8 179. For instance, the BlackRock Equity Index Fund E, which directly underlies the
9 LifePath funds, and C Fund, which underlies the TSP funds, were both indexed to the S&P 500, so
10 that both funds’ portfolios mirrored the S&P 500’s index.

11 180. Similarly, both the BlackRock US Debt Index Fund E, underlying the LifePath
12 Funds, and F Fund, underlying the TSP funds, were indexed to the Barclays Capital US Aggregate
13 Bond Total Return USD Index so that both funds’ portfolios mirrored this index fund.

14 181. BlackRock managed the funds underlying the TSP funds and implemented similar
15 strategies to the funds underlying the LifePath funds.

16 182. The TSP funds are therefore a helpful benchmark against which to compare the
17 performance and structure of LifePath Funds available to Plan participants.

18 183. Specifically, the TSP and LifePath Funds that were indexed to the exact same
19 underlying assets and managed by the same company should have performed almost exactly the
20 same.

21 184. However, the LifePath Funds underperformed the TSP funds.

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

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

187. Thus, government employees are spared multiple layers of management fees that BlackRock employees invested in the LifePath Funds are charged.

188. By selecting and maintaining the LifePath Funds and designating them as the default for participants, the Committee Defendants enabled all trusts layered within the LifePath Funds and sponsored by BTC to report large institutional participation and growing assets under management.

189. By selecting and maintaining the LifePath Funds and designating them as the default for participants, the Committee Defendants and BTC exposed the BlackRock Plan and participants to excessive fee layering and underperformance.

190. As a result of the Committee Defendants' and BTC's actions, the BlackRock Plan's investment in BTC-sponsored trusts with excessive fee layering has dramatically increased.

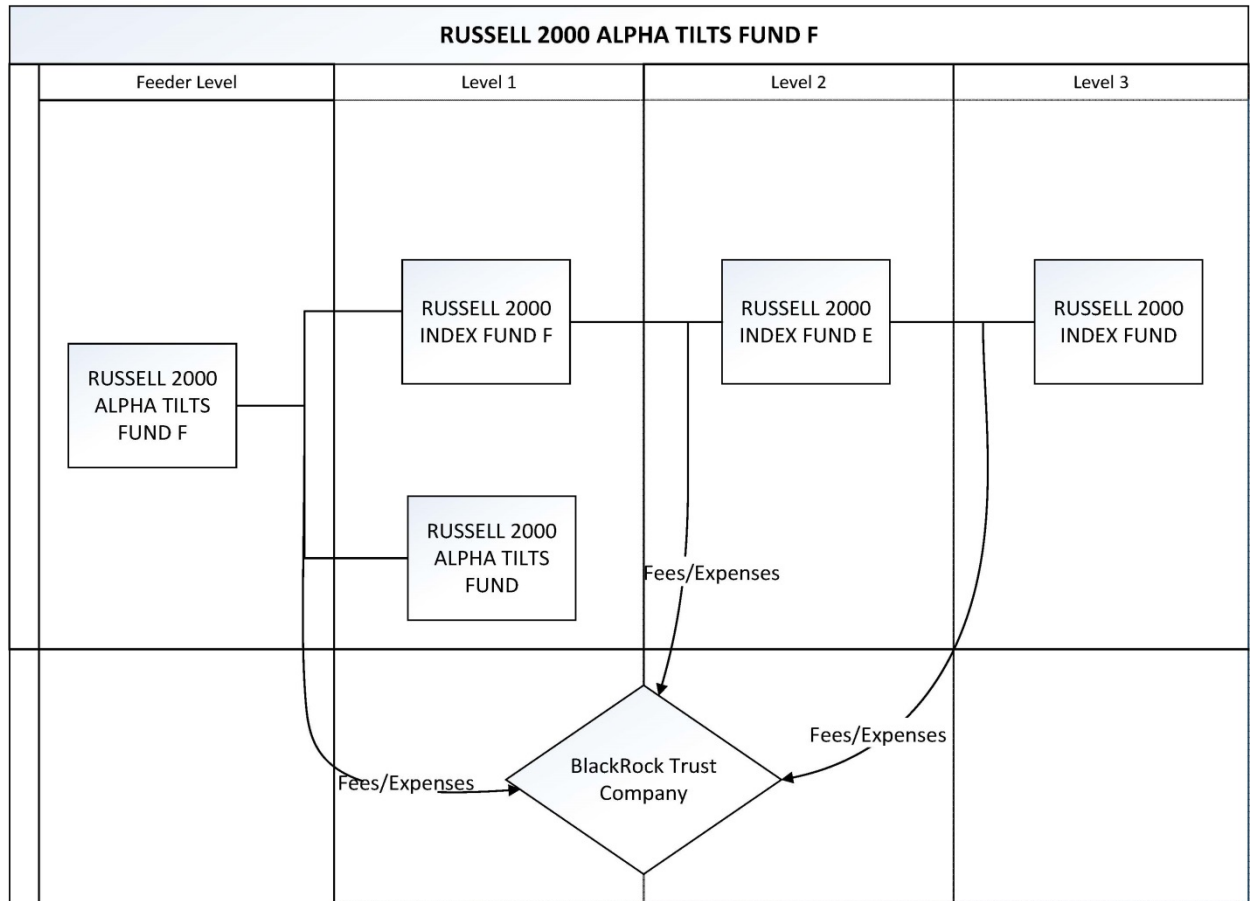
(2) Other BlackRock Plan Investment Options Also Contain Unnecessary Layering

191. Not only are the LifePath Funds described above layered in an unnecessary and imprudent fashion, most of the other BlackRock proprietary funds offered in the BlackRock Plan also exhibit such excessive and unnecessary fund layering.

192. This includes the BlackRock MSCI ACWI Ex. US IMI Index Fund, the Equity Dividend Fund, the Global Allocation Fund, the Active Stock Fund, the Russell 1000 Index Fund, the U.S. Debt Index Fund, the U.S. Treasury Inflation Fund, and the Russell 2000 Alpha Fund.

193. In total, these layered funds and the layered LifePath Funds comprise \$1.15 billion, or 77%, of the BlackRock Plan's assets. All of these funds are administered and sponsored by BTC.

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



195. However, BlackRock gives other non-BlackRock-sponsored retirement plans the option to directly invest in the sub-funds layered within the Russell 2000 Alpha Tilts Fund F class. Those retirement plans avoid unnecessary fees and expenses associated with the top-layer Russell 2000 Alpha Tilts Fund F class.

196. Another example of the undisclosed fees/costs associated with the unnecessary layering in the BlackRock proprietary funds is the iShares Russell 2000 Index Collective Fund F,

1 which incurs an indirect fee around 20 bps from its iShares Russell 2000 ETF layering in addition to
 2 securities lending fees.

3 197. Vanguard offered an institutional Russell 2000 index fund that carried an expense
 4 ratio of only 8 bps, 60% cheaper than the iShares Russell 2000 ETF.

5 198. Additionally, BlackRock's audited financial statements indicate that the "net
 6 operating expense ratio cap" for the iShares Russell 2000 Index Collective Fund F is 2 bps. The
 7 indirect fees from the iShares Russell 2000 ETF were not captured by the net operating expense ratio
 8 and only reflected in eroded performance gains.

9 199. In total, 22 of the BlackRock Proprietary Funds offered to employees in the
 10 BlackRock Plan funnel employee retirement assets into other BlackRock proprietary funds, which
 11 charge additional fees/expenses (not reported in the expense ratio for the top level fund), thereby
 12 eroding the participants' returns.

13 200. Participants are thus exposed to more layers and expenses than other retirement plans
 14 not sponsored by BlackRock.

15 (3) Total Layered Fees and Expenses Are Not Disclosed to
 16 Participants

17 201. The Retirement Committee Defendants state that the total annual operating expenses
 18 for *all* CTI plan options is only 2 bps. This 2 bps disclosed fee does not include layered fees and
 19 expenses, including BTC's 50% securities lending fee, and fees associated with STIFs used for cash
 20 management, which reduced the income generated from underlying fund.

21 202. Securities lending fees and expenses reduce net investment income and the higher the
 22 securities lending fees and other expenses charged by the underlying funds, the lower the rate of
 23 return earned by participants.
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1 203. Even though securities lending fees and other expenses embedded in the underlying
2 fund have a material impact on net investment income and therefore investments' rate of return,
3 Defendants do not disclose them to participants. These undisclosed fees can reach or exceed five
4 times the expense ratio that the Retirement Committee Defendants disclose to participants.
5

6 204. The 2 bps total annual operating expense also does not capture other indirect costs
7 incurred by the CTI plan options, such as fees and expenses associated with STIFs.

8 205. For example, the BlackRock Plan's 5500 states the BlackRock Plan has \$91,159,722
9 invested in a STIF with EIN-PN 161673805-001.

10 206. The CTI filing under EIN-PN 161673805-001 is a BTC-sponsored STIF with over
11 \$1.2 billion in net assets that reports the BlackRock Plan as a participating plan.
12

13 207. This STIF has an embedded investment management fee ranging from 7 to 10 bps.
14 The Retirement Committee Defendants only disclose a 2 bps expense ratio to participants for the
15 BlackRock Plan's STIF investment.

16 208. BTC also used other STIFs to manage cash held in the layered funds underlying the
17 BlackRock proprietary funds in the Plan, which charge fees and expenses upwards of 5 bps.

18 209. All STIFs used by BTC to manage BlackRock Plan assets are not registered under the
19 Investment Company Act of 1940 and are subject to ERISA; they therefore also are subject to
20 C.F.R. § 2550.404a-5(h)(5)(ii).
21

22 210. STIF fees and expenses are a component of net investment income and net
23 investment income is a component of the unit value. The rate of return is determined by the change
24 in unit value over time. Therefore, the higher the STIF fees, the lower the rate of return earned by
25 participants.
26
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211. Even though STIF fees and expenses have a material impact on net investment income and therefore investments' rate of return, Defendants do not disclose all such fees and expenses to participants.

c. By Concentrating Investment Management Under BlackRock Affiliates, the Committee Defendants and BTC Failed to Adequately Diversify Risk

212. The Committee Defendants and BTC have concentrated over 90% of the BlackRock Plan's assets under the management and/or administration of BlackRock affiliates.

213. Most of the investments selected by the Committee Defendants and BTC for the BlackRock Plan are administered by BlackRock affiliates, including BTC and BRAL.

214. The Committee Defendants' and BTC's decision to concentrate investment management of the Plan's assets in this way subjects the BlackRock Plan to risks that could be avoided by diversifying investments outside the BlackRock umbrella.

215. The following risks, among others, are discussed in the prospectus and statement of additional information provided for the BlackRock Low Duration Bond Fund (a mutual fund). BRAL manages and administers the BlackRock Low Duration Bond Fund.

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

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

5 218. There are also risks stemming from the securities lending program used by each
 6 BlackRock Plan option. Nearly all CTI options available to participants engage in securities lending.
 7 There are unique risks associated with this including cash collateral management risks and
 8 counterparty risks. All CTIs used in the BlackRock Plan that lend securities have engaged BTC to
 9 serve as the lending agent responsible for managing these risks. Any failure by this one entity, BTC,
 10 to control these risks will emanate to all CTIs in the BlackRock Plan. Because all but one of the
 11 BlackRock Plan's CTI options are exposed to securities lending related risks, participants have little
 12 recourse but to unwittingly accept it (to BTC's benefit) if they want to save for their retirement.
 13

14 219. Finally, Statements of Additional Information filed by various registered BlackRock
 15 products disclose that these risks are largely overseen by a single entity within BlackRock: the Risk
 16 and Quantitative Analysis Group (the "RQA"). The RQA is responsible for overseeing funds'
 17 fiduciary and corporate risks, including investment, operational, counterparty credit and enterprise
 18 risk. Moreover, the RQA is responsible for overseeing risks pertinent to funds' securities lending
 19 programs.
 20

21 220. Collective trusts do not have the same risk disclosure requirements as registered
 22 investment companies like the Low Duration Bond Fund, so Defendants were not required to
 23 disclose these risks to their employees with respect to the CTIs—including the LifePath Funds,
 24 which are the default investment for the BlackRock Plan.
 25
 26
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221. On information and belief, the RQA oversees the risks associated with BTC, its operations, and its lending programs.

222. Diversification would minimize these known risks by preventing the failures at one entity from having an effect on a substantial portion of the BlackRock Plan's assets. Any lapse in controls over the RQA or failures by the RQA will result in a systemic failure that would affect all funds overseen by the RQA.

223. By failing to diversify the Plan's assets beyond BlackRock affiliates, the Committee Defendants and BTC subject the Plan to greater than necessary risk, and risk which could be avoided.

B. Facts Related to the Claims of the CTI Class

1. BTC is a Fiduciary to the CTI Plans, To The Extent Those Plans Invest in the BlackRock CTIs

224. The BlackRock Plan invests, directly and indirectly, in a number of BlackRock proprietary CTIs. Other retirement plans across the country also invest, directly or indirectly, in these BlackRock CTIs; Plaintiffs bring the claims of the CTI Class on behalf of all of the participants (and their beneficiaries) in the CTI Plans whose retirement accounts are invested in the BlackRock CTIs.

225. Funds are traceable to BlackRock's possession because BlackRock has maintained accounting records of cash-flows through BlackRock and its affiliates, including BTC. Accountants have prepared detailed statements that will allow Plaintiffs to determine what income was generated by BlackRock from the services provided by BTC to the BlackRock CTIs, such as execution services, brokerage services, research services, and securities lending services.

226. As alleged above, Plaintiff Slayton invested her individual account of the BlackRock Plan in the BlackRock LifePath Index 2050 Fund ("LifePath 2050 Fund").

227. As a result of BTC's decision to invest the LifePath 2050 Fund in a maze of other BTC-managed CTIs, Plaintiff Slayton's individual account was indirectly invested in the following BlackRock CTIs:

- Blackrock MSCI Canada Small Cap Equity Index Fund
- Blackrock MSCI EAFE Small Cap Equity Index Fund
- Blackrock MSCI US Real Estate Index Fund E
- Commercial Mortgage-Backed Securities Index Fund B
- Commodity Index Daily Fund E
- Developed Ex-US Real Estate Index Fund
- EAFE Equity Index Fund
- EAFE Equity Index Fund F
- Emerging Markets Equity Index Master Fund
- Equity Index Fund
- Extended Equity Market Fund
- Intermediate Government Bond Index Fund
- Intermediate Term Credit Bond Index Fund
- Long Term Credit Bond Index Fund
- Long Term Government Bond Index Fund
- Mortgage-Backed Securities Index Fund
- Asset-Backed Securities Fund B
- MSCI Equity Index Fund B-Brazil
- MSCI Equity Index Fund B-Chile
- MSCI Equity Index Fund B-China
- MSCI Equity Index Fund B-Colombia
- MSCI Equity Index Fund B-Egypt
- MSCI Equity Index Fund B-Czech Republic
- MSCI Equity Index Fund B-Hungary
- MSCI Equity Index Fund B-India
- MSCI Equity Index Fund B-Indonesia
- MSCI Equity Index Fund B-Malaysia
- MSCI Equity Index Fund B-Morocco
- MSCI Equity Index Fund B-Peru
- MSCI Equity Index Fund B-Poland
- MSCI Equity Index Fund B-Russia
- MSCI Equity Index Fund B-S Korea
- MSCI Equity Index Fund B-South Africa
- MSCI Equity Index Fund B-Taiwan
- MSCI Equity Index Fund B-Thailand
- MSCI Equity Index Fund-Canada
- MSCI Equity Index Fund-Mexico
- MSCI Equity Index Fund-Philippines

- MSCI Equity Index Fund-Turkey

228. For each of the CTIs listed in the preceding paragraph, more than 25% of the assets of each CTI was derived from investments by ERISA-covered employee benefit plans and similar investors as defined in applicable regulations. *See* 29 C.F.R. § 2510.3-101. As a result, each of the CTIs listed in the preceding paragraph holds ERISA plan assets and is subject to ERISA's fiduciary requirements.

229. Plaintiff Baird invested his individual account of the BlackRock Retirement Savings Plan in the BlackRock Russell 1000 Class F; BlackRock Active Stock Fund Class F; BlackRock MSCI ACWI Ex-US Fund Class F; BlackRock US TIPs Fund Class F; and BlackRock US Debt Index Fund Class F and as a result was directly or indirectly invested in the following BlackRock CTIs:

- Russell 1000 Index Fund
- US Treasury Inflation Protected Securities Fund E
- Active Stock Fund E
- Intermediate Government Bond Index Fund
- Intermediate Term Credit Bond Index Fund
- Long Term Credit Bond Index Fund
- Long Term Government Bond Index Fund
- Mortgage-Backed Securities Index Fund
- Asset-Backed Securities Fund B
- Commercial MBS Index Fund B

230. For each of the CTIs listed in the preceding paragraph, more than 25% of the assets of each CTI were derived from investments by ERISA-covered employee benefit plans and similar investors as defined in applicable regulations. *See* 29 C.F.R. § 2510.3-101. As a result, each of the CTIs holds ERISA plan assets and is subject to ERISA's fiduciary requirements.

231. Together, the individual accounts of Plaintiffs were invested directly or indirectly in the following BlackRock CTIs, each of which hold ERISA-governed plan assets:

- Active Stock Fund E

- Blackrock MSCI Canada Small Cap Equity Index Fund
- Blackrock MSCI EAFE Small Cap Equity Index Fund
- Blackrock MSCI US Real Estate Index Fund E
- Commercial Mortgage-Backed Securities Index Fund B
- Commodity Index Daily Fund E
- Developed Ex-US Real Estate Index Fund
- EAFE Equity Index Fund
- EAFE Equity Index Fund F
- Emerging Markets Equity Index Master Fund
- Equity Index Fund
- Extended Equity Market Fund
- Intermediate Government Bond Index Fund
- Intermediate Term Credit Bond Index Fund
- Long Term Credit Bond Index Fund
- Long Term Government Bond Index Fund
- Mortgage-Backed Securities Index Fund
- Asset-Backed Securities Fund B
- MSCI Equity Index Fund B-Brazil
- MSCI Equity Index Fund B-Chile
- MSCI Equity Index Fund B-China
- MSCI Equity Index Fund B-Colombia
- MSCI Equity Index Fund B-Egypt
- MSCI Equity Index Fund B-Czech Republic
- MSCI Equity Index Fund B-Hungary
- MSCI Equity Index Fund B-India
- MSCI Equity Index Fund B-Indonesia
- MSCI Equity Index Fund B-Malaysia
- MSCI Equity Index Fund B-Morocco
- MSCI Equity Index Fund B-Peru
- MSCI Equity Index Fund B-Poland
- MSCI Equity Index Fund B-Russia
- MSCI Equity Index Fund B-S Korea
- MSCI Equity Index Fund B-South Africa
- MSCI Equity Index Fund B-Taiwan
- MSCI Equity Index Fund B-Thailand
- MSCI Equity Index Fund-Canada
- MSCI Equity Index Fund-Mexico
- MSCI Equity Index Fund-Philippines
- MSCI Equity Index Fund-Turkey
- Russell 1000 Index Fund
- US Treasury Inflation Protected Securities Fund E

232. Each of the CTIs in the preceding paragraph – collectively, the “BlackRock CTIs” – is organized as a trust and the trust beneficiaries of each CTI are the participants whose retirement accounts are invested directly or indirectly in that CTI.

233. BTC is the trustee for each of the BlackRock CTIs and therefore holds legal title to the assets of each of the BlackRock CTIs.

234. BTC is the investment manager to each of the BlackRock CTIs listed in paragraph 231.

235. Each of the BlackRock CTIs was/is established under a “plan document” that sets forth the terms under which BTC manages and administers the CTI’s assets.

236. Because BTC acted/acts as the investment manager to each of the BlackRock CTIs listed in paragraph 231, it exercised/exercises authority or control respecting the management or disposition of the plan assets held in each of the CTIs listed in paragraph 231 it is a fiduciary to CTI Plans the extent those CTI Plans directly or indirectly invest in the BlackRock CTIs within the meaning of ERISA § 3(21)(A)(i), 29 U.S.C. § 1002(21)(A)(i).

237. BTC was also a fiduciary to the CTI Plans within the meaning of ERISA § 3(21)(A)(i), 29 U.S.C. § 1002(21)(A)(i), because it managed the operations of each of the BlackRock CTIs and thus exercised discretionary authority or discretionary control respecting management of plan assets held in each BlackRock CTI.

238. As a fiduciary of each of the CTI Plans, BTC was and continues to be a party-in-interest to each of the CTI Plans under ERISA § 3(14)(A), 29 U.S.C. § 1002(14)(A).

239. Because BlackRock is at least a 50% owner of BTC (a fiduciary to the CTI Plans) it is also a party-in-interest to each of the CTI Plans under ERISA § 3(14)(G), 29 U.S.C. § 1002(14)(G).

1 240. BlackRock, as corporate parent of BTC (a fiduciary to the CTI Plans), has full
2 knowledge of BTC's operations. As a result, BlackRock knew and knows that BTC acts as a
3 fiduciary to the CTI Plans, and also collects income in various forms from the BlackRock CTIs
4 which hold plan assets from the CTI Plans.

5 241. The duty of loyalty BTC owed to the participants whose plan assets were held in the
6 BlackRock CTIs included a duty to avoid conflicts of interest and thus avoid giving itself or its
7 affiliates preferential treatment when selecting and maintaining service providers for the BlackRock
8 CTIs, including securities lending services and investment funds for the cash collateral of the
9 BlackRock CTIs.

10 242. ERISA's duty of prudence required BTC to follow reasonable standards of
11 investment due diligence by giving appropriate consideration to those facts and circumstances that,
12 given the scope of their fiduciary investment duties, they knew or should have known were relevant
13 to the particular investments of the BlackRock CTIs, and then to act accordingly. 29 C.F.R. §
14 2550.404a-1.

15 243. The duty of prudence required BTC to give adequate consideration to outside (i.e.
16 non-affiliated) service providers for the BlackRock CTIs and to avoid conflicts of interests,
17 including among other things the conflict associated with selecting and maintaining itself as the
18 securities lending agent for each BlackRock CTI.

19 244. As a fiduciary to the CTIs Plans, BTC also had an ongoing duty to monitor the plan
20 assets held in each of the BlackRock CTIs on a regular and frequent basis (at least as frequent as
21 every quarter), which included re-evaluating the securities lending agent and the cash collateral
22 funds used by the BlackRock CTIs to ensure that they were/are prudent options for the BlackRock
23

1 CTIs including a review of the cost/fees charged by the securities lending agent and/or the cash
2 collateral funds.

3 245. Based on its monitoring duty, BTC had an ongoing duty to replace the securities
4 lending agent and the cash collateral funds used by the BlackRock CTIs if there were cheaper and
5 otherwise comparable alternatives available.
6

7 2. BTC Violated Its ERISA Fiduciary Duties to the CTI Plans and the
8 Participants in Each of the CTI Plans By Giving Itself and Its Affiliates
9 Preferential Treatment in the Management of the BlackRock CTIs

10 246. BTC has a duty to act prudently and with undivided loyalty to the participants whose
11 retirement accounts were directly or indirectly invested in the CTIs. However, in contravention of
12 its fiduciary duties, BTC self-servingly gives itself and its affiliates preferential treatment with
13 respect to receiving compensation paid by the BlackRock CTIs.

14 247. The compensation paid to BTC affiliates through this improper preferential treatment
15 includes, but is not limited to, trading fees, securities lending fees, brokerage commissions, and
16 research.

17 248. For example, each of the BlackRock CTIs listed in paragraph 231 engages in
18 securities lending.

19 249. Securities lending is the practice by which securities owned by a lender are
20 temporarily transferred to a borrower through a lending agent.
21

22 250. The borrower, typically banking institutions or hedge funds, uses the borrowed
23 securities for various investment activities like facilitating a short-sale. In exchange for the
24 securities, the borrower posts collateral generally exceeding the value of the loaned securities and
25 may pay the lending agent an additional fee. The collateral posted by the borrower is typically
26 reinvested in an investment vehicle that generates a return on the collateral. Once the loan ends, the
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28

1 borrower returns the securities to the lender and the lender returns to the borrower collateral, plus
 2 any agreed upon reimbursement from the collateral reinvestment vehicle.

3 251. When a lending agent is used to facilitate this process, a portion of the lender's
 4 revenue generated through the lending process is shared with the lending agent.
 5

6 252. The lenders here are the BlackRock CTIs.

7 253. BTC, in its fiduciary capacity to each of the CTI Plans which invest in the BlackRock
 8 CTIs, selected and maintained itself as lending agent for the BlackRock CTIs.

9 254. As a result, BTC served and serves as the lending agent responsible for conducting
 10 securities lending programs for all of the BlackRock CTIs throughout the Class Period.

11 255. By selecting itself as the securities lending agent for the BlackRock CTIs, BTC
 12 engaged in self-dealing and earned significant fees and expenses from multiple sources, including
 13 the excessive share of the BlackRock CTIs' profits that it retains as the lending agent, the cash
 14 collateral fee BTC charges the BlackRock CTIs, and the selection of more expensive short term
 15 investment funds.
 16

17 *a. BTC Retains An Excessive 50% of the Securities Lending Profits.*

18 256. BTC, as lending agent, takes as a fee 50% of all securities lending income generated
 19 by the loan of the BlackRock CTIs' assets, net of fees for managing cash collateral and rebates to the
 20 borrower.
 21

22 257. A 50% cut of the securities lending profits is excessive. A prudent fiduciary
 23 negotiating on behalf of a trust (here, each of the BlackRock CTIs) to which it owes ERISA
 24 fiduciary duties because the trust holds plan assets could have and would have obtained a more
 25 favorable profit split on behalf of each BlackRock CTI to allow the ERISA covered participants
 26 invested in each BlackRock CTI to retain a larger share of their securities lending profits.
 27
 28

258. Indeed, BTC receives far less compensation for its securities lending services with other BlackRock mutual funds because the mutual fund investors are represented by independent fiduciaries other than BTC.

259. For example, the BlackRock LifePath mutual funds are represented by a Board of Trustees independent of BTC and, as a result, BTC is paid only 20% of securities lending income. Additionally, BTC is paid just 15% of securities lending income for LifePath mutual funds once it exceeds a threshold amount.

260. Another example shows that BlackRock has also twice cut its share of the lending revenue it splits with investors in its iShares exchange-traded funds and in mutual funds.

- In the first quarter of 2014, BlackRock officials dropped a “one-size-fits all” policy — under which it retained a uniform 35% of the profits — and began keeping between 15% and 30%, depending on the fund.
- In January of 2015, BlackRock lowered its profit retention split to 28.5% for some of its other investment vehicles.

261. Furthermore, the 50% profit retention split received by BTC for the BlackRock CTIs far exceeds industry standards.

262. A survey of retirement plan sponsors reports that in 2011, over 50% of respondents paid 15% of securities lending income to the lending agent. In prior years, the survey reported that the prevalent fee split was 75/25, in favor of retirement plans. US Plan Sponsors on Securities Lending, Collateral Management and Custody in 2011, at 20.

263. Certain firms that provide securities lending services, like “T. Rowe Price Group and Vanguard Group, rebate *all* securities-lending income (net of expenses) back to the funds that generated it. The total cost of Vanguard’s securities-lending program is well under 1%. That suggests that most of the 30%-to-50% toll charged by other fund managers is pure profit -- in effect,

1 money for nothing.” Jason Sweig, *Is Your Fund Pawning Shares at Your Expense?* Wall Street
 2 Journal, May 30, 2009.

3 264. SSgA, a competitor to BTC for securities lending services, began reducing its
 4 securities lending fees and expenses in 2010, cutting SSgA’s share of retained profits to 30% from
 5 50%. SSgA fund documents for 2014 show SSgA fund investors now receive 85%, and SSgA
 6 retains only 15% of the profit from securities lending.

7 265. Similarly, Northern Trust, another lending agent, reduced the securities lending fee it
 8 takes for its agency to 30% of the total profits.

9 266. A vice-president at Citibank commented that “anyone over \$1 billion in assets still at
 10 60/40 should be talking to agent lenders ... and any large [investors] (\$10 billion and better) not at
 11 80/20 should likewise be talking to lenders.” Charles Ruffel, *Lending Logic*, PLANSponsor,
 12 (2002). Collectively the Lending Funds represented by BTC held over a *quarter trillion* dollars in
 13 assets. But BTC did not use this massive bargaining power to obtain securities lending services for a
 14 reasonable fee from an outside firm.

15 *b. BTC Also Pays Itself Fees for Short Term Investment Of Cash*
 16 *Collateral for Securities Lending and Passes all Risk to the CTI Class.*

17 267. The 50% profit BTC pays itself from the securities lending profits of the BlackRock
 18 CTIs is paid after, ***and in addition to***, a fee BTC pays itself for managing the proprietary STIFs it
 19 uses to manage the cash collateral of the BlackRock CTIs.

20 268. BTC invested all cash collateral it received for the BlackRock CTIs’ loaned securities
 21 in its own proprietary STIFs whose fees and expenses ranged from 5 to 5.6 bps.

22 269. BTC, as lending agent, selected the STIFs into which it would invest the BlackRock
 23 CTIs’ collateral.

1 270. The proprietary STIFs that BTC, as lending agent, selects for the BlackRock CTIs are
2 substantially more expensive than similar funds used by other lending agents.

3 271. For instance, Vanguard uses the Market Liquidity Fund for cash management, which
4 charges only 1 bp. The 400-500% premiums that the STIFs charge are profit for BTC generated with
5 BlackRock CTIs' assets and reduce the value of collateral.
6

7 272. Moreover, BTC offers other investors a STIF with no embedded investment
8 management fee and charges the LifePath mutual funds only 4 bps for the STIF used in the mutual
9 funds' securities lending program.

10 273. The CTIs face a number of risks associated with the BTC securities lending program,
11 including: (1) the risk that the borrower is unable to timely return the securities or provide additional
12 collateral; (2) the risk that the vehicle used to reinvest collateral loses value or restricts redemptions;
13 (3) the risk that non-cash collateral accepted by the lending agent loses value; and (4) operational
14 risks.
15

16 274. BTC, in its capacity as lending agent, has (1) significantly reduced the returns the CTI
17 Class earns through investing activities, (2) passed all securities lending risks to the CTI Class, and
18 (3) utilized proprietary collateral reinvestment vehicles that exposed the CTI Class to excessive risk
19 and deteriorated collateral value with high fees.
20

21 275. This lending arrangement that BTC has imposed upon the CTI Class through its self-
22 dealing has generated hundreds of millions of dollars in risk-free profits for BTC. These profits came
23 at the expense of the CTI Class's returns and through the exposure of the CTI Class to additional
24 risks.

25 276. The CTI Class bears all risks associated with the securities lending programs. For
26 instance, should any of the STIFs selected by the lending agent, BTC, lose value, the CTIs would be
27
28

1 responsible for providing to the borrower any short-fall in collateral owed to the borrower upon
2 return of loaned securities. BTC, despite taking a large management fee from the STIFs and 50% of
3 all income generated through the process, would bear none of the loss.

4 277. BTC manages the BlackRock CTIs in a manner that encourages excessive risk taking
5 to maximize its profits. BTC has directed a substantial amount of cash collateral into its most
6 expensive “Synthetic STIF.” This Synthetic STIF is more expensive than the traditional STIF and
7 permits investment in riskier assets than the traditional STIF, such as derivatives and stocks. Again,
8 the risks associated with this Synthetic STIF are borne by the CTI Class, while BTC maximizes its
9 profits by capturing an increased fee regardless of the performance of the collateral held therein.

10 278. By allowing the lending agent to make substantial, risk-free profits using the
11 BlackRock CTIs’ assets, BTC, as investment manager, has incentivized risk-seeking behavior by the
12 lending agent. As one commentator at the Federal Reserve Bank of New York observed, “[o]ne
13 might view the securities-lending agent’s incentives as akin to a free long option position, in which
14 securities-lending agents participate proportionally in higher cash reinvestment returns but are not
15 exposed to net losses from this activity.” Frank M. Keane, *Securities Loans Collateralized by Cash:
16 Reinvestment Risk, Run Risk and Incentive Issues*, 19 No. 3, Current Issues in Econ. and Fin., 1,6
17 (2013). This risk-seeking behavior was a “problem in the lead-up to the financial crisis.” *Id.* BTC
18 has put over \$45 billion in assets into its more expensive Synthetic STIFs, which permit the use of
19 higher-risk financial instruments like derivatives and stocks. BTC has directed substantially more
20 assets into its Synthetic STIFs than it has directed into its cheaper, traditional STIFs.

21 279. The lending agent’s risk-taking, in addition to the large fee it takes from the STIFs
22 and net lending income, have a material impact on the growth of the retirement plan assets invested
23 in the BlackRock CTIs.

280. All revenue generated by this lending process that is not taken by fees and expenses is reinvested back into the BlackRock CTIs, thereby increasing the value of the CTIs. As a result, the less income that is reinvested, the lower the value of the BlackRock CTIs and the lower the value of the participant accounts that are directly or indirectly invested in the BlackRock CTIs.

V. CLASS ALLEGATIONS

281. Plaintiffs bring this action on behalf of two related classes: the BlackRock Plan Class and the CTI Class.

A. The Class of BlackRock Plan Participants (“BlackRock Plan Class”)

282. The BlackRock Plan Class consists of:

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

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

284. **Numerosity.** The BlackRock Plan Class satisfies the numerosity requirement because it is composed of thousands of persons. The Plan currently has more than 9,700 participants. The number of BlackRock Plan Class members is so large that joinder of all its members is impracticable.

285. **Commonality.** As to the members of the Class, this case presents numerous common questions of law and fact, among them:

- (a) Whether all the Committee Defendants and BTC were and are ERISA fiduciaries responsible for selecting, retaining, removing and monitoring the BlackRock Plan investments;
- (b) Whether Defendant BlackRock, Inc. was and is an ERISA fiduciary to the BlackRock Plan;
- (c) Whether the Committee Defendants and BTC breached their ERISA fiduciary duties in monitoring or failing to monitor the investment options in the BlackRock Plan during the Class Period;

- (d) Whether the Committee Defendants and BTC breached their ERISA fiduciary duties in selecting additional BlackRock proprietary fund options for the BlackRock Plan during the Class Period;
- (e) Whether the Committee Defendants and BTC caused the BlackRock Plan to engage in multiple prohibited transactions in violation of ERISA § 406, 29 U.S.C. 1106, throughout the Class Period;
- (f) Whether the BlackRock Plan and its participants suffered losses as a result of Defendants' ERISA violations.

286. **Typicality.** Plaintiffs' claims are typical of the claims of the BlackRock Plan Class because (a) to the extent that Plaintiffs seeks relief on behalf of the BlackRock Plan pursuant to § 502(a)(2) of ERISA, 29 U.S.C. 1132(a)(2) their claims are not only typical of, but the same as, a claim under § 502(a)(2) brought by any other Class Member; (b) to the extent that Plaintiffs seek equitable relief, that relief would affect all Class Members equally; all of the BlackRock Plan Class members were injured and continue to be injured in the same manner by Defendants' breaches of fiduciary duty. They have no interests that are antagonistic to the claims of the Class. They understand that this matter cannot be settled without the Court's approval.

287. **Adequacy.** Plaintiffs will fairly and adequately protect the interests of the Class and they are committed to the vigorous representation of the Class. Plaintiffs retained counsel, Cohen Milstein Sellers and Toll PLLC ("Cohen Milstein") and Feinberg, Jackson, Worthman & Wasow ("Feinberg Jackson"), who are experienced in class action and ERISA litigation.

288. Plaintiffs' counsel have agreed to advance the costs of the litigation contingent upon the outcome. Counsel are aware that no fee can be awarded without the Court's approval.

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

290. Moreover, Defendants, as fiduciaries to the BlackRock Plan, were and are obligated to treat all BlackRock Class members similarly because ERISA imposes uniform standards of conduct on fiduciaries. Individual proceedings, therefore, would pose the risk of inconsistent adjudications. Plaintiffs are unaware of any difficulty in the management of this action as a class action.

291. The BlackRock Class may be certified under Rule 23(b).

A. **Rule 23(b)(1) requirements.** As an ERISA breach of fiduciary duty action, this action is a classic 23(b)(1) class action. Prosecution of separate actions by individual members would create the risk of (A) inconsistent or varying adjudications with respect to individual class members that would establish incompatible standards of conduct for the Defendants, or (B) adjudications with respect to individual class members would, as a practical matter, be dispositive of the interests of the other members not parties to the adjudication or substantially impair or impede their ability to protect their interests.

B. **Rule 23(b)(2) requirements.** Rule 23(b)(2) allows class treatment when “the party opposing the class has acted or refused to act on grounds that apply generally to the class, so that final injunctive relief or corresponding declaratory relief is appropriate respecting the class as a whole.” Fed. R. Civ. P. 23(b)(2). Here, the challenged conduct at issue—Defendants’ investment of plan assets and improper use thereof—not only can be, but must be enjoined or declared unlawful only as to all of the class members or as to none of them.

C. **Rule 23(b)(3) requirements.** This action is suitable to proceed as a class action under Rule 23(b)(3) because questions of law and fact common to the members of the Class predominate over individual questions, and a class action is superior to other available methods for the fair and efficient adjudication of this controversy. Given the nature of the

allegations, no class member has an interest in individually controlling the prosecution of this matter.

B. The Class of Participants Invested in the CTIs (“the CTI Class”)

292. Plaintiffs also bring this action on behalf of the second class, which consists of:

All participants, and their beneficiaries, whose individual accounts were invested directly or indirectly in the following BlackRock CTIs, each of which held ERISA plan assets and thus was governed by ERISA: Active Stock Fund E; Blackrock MSCI Canada Small Cap Equity Index Fund; Blackrock MSCI EAFE Small Cap Equity Index Fund; Blackrock MSCI US Real Estate Index Fund E; Commercial Mortgage-Backed Securities Index Fund B; Commodity Index Daily Fund E; Developed Ex-US Real Estate Index Fund; EAFE Equity Index Fund; EAFE Equity Index Fund F; Emerging Markets Equity Index Master Fund; Equity Index Fund; Extended Equity Market Fund; Intermediate Government Bond Index Fund; Intermediate Term Credit Bond Index Fund; Long Term Credit Bond Index Fund; Long Term Government Bond Index Fund; Mortgage-Backed Securities Index Fund; MSCI Equity Index Fund B-Brazil; MSCI Equity Index Fund B-Chile; MSCI Equity Index Fund B-China; MSCI Equity Index Fund B-Colombia; MSCI Equity Index Fund B-Egypt; MSCI Equity Index Fund B-Czech Republic; MSCI Equity Index Fund B-Hungary; MSCI Equity Index Fund B-India; MSCI Equity Index Fund B-Indonesia; MSCI Equity Index Fund B-Malaysia; MSCI Equity Index Fund B-Morocco; MSCI Equity Index Fund B-Peru; MSCI Equity Index Fund B-Poland; MSCI Equity Index Fund B-Russia; MSCI Equity Index Fund B-S Korea; MSCI Equity Index Fund B-South Africa; MSCI Equity Index Fund B-Taiwan; MSCI Equity Index Fund B-Thailand; MSCI Equity Index Fund-Canada; MSCI Equity Index Fund-Mexico; MSCI Equity Index Fund-Philippines; MSCI Equity Index Fund-Turkey; Russell 1000 Index Fund; and US Treasury Inflation Protected Securities Fund E, from April 5, 2011 through the date of judgment. Any individual Defendants are excluded from the class.

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

294. **Numerosity.** The CTI Class satisfies the numerosity requirement because it is composed of hundreds of thousands of persons. The number of class members is so large that joinder of all its members is impracticable.

1 295. **Commonality.** As to the members of the Class, this case presents numerous common
2 questions of law and fact, among them:

- 3 • Whether BTC is an ERISA fiduciary to the CTI Plans to the extent those CTI Plans
4 directly or indirectly invest in the BlackRock CTIs;
- 5 • Whether BTC appropriately and prudently considered outside service providers for
6 the BlackRock CTIs;
- 7 • Whether BTC gave itself preferential treatment when selecting and maintaining a
8 securities lending agent for the BlackRock CTIs;
- 9 • Whether BTC gave itself preferential treatment when selecting and maintaining itself
10 for execution services for the BlackRock CTIs;
- 11 • Whether BTC gave itself preferential treatment when selecting and maintaining itself
12 for brokerage services for the BlackRock CTIs;
- 13 • Whether BTC gave itself preferential treatment when selecting and maintaining itself
14 for research services for the BlackRock CTIs;
- 15 • Whether BTC received compensation, direct or indirectly, from the ERISA-governed
16 retirement plan assets of the BlackRock CTIs including but not limited to
17 compensation paid in connection with securities lending transactions, trade execution,
18 and/or research services.

19 296. **Typicality.** Plaintiffs' claims are typical of the claims of the CTI Class because (a) to
20 the extent that Plaintiff seeks relief on behalf of the CTI Class pursuant to § 502(a)(2) of ERISA, 29
21 U.S.C. 1132(a)(2) their claims are not only typical of, but the same as a claim under § 502(a)(2)
22 brought by any other Class Member; (b) to the extent that Plaintiffs seek equitable relief, that relief
23 would affect all class members equally; all of the CTI Class members were injured and continue to
24 be injured in the same manner by Defendants' breaches of fiduciary duty. They have no interests
25 that are antagonistic to the claims of the Class. They understand that this matter cannot be settled
26 without the Court's approval.

27 297. **Adequacy.** Plaintiffs will fairly and adequately protect the interests of the CTI Class.
28 Plaintiffs are committed to the vigorous representation of the Class. Plaintiffs' counsel, Cohen

1 Milstein and Feinberg Jackson have agreed to advance the costs of the litigation contingent upon the
 2 outcome. Counsel are aware that no fee can be awarded without the Court's approval.

3 298. Proceeding as a class action is particularly appropriate here because the BlackRock
 4 CTIs' assets were held in commingled funds, or Collective Trusts. BTC's actions affected all
 5 employee benefit plans invested in the BlackRock CTIs in exactly the same manner.
 6

7 299. A class action is the superior method for the fair and efficient adjudication of this
 8 controversy. Joinder of all members of the CTI Class is impracticable. The losses suffered by some
 9 of the individual members of the CTI Class may be small, and it would therefore be impracticable
 10 for individual members to bear the expense and burden of individual litigation to enforce their rights.
 11

12 300. Moreover, BTC as a fiduciary to the participants whose individual accounts were
 13 invested directly or indirectly in the BlackRock CTIs, was obligated to treat all CTI Class members
 14 similarly because ERISA imposes uniform standards of conduct on fiduciaries. Individual
 15 proceedings, therefore, would pose the risk of inconsistent adjudications. Plaintiffs are unaware of
 16 any difficulty in the management of this action as a class action.

17 301. The CTI Class may be certified under Rule 23(b).

18 A. **Rule 23(b)(1) requirements.** As an ERISA breach of fiduciary duty action,
 19 this action is a classic 23(b)(1) class action. Prosecution of separate actions by individual members
 20 would create the risk of (A) inconsistent or varying adjudications with respect to individual class
 21 members that would establish incompatible standards of conduct for the Defendants, or (B)
 22 adjudications with respect to individual class members would, as a practical matter, be dispositive of
 23 the interests of the other members not parties to the adjudication or substantially impair or impede
 24 their ability to protect their interests.
 25
 26
 27
 28

B. **Rule 23(b)(2) requirements.** Rule 23(b)(2) allows class treatment when “the party opposing the class has acted or refused to act on grounds that apply generally to the class, so that final injunctive relief or corresponding declaratory relief is appropriate respecting the class as a whole.” Fed. R. Civ. P. 23(b)(2). Here, the challenged conduct at issue—Defendants’ investment of plan assets and improper use thereof—not only can be, but must be enjoined or declared unlawful only as to all of the class members or as to none of them. The requirements for Rule 23(b)(2) certification are plainly met.

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

VI. CAUSES OF ACTION

Count I

Breach of Fiduciary Duties for Failing to Prudently and Loyal­ly Disclose, Monitor, Select, and Diversify Investments for the Plan in Violation of ERISA §404, 29 U.S.C. § 1104 (BlackRock Plan Class Against Retirement Committee Defendants, Investment Committee Defendants and BTC)

302. Plaintiffs restate and incorporate the allegations of the preceding paragraphs as if set forth fully herein.

303. At all relevant times, the Committee Defendants and BTC were fiduciaries within the meaning of ERISA § 3(21)(A)(i) 29 U.S.C. § 1002(21)(A)(i) by exercising authority or control respecting the management or disposition of the BlackRock Plan's assets. As fiduciaries, they had a duty to act solely in the interest of the participants and beneficiaries of the Plan they served and "for the exclusive purpose of: (i) providing benefits to participants and their beneficiaries; and (ii)

1 defraying reasonable expenses of administering the plan” in accordance with ERISA § 404(a)(1)(A),
 2 29 U.S.C. § 1104(a)(1)(A).

3 304. The Committee Defendants and BTC further had the duty to discharge their duties
 4 “with the care, skill, prudence, and diligence under the circumstances then prevailing that a prudent
 5 man acting in a like capacity and familiar with such matters would use in the conduct of an
 6 enterprise of a like character and with like aims,” in accordance with ERISA § 404(a)(1)(B), 29
 7 U.S.C. § 1104(a)(1)(B). These fiduciary duties include the ongoing duty to monitor plan
 8 investments.
 9

10 305. The Committee Defendants and BTC were required to diversify the investments of
 11 the BlackRock Plan so as to minimize the risk of large losses unless it was clearly prudent not to do
 12 so in accordance with ERISA § 404(a)(1)(C), 29 U.S.C. § 1104(a)(1)(C). This obligation includes a
 13 duty to avoid the risk of manager concentration.
 14

15 306. As set forth in detail above, the Committee Defendants and BTC breached these
 16 fiduciary duties by, inter alia:

17 a. Choosing and maintaining almost exclusively BlackRock proprietary funds as
 18 investment options for the BlackRock Plan without adequately considering non-proprietary
 19 funds that did not have unnecessary fund layering and excessive, hidden fees, expenses and
 20 which performed better than the BlackRock funds;
 21

22 b. Failing to provide the notice required by applicable regulations, 29 C.F.R. §
 23 2550.404a-5(a);

24 c. Failing to monitor the Plan investment options and remove BlackRock-affiliated
 25 funds by, among other things: (i) giving preferential treatment to BlackRock-proprietary
 26 funds; (ii) failing to avoid conflict of interests; (iii) failing to adequately consider non-
 27

1 proprietary funds which did not have unnecessary fund layering and excessive, hidden fees,
 2 expenses, and which performed better than the BlackRock funds; (iv) failing to remove
 3 BlackRock proprietary funds from the Plan which were selected based on an imprudent and
 4 disloyal process which gave preferential treatment to BlackRock funds; and (v) failing to
 5 adequately consider whether continuing to invest Plan assets in BlackRock-proprietary funds
 6 constituted party-in-interest transactions;

7
 8 d. Failing to diversify the assets of the Plan in order to avoid unnecessary and unlawful
 9 operational and manager concentration risk.

10 307. As a direct and proximate result of the above breaches of fiduciary duties, the Plan
 11 and its participants have suffered tens of millions of losses in retirement assets, for which all
 12 Defendants named in this Count are jointly and severally liable.

13 Count II

14
 15 Violations of ERISA §406(a) and (b), 29 U.S.C. § 1106(a) and (b) for
 16 Engaging in Party-in-Interest Transactions
 17 (BlackRock Plan Class Against the Retirement Committee Defendants, Investment Committee
 18 Defendants, BlackRock, and BTC)

19 308. Plaintiffs restate and incorporate the allegations of the preceding paragraphs as if set
 20 forth fully herein.

21 309. ERISA § 406(a)(1)(A), 29 U.S.C. § 1106(a)(1)(A), prohibits transactions that
 22 constitute direct or indirect sale or exchange of property between a plan and any parties-in-interest
 23 and prohibits fiduciaries from causing the plan to engage in such transactions.

24 310. The Committee Defendants, BlackRock, and BTC caused the Plan to engage in
 25 multiple party-in-interest transactions, namely causing the BlackRock Plan to repeatedly purchase
 26 property (i.e., interests in BlackRock proprietary funds) from BlackRock (who holds legal title to the
 27 BlackRock mutual fund assets) and/or BTC (who holds legal title to the BlackRock CTI assets).

Each purchase by the Plan of an interest in the BlackRock proprietary fund during the Class Period constituted a separate violation of ERISA § 406(a)(1)(A), 29 U.S.C. § 1106(a)(1)(A).

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

312. The Committee Defendants, Defendant BlackRock, and Defendant BTC caused the BlackRock Plan to engage in multiple party-in-interest transactions, namely the repeated transfer of BlackRock Plan assets directly and/or indirectly to BlackRock and BTC (both parties-in-interest), in the form of various direct or indirect fees paid to BlackRock, BTC, their subsidiaries, and/or their affiliates, which constituted multiple, knowing violations of ERISA § 406(a)(1)(D), 29 U.S.C. § 1106(a)(1)(D).

313. ERISA § 406(b), 29 U.S.C. § 1106(b), prohibits a fiduciary from "deal[ing] with the assets of the plan in his own interest or for his own account" ERISA § 406(b)(1), 29 U.S.C. § 1106(b)(1).

314. By virtue of their positions as fiduciaries of the BlackRock Plan, the Committee Defendants, BlackRock and BTC made decisions about the investment of the Plan's assets in ways that benefitted themselves or were in their own self-interest because: (a) BlackRock received many direct and indirect fees and other compensation from the BlackRock Plan investment in BlackRock proprietary funds; (b) the assets under management for the proprietary funds were increased by the BlackRock Plan's investments; and/or (c) the Retirement and Investment Committee Defendants were all BlackRock executives whose compensation and promotion levels increased when they acted to increase revenues for BlackRock, which violated ERISA § 406(b)(1), 29 U.S.C. § 1106(b)(1).

315. As a direct and proximate result of the above prohibited transactions, the Plan and its participants have suffered tens of millions of losses in retirement assets, for which all Defendants named in this Count are jointly and severally liable.

Count III

Failure to Monitor Other Fiduciaries in Violation of ERISA §404, 29 U.S.C. § 1104
(BlackRock Plan Class Against Retirement Committee Defendants, and BlackRock)

316. Plaintiffs restate and incorporate the allegations of the preceding paragraphs as if set forth fully herein.

317. As alleged above, the Retirement Committee Defendants and BlackRock (collectively, “the Monitoring Fiduciaries”) were and continue to be Plan fiduciaries under ERISA § 3(21), 29 U.S.C. § 1002(21).

318. As fiduciaries, the Retirement Committee and BlackRock were required by ERISA § 404(a)(1)(A), 29 U.S.C. § 1104(a)(1)(A) to manage and administer the Plan and the Plan’s investments “solely in the interest of the participants and beneficiaries” of the Plan and for the “exclusive purpose” of providing benefits to the participants and beneficiaries of the Plan.

319. Under ERISA, a fiduciary charged in a plan document with the authority to select and remove other fiduciaries has an ongoing duty to monitor the performance of those persons whom the fiduciary may remove at reasonable intervals to ensure that their performance has been in compliance with statutory standards.

320. As previously alleged, BlackRock was responsible for the appointment and removal of the Committee Defendants and for periodically monitoring the performance of the Retirement and Investment Committee Members. Also, as alleged above, the Retirement Committee Defendants were responsible for the appointment and removal of Defendant BTC and for periodically monitoring the performance of BTC. BlackRock and the Retirement Committee Defendants

1 breached that duty by, *inter alia*, failing to monitor their appointees, failing to monitor their
 2 appointees' fiduciary process, failing to ensure that the monitored fiduciaries considered the ready
 3 availability of comparable non-proprietary fund options to a plan of the size of the BlackRock Plan,
 4 and failing to remove appointees who made imprudent and disloyal decisions about the investment
 5 of Plan assets.
 6

7 321. As a direct and proximate result of the above breaches of fiduciary duties, the Plan
 8 and its participants have suffered tens of millions of losses in retirement assets, for which all
 9 Defendants named in this Count are jointly and severally liable.

10 **Count IV**

11 Co-Fiduciary Liability, Violation of ERISA § 405, 29 U.S.C. § 1105
 12 (BlackRock Plan Class Against BlackRock, BTC, Retirement Committee Defendants, and
 Investment Committee Defendants)

13 322. Plaintiffs restate and incorporate the allegations of the preceding paragraphs as if set
 14 forth fully herein.

15 323. Section 405 of ERISA, 29 U.S.C. § 1105 imposes co-fiduciary liability, in addition to
 16 any other liability a fiduciary may have under any other provision of ERISA. Specifically,
 17 Section 405(a)(1) of ERISA, 29 U.S.C. § 1105(a)(1) imposes liability for the knowing participation
 18 in a breach of fiduciary duty by a co-fiduciary. Section 405(a)(2) of ERISA, 29 U.S.C. § 1105(a)(2),
 19 imposes liability if a fiduciary, in the administration of his fiduciary responsibilities, enables another
 20 fiduciary to commit a breach. Section 405(a)(3) of ERISA, 29 U.S.C. § 1105(a)(3), imposes liability
 21 on a fiduciary if he knows of a breach by a co-fiduciary and fails to make reasonable efforts to
 22 remedy it.
 23

24 324. As alleged above, BlackRock, Inc. knew that the BlackRock proprietary funds were
 25 given preferential treatment for inclusion in the BlackRock Plan. Defendant BlackRock is therefore
 26 liable as co-fiduciary because it was aware of, participated in, enabled, concealed, and failed to
 27

1 remedy the Committee Defendants', and BTC's breaches of fiduciary duty and the many prohibited
2 transactions committed during the Class Period related to the Plan's selection of, and failure to
3 remove, the BlackRock proprietary funds from the Plan.

4
5 325. As alleged above, the Retirement Committee Defendants knew that the BlackRock
6 proprietary funds were given preferential treatment for inclusion in the BlackRock Plan. The
7 Retirement Committee Defendants are all liable as co-fiduciaries because they were aware of,
8 participated in, enabled, concealed, and failed to remedy BlackRock's, the Investment Committee
9 Defendants', and BTC's breaches of fiduciary duty and the many prohibited transactions committed
10 during the Class Period, related to the selection of, and failure to remove, the BlackRock proprietary
11 funds from the BlackRock Plan.

12
13 326. As alleged above, the Investment Committee Defendants knew that the BlackRock
14 proprietary funds were given preferential treatment for inclusion in the BlackRock Plan. The
15 Investment Committee Defendants are all liable as co-fiduciaries because they were aware of,
16 participated in, enabled, and failed to remedy BlackRock's, the Retirement Committee Defendants',
17 and BTC's breaches of fiduciary duty and the many prohibited transactions committed during the
18 Class Period, related to the selection of, and failure to remove, the BlackRock proprietary funds from
19 the BlackRock Plan.

20
21 327. As alleged above, Defendant BTC knew that the BlackRock proprietary funds were
22 given preferential treatment for inclusion in the BlackRock Plan. BTC is liable as a co-fiduciary
23 because it was aware of, participated in, enabled, and failed to remedy BlackRock's, and the
24 Committee Defendants' breaches of fiduciary duty and the many prohibited transactions committed
25 during the Class Period, related to the selection of, and failure to remove, the BlackRock proprietary
26 funds from the BlackRock Plan.

328. As a direct and proximate result of the above breaches of fiduciary duties, the Plan and its participants have suffered tens of millions of losses in retirement assets, for which all Defendants named in this Count are jointly and severally liable.

Count V

Violations of ERISA § 404 Relating to the Management of the BlackRock CTIs (CTI Class Against BTC)

329. Plaintiffs restate and incorporate the allegations of the preceding paragraphs as if set forth fully herein.

330. As alleged in more detail above, each of the BlackRock CTIs holds ERISA plan assets. The investment of the plan assets in the BlackRock CTIs are thus governed by ERISA, including ERISA's fiduciary duties of prudence and loyalty, and all applicable regulations. *See* ERISA §§ 404(a)(1)(A)-(C); 29 U.S.C. §§ 1104(a)(1)(A)-(C).

331. At all relevant times, BTC was a fiduciary to each of the CTI Plans to the extent those CTI Plans directly or indirectly invest in the BlackRock CTIs within the meaning of ERISA § 3(21)(A)(i), 29 U.S.C. § 1002(21)(A)(i), because it managed and/or manages the assets of each BlackRock CTI and thus exercised and/or exercises authority or control over plan assets.

332. BTC had an ongoing duty to act solely in the interest of the participants and beneficiaries of the CTI Plans and “for the exclusive purpose of: (i) providing benefits to participants and their beneficiaries; and (ii) defraying reasonable expenses of administering the plan” in accordance with ERISA § 404(a)(1)(A), 29 U.S.C. § 1104(a)(1)(A).

333. BTC had an ongoing duty to act prudently when exercising authority or control over the plan assets in the BlackRock CTIs, meaning to discharge its duties “with the care, skill, prudence, and diligence under the circumstances then prevailing that a prudent man acting in a like

1 capacity and familiar with such matters would use in the conduct of an enterprise of a like character
2 and with like aims,” in accordance with ERISA § 404(a)(1)(B), 29 U.S.C. § 1104(a)(1)(B).

3 334. In violation of its duties of prudence and loyalty, BTC self-servingly gives itself and
4 its affiliates preferential treatment with respect to receiving compensation paid by the BlackRock
5 CTIs.
6

7 335. The compensation paid to BTC affiliates obtained through improper preferential
8 treatment by BTC includes, but is not limited to, trading fees, securities lending fees, brokerage
9 commissions, and research.

10 336. For example, BTC gave itself preferential treatment when selecting and maintaining
11 itself as the securities lending agent to each and every BlackRock CTI listed in this Count rather than
12 considering outside securities lending agents/providers who charge less for securities lending
13 services.
14

15 337. BTC also gave itself preferential treatment when selecting its own funds (i.e. funds
16 managed by BTC) to invest the securities lending collateral of each of the BlackRock CTI funds
17 rather than considering non-affiliated funds charged less in fees and expenses.

18 338. BTC’s failure to re-evaluate and replace itself as the securities lending agent or to re-
19 evaluate and replace the BTC funds in which the CTIs’ cash collateral was invested, BTC violated
20 the fiduciary duties of prudence and loyalty it owed to the CTI Class. ERISA § 404(a)(1), 29 U.S.C.
21 § 1104(a)(1).
22

23 339. As a direct and proximate result of these breaches of fiduciary duties, the participants
24 in the CTI Class have suffered hundreds of millions of dollars in lost retirement assets, for which
25 BTC is liable.
26
27
28

Count VI

**Violations of ERISA § 406 Relating to the Management of the
BlackRock CTIs
(CTI Class Against BTC and BlackRock)**

340. Plaintiffs restate and incorporate the allegations of the preceding paragraphs as if set forth fully herein.

341. As alleged in more detail above, each of the BlackRock CTIs holds ERISA plan assets and thus BTC is governed by ERISA, including ERISA's prohibited transaction rules and all applicable regulations. *See* ERISA §§ 406(a)(1)(A) & (D), 406(b)(1); 29 U.S.C. §§ 1106(a)(1)(A) & (D), 1106(b)(1).

342. ERISA § 406(a)(1)(C), 29 U.S.C. § 1106(a)(1)(C), prohibits the "furnishing of goods, services, or facilities between the plan and a party in interest."

343. Every time BTC provided services to BlackRock CTIs, such as execution services, brokerage services, research services, securities lending services or other services for the BlackRock CTIs, it acted as a party in interest furnishing services to the CTI Plans, in violation of ERISA § 406(a)(1)(C), 29 U.S.C. § 1106(a)(1)(C).

344. Every time BlackRock provided services to the BlackRock CTIs, such as brokerage services, research services, BlackRock acted as a party in interest furnishing services to the CTI Plans in violation of ERISA § 406(a)(1)(C), 29 U.S.C. § 1106(a)(1)(C).

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

346. Each and every time BTC or BlackRock collected indirect or direct fees from the BlackRock CTIs for services, including but not limited to the fee paid to BTC for investing

1 securities lending collateral in the BlackRock STIF, the cut BTC took from the securities lending
 2 income of the BlackRock CTIs, trading fees, and brokerage commissions, the collecting of those
 3 indirect or direct fees constituted the prohibited transfer of the CTI Plans' assets to parties in interest
 4 (BTC and BlackRock), in violation of ERISA § 406(a)(1)(D), 29 U.S.C. § 1106(a)(1)(D).

5
 6 347. BlackRock, Inc. knowingly participated in these violations of ERISA; enabled BTC
 7 to commit a breach by failing to lawfully discharge its own fiduciary duties; and knew of the ERISA
 8 violations by BTC and failed to make any reasonable effort under the circumstances to remedy the
 9 breaches.

10 348. Funds are traceable to BlackRock's possession. BlackRock, Inc. has maintained
 11 accounting records of cash-flows through BlackRock, Inc. and its affiliates, including BTC.
 12 Accountants have prepared detailed statements that will allow Plaintiffs to determine what income
 13 was generated by BlackRock from the securities lending services provided by BTC to the BlackRock
 14 CTIs.
 15

16 349. ERISA § 406(b)(1), 29 U.S.C. § 1106(b)(1), prohibits a fiduciary from "deal[ing]
 17 with the assets of the plan in his own interest or for his own account."

18 350. By virtue of its position as a fiduciary to the CTI Plans to the extent those CTI Plans
 19 directly or indirectly invested in the BlackRock CTIs, BTC made decisions regarding the selection
 20 and maintenance of itself and its affiliates for various services provided to the BlackRock CTIs such
 21 as securities lending services and the selection of BTC funds (such as the STIF investments) for the
 22 investment of the cash collateral of the BlackRock CTIs in ways that benefitted BTC or BTC's
 23 corporate parent BlackRock, Inc. These actions violated ERISA § 406(b)(1), 29 U.S.C. §
 24 1106(b)(1).
 25
 26
 27
 28

351. BTC and BlackRock received direct and indirect fees and other compensation from BTC acting as securities lending agent to the BlackRock CTIs and using BTC managed funds (such as the BTC STIFs) to hold the plan assets of the BlackRock CTIs. These actions violated ERISA § 406(b)(1), 29 U.S.C. § 1106(b)(1).

352. As a result of BTC's self-dealing and prohibited transactions, the BlackRock CTIs and the participants whose individual retirement accounts were invested in them suffered hundreds of millions of dollars in losses, for which all Defendants named in this Count are jointly and severally liable.

VII. PRAYER FOR RELIEF

Plaintiffs, on behalf of the Plan and the BlackRock Plan Class, respectfully requests that the Court award the following relief for Counts I through IV:

- a. Declare that the Defendants have breached their fiduciary duties to the BlackRock Plan Class in the manner described herein;
- b. Order each fiduciary found to have breached his/her/its fiduciary duty to the Plan to jointly and severally pay such amount or surcharge to the Plan as is necessary to make the Plan whole for any losses which resulted from said breaches or by virtue of liability pursuant to ERISA § 405, 29 U.S.C. § 1105, plus pre-judgment and post-judgment interest;
- c. Order Defendants to provide all accountings necessary to determine the amounts Defendants must remit to the Plan under ERISA § 409(a), 29 U.S.C. § 1109(a), to restore losses and to disgorge any profits fiduciaries obtained from the use of plan assets or other violations of ERISA § 404, 406 or 406, 29 U.S.C. § 1104, 1106, or 1105;

- d. To the extent necessary, issue an injunction or order creating a constructive trust into which all ill-gotten gains, fees and/or profits paid to any of the Defendants in violation of ERISA shall be placed for the sole benefit of the Plan and its participants and beneficiaries. This includes, but is not limited to, the ill-gotten gains, fees and/or profits paid to any of the Defendants that have been wrongly obtained as a result of breaches of fiduciary duty or prohibited transactions or other violations of ERISA;
- e. Issue an injunction removing the fiduciaries who have breached their fiduciary duties their roles as fiduciaries for the Plan, and an order appointing an independent fiduciary to manage the assets of the Plan;
- f. Issue an injunction requiring all fiduciaries to avoid all prohibited transactions and future ERISA violations, including but not limited to removing all BlackRock affiliated funds from the Plan;
- g. Certify the BlackRock Plan Class, appoint Plaintiffs as class representatives, and appoint Cohen Milstein and Feinberg, Jackson as Class Counsel;

Plaintiffs, on behalf of the BlackRock CTIs and the CTI Class, respectfully request that the Court the following relief for Counts V-VI:

- a. Declare that BTC has breached its fiduciary duties to the CTI Class in the manner described herein;
- b. Order BTC to pay such amount or surcharge to the BlackRock CTIs, the CTI Class and/or the CTI Plans as necessary to make the CTI Class whole for any losses which resulted from said breaches or by virtue of liability pursuant to ERISA § 405, 29 U.S.C. § 1105, plus pre-judgement and post-judgment interest;

- c. Order BTC to provide all accountings necessary to determine the amounts Defendants must remit to the CTI Class under ERISA § 409, 29 U.S.C. § 1109(a), to restore losses and to disgorge any profits fiduciaries obtained from the use of plan assets held in the BlackRock CTIs or other violations of ERISA § 404, 406 or 406, 29 U.S.C. § 1104, 1106, or 1105;
- d. To the extent necessary, issue an injunction or order creating a constructive trust into which all ill-gotten gains, fees and/or profits paid to BTC or BlackRock in violation of ERISA shall be placed for the sole benefit of the CTI Class. This includes, but is not limited to, the ill-gotten gains, fees and/or profits paid to BTC or BlackRock as a result of breaches of fiduciary duty or prohibited transactions or other violations of ERISA.
- e. Issue an injunction removing BTC from its role as a fiduciary to plan assets held in the BlackRock CTIs, and appointing an independent fiduciary to manage the plan assets held in the BlackRock CTIs;
- f. Issue an injunction requiring BTC to avoid all prohibited transactions and future ERISA violations with respect to the management of the plan assets held in the BlackRock CTIs;
- g. Certify the CTI Class, appoint Plaintiffs as class representatives of the CTI Class, and appoint Cohen Milstein and Feinberg, Jackson as Class Counsel for the CTI Class;

Plaintiffs, on behalf of the BlackRock Plan Class and the CTI Class, respectfully requests that the Court the following relief for all Counts:

- 1 a. Award to the Plaintiffs and the BlackRock Plan Class and the CTI Class their
2 attorneys' fees and costs under ERISA §502(g)(1), 29 U.S.C. § 1132(g)(1), and/or the
3 common fund doctrine;
4
5 b. Order the payment of interest to the extent it is allowed by law; and
6
7 c. Order other equitable or remedial relief as the Court deems appropriate.

7 Dated: October 10, 2017

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/s/ Nina Wasow

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