

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLORADO

Case No. 1:17-cv-01579-WJM-NYW

WILLIAM M. BARRETT, individually and as the representative of a class consisting of the participants and beneficiaries of the Pioneer Natural Resources USA, Inc. 401(K) and Matching Plan,

Plaintiff,

v.

PIONEER NATURAL RESOURCES USA, INC.; THE PIONEER NATURAL RESOURCES USA INC. 401(K) AND MATCHING PLAN COMMITTEE; THERESA A. FAIRBROOK; TODD C. ABBOTT; W. PAUL MCDONALD; MARGARET M. MONTEMAYOR; THOMAS J. MURPHY; CHRISTOPHER M. PAULSEN; KERRY D. SCOTT; SUSAN A. SPRATLEN; LARRY N. PAULSEN; MARK KLEINMAN; and RICHARD P. DEALY,

Defendants.

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**DEFENDANTS' ANSWER AND AFFIRMATIVE DEFENSES TO PLAINTIFF'S COMPLAINT**

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Pursuant to Rules 7 and 8 of the Federal Rules of Civil Procedure, Defendants Pioneer Natural Resources USA, Inc. ("Pioneer"); the Pioneer Natural Resources USA, Inc. 401(k) and Matching Plan Committee (the "Committee"); Theresa A. Fairbrook, Todd C. Abbott, W. Paul McDonald, Margaret M. Montemayor, Thomas J. Murphy, Christopher M. Paulsen, Kerry D. Scott, Susan A. Spratlen, Larry N. Paulsen, Mark Kleinman, and Richard P. Dealy (collectively, the "Individual Defendants," and with Pioneer and the Committee, "Defendants") hereby answer Plaintiff William M. Barrett's ("Plaintiff") Complaint as follows:

**GENERAL DENIALS**

Except as expressly admitted below, Defendants deny each and every allegation against them and deny liability to Plaintiff. With respect to those allegations in the Complaint that specify no applicable time period, Defendants have answered as of the present date.

Plaintiff includes in the Complaint bolded headings purporting to characterize certain actions or events. Because the headings are not set forth in numbered paragraphs, they are not

properly pleaded facts, and no response is necessary. To the extent that Plaintiff has included headings that are inappropriate under Rules 8 and 12(f) of the Federal Rules of Civil Procedure, no response is necessary, and any such inappropriate material should be stricken. To the extent Plaintiff's headings purport to state facts to which a response is required, Defendants deny each and every such allegation. Plaintiff's headings are repeated below, solely for organizational purposes. Defendants specifically deny, and do not adopt, the characterizations set forth in these headings.

Defendants expressly reserve the right to seek to amend and/or supplement this Answer as may be necessary.

### **RESPONSES TO SPECIFIC ALLEGATIONS**

In addition to and incorporating the above general denials, Defendants further answer the numbered paragraphs in the Complaint as follows:

#### **PRELIMINARY STATEMENT**

1. Answering Paragraph 1 of the Complaint, Defendants admit each and every allegation in said paragraph.
2. Answering Paragraph 2 of the Complaint, Defendants admit that a 401(k) plan is an employer-sponsored defined contribution retirement plan that enables employees to make tax-deferred contributions from their salaries and that employers also may make contributions into employee accounts. The remainder of Paragraph 2 appears to be referring to a specific document and such document speaks for itself; Defendants lack information or belief sufficient to answer these remaining allegations.
3. Answering Paragraph 3 of the Complaint, Defendants state that Plaintiff appears to be referring to 29 U.S.C. § 1002(34) and that the statute speaks for itself.
4. Answering Paragraph 4 of the Complaint, Defendants state that said paragraph asserts Plaintiff's legal position, to which no response is required; to the extent that such allegations require a response, Defendants state that Plaintiff appears to be referring to a specific court opinion and that such opinion speaks for itself.

5. Answering Paragraph 5 of the Complaint, Defendants state that said paragraph asserts Plaintiff's legal position, to which no response is required; to the extent that such allegations require a response, Defendants state that Plaintiff appears to be referring to a specific document and that such document speaks for itself.

6. Answering Paragraph 6 of the Complaint, Defendants state that said paragraph asserts Plaintiff's legal position, to which no response is required; to the extent that such allegations require a response, Defendants admit that the Plan had \$500,187,123 in assets on December 31, 2015 and admit that there are a variety of administrative and investment management services available in the 401(k) plan market; state that Plaintiff appears to be referring to a specific document and other specific, unidentified documents, and that such documents speak for themselves; and, except as admitted, deny each and every allegation in said paragraph.

7. Answering Paragraph 7 of the Complaint, Defendants state that said paragraph asserts Plaintiff's legal position, to which no response is required; to the extent that such allegations require a response, Defendants deny each and every allegation in said paragraph.

8. Answering Paragraph 8 of the Complaint, Defendants state that said paragraph asserts Plaintiff's legal position and conclusions of law, to which no response is required; to the extent that such allegations require a response, Defendants state that Plaintiff appears to be referring to 29 U.S.C. § 1104(a) and a specific court opinion, and that the statute and court opinion speak for themselves.

9. Answering Paragraph 9 of the Complaint, Defendants state that said paragraph asserts Plaintiff's legal position and conclusions of law, to which no response is required; to the extent that such allegations require a response, Defendants admit that Defendant Pioneer Natural Resources USA, Inc. is the Plan Sponsor, and admit that the Pioneer Natural Resources USA Inc. 401(K) and Matching Plan Committee is the Plan Administrator, but, except as admitted, deny each and every allegation in said paragraph.

10. Answering Paragraph 10 of the Complaint, Defendants state that said paragraph asserts Plaintiff's legal position, to which no response is required; to the extent that such allegations require a response, Defendants admit that Plaintiff purports to bring an action on behalf of the Plan under 29 U.S.C. §§ 1132(a)(2) and (3) based on Defendants' purported breaches of fiduciary duty; and, except as admitted, deny each and every allegation in said paragraph and specifically deny Defendants' liability and Plaintiff's entitlement to any requested relief.

## **PARTIES**

### **The Plan**

11. Answering Paragraph 11 of the Complaint, Defendants admit each and every allegation in said paragraph.

12. Answering Paragraph 12 of the Complaint, Defendants admit each and every allegation in said paragraph.

13. Answering Paragraph 13 of the Complaint, Defendants admit each and every allegation in said paragraph.

### **Defendants**

14. Answering Paragraph 14 of the Complaint, Defendants deny that Pioneer is a wholly-owned subsidiary of Pioneer Natural Resources, Inc.; admit that Pioneer is a wholly-owned subsidiary of Pioneer Natural Resources Company; and admit the remaining allegations in said paragraph.

15. Answering Paragraph 15 of the Complaint, Defendants state that said paragraph asserts Plaintiff's legal position and conclusions of law, to which no response is required; to the extent that such allegations require a response, Defendants admit that Pioneer is the Plan Sponsor as defined under 29 U.S.C. § 1002(16)(A)(i); admit that Pioneer, acting through its officers, directors, and/or agents, has discretionary authority to appoint or remove members of the Committee and to amend or modify the Plan or Trust; and, except as admitted, deny each and every allegation in said paragraph.

16. Answering Paragraph 16 of the Complaint, Defendants state that said paragraph asserts Plaintiff's legal position and conclusions of law, to which no response is required; to the extent that such allegations require a response, Defendants admit that the Committee is the Plan Administrator as defined under 29 U.S.C. § 1002(16)(A)(i); admit that the Committee exercises discretionary authority over the management and administration of the Plan, including evaluating, analyzing, and monitoring the performance and fees of investment options made available to Plan participants, selecting new investment options to be offered to Plan participants, and removing or replacing investment options offered to Plan participants; and, except as admitted, deny each and every allegation in said paragraph.

17. Answering Paragraph 17 of the Complaint, Defendants state that said paragraph asserts Plaintiff's legal position and conclusions of law, to which no response is required; to the extent that such allegations require a response, Defendants admit that the Individual Defendants are current or former members of the Committee; admit that Committee members exercise discretionary authority over the management and administration of the Plan, including evaluating, analyzing, and monitoring the performance and fees of investment options made available to Plan participants, selecting new investment options to be offered to Plan participants, and removing or replacing investment options offered to Plan participants; and, except as admitted, deny each and every allegation in said paragraph.

18. Answering Paragraph 18 of the Complaint, Defendants state that Plaintiff has not pled any facts in Paragraph 18, so no response is required.

**Plaintiff**

19. Answering Paragraph 19 of the Complaint, Defendants admit that Plaintiff was employed by Pioneer in Trinidad, Colorado, until September 7, 2017, and that Plaintiff is a Plan participant; deny that Plaintiff was employed as a Fleet Coordinator; deny that Plaintiff was employed by Pioneer for over 30 years; and, except as admitted or denied, state that they lack sufficient knowledge or information to answer the allegations in said paragraph, and on that basis deny such allegations.

## **JURISDICTION AND VENUE**

20. Answering Paragraph 20 of the Complaint, Defendants state that said paragraph asserts conclusions of law, to which no response is required; to the extent that such allegations require a response, Defendants admit that this Court has jurisdiction over Plaintiff's ERISA claims.

21. Answering Paragraph 21 of the Complaint, Defendants state that said paragraph asserts conclusions of law, to which no response is required; to the extent that such allegations require a response, Defendants admit that venue is proper in this district; admit that some administrative functions of the Plan occur or have occurred in this district and that at least one defendant may be found in this district; and, except as admitted, deny each and every allegation in said paragraph.

22. Answering Paragraph 22 of the Complaint, Defendants state that said paragraph asserts conclusions of law, to which no response is required; to the extent that such allegations require a response, Defendants admit that this Court has specific personal jurisdiction over Defendants.

## **FACTUAL ALLEGATIONS**

### **The Pioneer Defendants Caused the Plan Participants to Pay Excessive Fees by Failing to Offer Available Lower Cost Share Classes as Plan Investment Options**

23. Answering Paragraph 23 of the Complaint, Defendants state that said paragraph asserts Plaintiff's legal position, to which no response is required; to the extent that such allegations require a response, Defendants admit that the Committee and Individual Defendants, while members of the Committee, exercised discretionary authority over the management and administration of the Plan, including investment options made available to Plan participants.

24. Answering Paragraph 24 of the Complaint, Defendants state that said paragraph asserts Plaintiff's legal position, to which no response is required; to the extent that such allegations require a response, Defendants deny each and every allegation in said paragraph.

25. Answering Paragraph 25 of the Complaint, Defendants admit that mutual funds may offer more than one "class" of their shares to investors, that each class represents a similar

interest in the mutual fund's portfolio, and that different classes charge different fees and expenses, but, except as admitted, Defendants deny each and every allegation in said paragraph.

26. Answering Paragraph 26 of the Complaint, Defendants state that the paragraph contains a generalization of the concept set forth in Paragraph 25, and admit that an investor will realize a greater return on his or her investment as the annual expense ratio decreases if all other factors remain constant, but, except as admitted, Defendants deny each and every allegation in said paragraph.

27. Answering Paragraph 27 of the Complaint, Defendants admit that they selected Vanguard to serve as the Plan recordkeeper and investment platform; as to the paragraph's other allegations, Defendants state that Plaintiff appears to be referring to a specific document and that such document speaks for itself.

28. Answering Paragraph 28 of the Complaint, Defendants admit that the Plan offered a number of Vanguard proprietary mutual funds as investment options; state that Plaintiff appears to be referring to a specific document and that such document speaks for itself; and, except as admitted, deny each and every allegation in said paragraph and specifically deny that Vanguard mutual funds only offer two share classes and that the Institutional share class is the same as the Admiral share class.

29. Answering Paragraph 29 of the Complaint, Defendants deny that the Institutional share class is the same as the Admiral share class, and, on that basis, deny each and every allegation in said paragraph.

30. Answering Paragraph 30 of the Complaint, Defendants state that said paragraph asserts Plaintiff's legal position, to which no response is required; to the extent that such allegations require a response, Defendants admit that the Plan offered certain investment options with the Vanguard Investor share class; and, except as admitted, deny each and every allegation in said paragraph.

31. Answering Paragraph 31 of the Complaint, Defendants state that they lack information or belief sufficient to answer the allegations in said paragraph, and that Plaintiff

appears to be referring to specific, unidentified documents and that such documents speak for themselves; Defendants, however, specifically deny that the percentage difference (rounded down) between the fee amounts alleged for the Vanguard Windsor II Fund is 36%, and for the Vanguard Inflation-Protected Securities Fund is 285%.

32. Answering Paragraph 32 of the Complaint, Defendants state that said paragraph asserts Plaintiff's legal position, to which no response is required; to the extent that such allegations require a response, Defendants specifically deny that participants paid any excess fees, and state that they lack information or belief sufficient to answer the remaining allegations in said paragraph, and, on that basis, deny such allegations.

33. Answering Paragraph 33 of the Complaint, Defendants state that said paragraph asserts Plaintiff's legal position, to which no response is required; to the extent that such allegations require a response, Defendants deny each and every allegation in said paragraph, and specifically deny that they selected "high-priced" share classes and that "lower-cost" share classes are "identical."

34. Answering Paragraph 34 of the Complaint, Defendants admit that the Plan notified participants of share class changes in May 2014 and state that Plaintiff appears to be referring to a specific document and that such document speaks for itself.

35. Answering Paragraph 35 of the Complaint, Defendants state that Plaintiff purports to be referring to a specific document and that such document speaks for itself.

36. Answering Paragraph 36 of the Complaint, Defendants state that Plaintiff appears to be referring to a specific document and that such document speaks for itself; Defendants, however, specifically deny that the savings per \$1,000 invested alleged in said paragraph is the same for the Vanguard Inflation-Protected Securities Fund and Vanguard Total Bond Market Index Fund, which are alleged to have a 0.13% change in the expense ratio, as is the savings for the Vanguard Extended Market Index Fund, which is alleged to have a 0.20% change in the expense ratio.



37. Answering Paragraph 37 of the Complaint, Defendants admit that the Plan notified participants of share class changes in May 2014, and that, following the change in share classes for the four Vanguard mutual funds listed in Paragraph 36, the Plan continued to offer to Plan participants other Vanguard mutual funds with an Investor share class. Except as so admitted, Defendants deny the allegations in Paragraph 37.

38. Answering Paragraph 38 of the Complaint, Defendants state that said paragraph asserts Plaintiff's legal position and conclusions of law, to which no response is required; to the extent that such allegations require a response, Defendants deny each and every allegation in said paragraph, and specifically deny that they had no competent annual review process in place or that they failed to monitor Plan investment choices.

39. Answering Paragraph 39 of the Complaint, Defendants state that said paragraph asserts Plaintiff's legal position and conclusions of law, to which no response is required; to the extent that such allegations require a response, Defendants deny each and every allegation in said paragraph.

**The Pioneer Defendants Caused the Plan Participants to Pay Excessive Fees by Failing to Offer Lower-Cost Collective Trust Retirement Funds.**

40. Answering Paragraph 40 of the Complaint, Defendants state that said paragraph asserts Plaintiff's legal position, to which no response is required; to the extent that such allegations require a response, Defendants admit that collective trusts are an investment vehicle offered in some 401(k) plans; and, except as admitted, deny each and every allegation in said paragraph.

41. Answering Paragraph 41 of the Complaint, Defendants state that said paragraph asserts Plaintiff's legal position, to which no response is required; to the extent that such allegations require a response, Defendants admit that Vanguard offers certain collective trust funds, and state that Plaintiff appears to be referring to specific documents and that such documents speak for themselves. Except as admitted, Defendants deny each and every allegation in Paragraph 41.

42. Answering Paragraph 42 of the Complaint, Defendants admit that Vanguard offers Target Retirement collective trusts available to client plans that invest assets above a minimum threshold, but deny that the Plan met the minimum asset thresholds for Vanguard Target Retirement collective trusts that would have offered overall lower costs to the Plan. Defendants further state that Plaintiff appears to be referring to specific, unidentified documents and that such documents speak for themselves.

43. Answering Paragraph 43 of the Complaint, Defendants admit that ten of the twelve Vanguard collective trust funds identified in Paragraph 42 had an inception date of June 2007 and that the Plan did not offer Vanguard collective trust funds to Plan participants; and, except as admitted, deny each and every allegation in said paragraph.

44. Answering Paragraph 44 of the Complaint, Defendants state that said paragraph asserts Plaintiff's legal position, to which no response is required; to the extent that such allegations require a response, Defendants deny each and every allegation in said paragraph.

45. Answering Paragraph 45 of the Complaint, Defendants state that said paragraph asserts Plaintiff's legal position and conclusions of law, to which no response is required; to the extent that such allegations require a response, Defendants deny each and every allegation in said paragraph, and specifically deny that they had no competent annual review process in place or that they failed to monitor Plan investment options.

**The Pioneer Defendants Caused the Plan to Pay Excessive Recordkeeping Fees.**

46. Answering Paragraph 46 of the Complaint, Defendants state that said paragraph asserts Plaintiff's legal position, to which no response is required; to the extent that such allegations require a response, Defendants state that Plaintiff appears to be referring to ERISA §§ 3, 406, 29 U.S.C. §§ 1002, 1106, and that the statute speaks for itself.

47. Answering Paragraph 47 of the Complaint, Defendants state that said paragraph asserts Plaintiff's legal position, to which no response is required; to the extent that such allegations require a response, Defendants state that Plaintiff appears to be referring to ERISA § 408, 29 U.S.C. § 1108, and that the statute speaks for itself.

48. Answering Paragraph 48 of the Complaint, Defendants state that said paragraph asserts Plaintiff's legal position, to which no response is required; to the extent that such allegations require a response, Defendants admit that recordkeeping is a necessary service for every defined contribution plan; and, except as admitted, deny each and every allegation in said paragraph.

49. Answering Paragraph 49 of the Complaint, Defendants state that said paragraph asserts Plaintiff's legal position, to which no response is required; to the extent that such allegations require a response, Defendants state that they lack information or belief sufficient to answer the allegations in said paragraph, and, on that basis, deny each and every allegation in said paragraph.

50. Answering Paragraph 50 of the Complaint, Defendants state that they lack information or belief sufficient to answer the allegations in said paragraph, and, on that basis, deny each and every allegation in said paragraph.

51. Answering Paragraph 51 of the Complaint, Defendants admit that there are multiple recordkeepers in the 401(k) marketplace; and, except as admitted, deny each and every allegation in said paragraph.

52. Answering Paragraph 52 of the Complaint, Defendants deny each and every allegation in said paragraph.

53. Answering Paragraph 53 of the Complaint, Defendants admit that the Committee contracted with Vanguard to provide recordkeeping services to the Plan and that, during the Relevant Period, Vanguard received compensation in multiple forms.

54. Answering Paragraph 54 of the Complaint, Defendants state that Plaintiff appears to be referring to specific documents and that such documents speak for themselves.

55. Answering Paragraph 55 of the Complaint, Defendants state that said paragraph asserts Plaintiff's legal position, to which no response is required; to the extent that such allegations require a response, Defendants deny that there was no reasonable basis for Vanguard's increased fees, and state that Plaintiff appears to be referring to specific documents

and that such documents speak for themselves.

56. Answering Paragraph 56 of the Complaint, Defendants admit that Vanguard received indirect compensation through revenue sharing from certain mutual funds offered to Plan participants during the relevant period, but, except as admitted, deny each and every allegation in said paragraph.

57. Answering Paragraph 57 of the Complaint, Defendants admit each and every allegation in said paragraph.

58. Answering Paragraph 58 of the Complaint, Defendants state that said paragraph asserts Plaintiff's legal position and conclusions of law, to which no response is required; to the extent that such allegations require a response, Defendants deny each and every allegation in said paragraph.

59. Answering Paragraph 59 of the Complaint, Defendants state that said paragraph asserts Plaintiff's legal position and conclusions of law, to which no response is required; to the extent that such allegations require a response, Defendants deny each and every allegation in said paragraph.

60. Answering Paragraph 60 of the Complaint, Defendants state that said paragraph asserts Plaintiff's legal position and conclusions of law, to which no response is required; to the extent that such allegations require a response, Defendants state that Plaintiff appears to be referring to specific documents and that such documents speak for themselves; and Defendants deny each and every allegation in said paragraph.

61. Answering Paragraph 61 of the Complaint, Defendants state that said paragraph asserts Plaintiff's legal position and conclusions of law, to which no response is required; to the extent that such allegations require a response, Defendants deny each and every allegation in said paragraph.

62. Answering Paragraph 62 of the Complaint, Defendants state that said paragraph asserts Plaintiff's legal position and conclusions of law, to which no response is required; to the extent that such allegations require a response, Defendants admit that, consistent with their

fiduciary duties, plan fiduciaries monitor recordkeeping and other administrative costs paid by the Plan; and, except as admitted, deny each and every allegation in said paragraph.

63. Answering Paragraph 63 of the Complaint, Defendants state that said paragraph asserts Plaintiff's legal position and conclusions of law, to which no response is required; to the extent that such allegations require a response, Defendants deny each and every allegation in said paragraph.

64. Answering Paragraph 64 of the Complaint, Defendants state that said paragraph asserts Plaintiff's legal position, to which no response is required; to the extent that such allegations require a response, Defendants deny each and every allegation in said paragraph.

65. Answering Paragraph 65 of the Complaint, Defendants state that said paragraph asserts Plaintiff's legal position, to which no response is required; to the extent that such allegations require a response, Defendants deny each and every allegation in said paragraph, and specifically deny that they had no competent annual review process in place or that they failed to monitor Plan fees and expenses.

66. Answering Paragraph 66 of the Complaint, Defendants state that said paragraph asserts Plaintiff's legal position and conclusions of law, to which no response is required; to the extent that such allegations require a response, Defendants deny each and every allegation in said paragraph.

67. Answering Paragraph 67 of the Complaint, Defendants state that said paragraph asserts Plaintiff's legal position and conclusions of law, to which no response is required; to the extent that such allegations require a response, Defendants deny each and every allegation in said paragraph.

**The Pioneer Defendants Imprudently Retained the Vanguard Money Market Fund**

68. Answering Paragraph 68 of the Complaint, Defendants state that said paragraph asserts Plaintiff's legal position, to which no response is required; to the extent such allegations require a response, Defendants admit that stable value funds are portfolios of assets that are managed with the objective of preserving principal and providing a stable credit rate of interest

and are included in the lineups of some defined contribution plans; and, except as admitted, deny each and every allegation in said paragraph. Further, Plaintiff appears to be referring to a specific court opinion, which opinion speaks for itself.

69. Answering Paragraph 69 of the Complaint, Defendants admit that some stable value funds include a wrap contract issued by a bank, insurance company or other financial institution; but, except as admitted, deny each and every allegation in said paragraph.

70. Answering Paragraph 70 of the Complaint, Defendants admit that Vanguard offers the Vanguard Retirement Trust stable value fund, that the fund offers I, III, IV, and V share classes, and that the share classes have different expense ratios; but, except as admitted, deny each and every allegation in said paragraph.

71. Answering Paragraph 71 of the Complaint, Defendants admit that effective June 2, 2014, the Plan offered the Vanguard Retirement Savings Trust III to replace the Vanguard Retirement Savings Trust V; and as to Plaintiff's remaining allegations, Defendants state that the expense ratios and average returns of the Vanguard Retirement Savings Trust funds vary over time and by fund, that Plaintiff appears to be referring to specific, unidentified documents and that such documents speak for themselves.

72. Answering Paragraph 72 of the Complaint, Defendants admit that the Plan offered to participants a Vanguard money market fund as an investment option; and, except as admitted, deny each and every allegation in said paragraph and state that Plaintiff appears to be referring to specific, unidentified documents and that such documents speak for themselves.

73. Answering Paragraph 73 of the Complaint, Defendants state that said paragraph asserts Plaintiff's legal position and conclusions of law, to which no response is required, and state that Plaintiff appears to be referring to specific, unidentified documents and that such documents speak for themselves; to the extent that such allegations require a response, Defendants deny each and every allegation in said paragraph.

74. Answering Paragraph 74 of the Complaint, Defendants state that said paragraph asserts Plaintiff's legal position and conclusions of law, to which no response is required; to the

extent that such allegations require a response, Defendants deny each and every allegation in said paragraph.

75. Answering Paragraph 75 of the Complaint, Defendants state that Plaintiff appears to be referring to specific, unidentified documents and that such documents speak for themselves. Defendants state that the annual Form 5500s filed with the Department of Labor state the Plan's balances as of the end of each year.

76. Answering Paragraph 76 of the Complaint, Defendants state that said paragraph asserts Plaintiff's legal position, to which no response is required; to the extent that such allegations require a response, Defendants deny each and every allegation in said paragraph.

77. Answering Paragraph 77 of the Complaint, Defendants admit that the Plan no longer offered to participants a Vanguard money market fund as an investment option after 2016 and did not make another money market fund available to participants, but except as admitted, deny each and every allegation in said paragraph.

78. Answering Paragraph 78 of the Complaint, Defendants state that said paragraph asserts Plaintiff's legal position and conclusions of law, to which no response is required; to the extent that such allegations require a response, Defendants deny each and every allegation in said paragraph and state that Plaintiff appears to be referring to a specific court opinion and that such opinion speaks for itself.

79. Answering Paragraph 79 of the Complaint, Defendants state that said paragraph asserts Plaintiff's legal position, to which no response is required; to the extent that such allegations require a response, Defendants deny each and every allegation in said paragraph, and specifically deny that they had no competent annual review process in place or that they failed to monitor fund performance.

80. Answering Paragraph 80 of the Complaint, Defendants state that said paragraph asserts Plaintiff's legal position, to which no response is required; to the extent that such allegations require a response, Defendants deny each and every allegation in said paragraph.

### **ERISA's Fiduciary Standards**

81. Answering Paragraph 81 of the Complaint, Defendants state that said paragraph asserts Plaintiff's legal position and conclusions of law, to which no response is required; to the extent that such allegations require a response, Defendants state that Plaintiff appears to be referring to ERISA § 404(a), 29 U.S.C. § 1104(a), and that the statute speaks for itself.

82. Answering Paragraph 82 of the Complaint, Defendants state that said paragraph asserts Plaintiff's legal position and conclusions of law, to which no response is required; to the extent that such allegations require a response, Defendants admit that fiduciaries governed by ERISA owe duties of prudence and loyalty to participants in a covered plan, as defined by ERISA § 404(a), 29 U.S.C. § 1104(a); and, except as admitted, deny each and every allegation in said paragraph.

83. Answering Paragraph 83 of the Complaint, Defendants state that said paragraph asserts Plaintiff's legal position and conclusions of law, to which no response is required; to the extent that such allegations require a response, Defendants state that Plaintiff appears to be referring to ERISA § 405(a), 29 U.S.C. § 1105(a), and that the statute speaks for itself.

84. Answering Paragraph 84 of the Complaint, Defendants state that said paragraph asserts Plaintiff's legal position and conclusions of law, to which no response is required; to the extent that such allegations require a response, Defendants state that Plaintiff appears to be referring to ERISA §§ 409(a) and 502(a)(2), 29 U.S.C. §§ 1109(a), 1132(a)(2), and that the statute speaks for itself.

### **CLASS ACTION ALLEGATIONS**

85. Answering Paragraph 85 of the Complaint, Defendants state that said paragraph asserts Plaintiff's legal position and conclusions of law, to which no response is required; to the extent that such allegations require a response, Defendants state that Plaintiff appears to be referring to ERISA § 502(a)(2), 29 U.S.C. § 1132(a)(2) and specific court opinions, and that the statute and such opinions speak for themselves.



86. Answering Paragraph 86 of the Complaint, Defendants state that said paragraph asserts Plaintiff's legal position, to which no response is required; to the extent that such allegations require a response, Defendants admit that Plaintiff purports to assert his claims on behalf of certain Plan participants and purports to exclude certain persons or entities from the classes he purports to represent, but denies that class certification is appropriate; and, except as admitted, deny each and every allegation in said paragraph.

87. Answering Paragraph 87 of the Complaint, Defendants state that said paragraph asserts Plaintiff's legal position and conclusions of law, to which no response is required; to the extent that such allegations require a response, Defendants admit that the Plan had 4,410 participants with a balance at the end of 2015. Except as so admitted, Defendants deny each and every allegation in said paragraph and specifically deny that class certification is appropriate.

88. Answering Paragraph 88 of the Complaint, Defendants state that said paragraph asserts Plaintiff's legal position and conclusions of law, to which no response is required; to the extent that such allegations require a response, Defendants deny each and every allegation in said paragraph and specifically deny that class certification if appropriate.

89. Answering Paragraph 89 of the Complaint, Defendants state that said paragraph asserts Plaintiff's legal position and conclusions of law, to which no response is required; to the extent that such allegations require a response, Defendants state that they are without sufficient knowledge or information to form a belief as to the allegations in said paragraph, and, on that basis, deny each and every allegation contained therein.

#### **FIRST CLAIM FOR RELIEF**

##### **Breach of Duties of Loyalty and Prudence—Unreasonable Investment Management Fees Against the Committee and the Individual Defendants**

90. Answering Paragraph 90 of the Complaint, Defendants state that said paragraph asserts Plaintiff's legal position, to which no response is required; to the extent that such allegations require a response, Defendants admit that Plaintiff purports to reallege each of the allegations set forth in the foregoing paragraphs as if fully set forth in this paragraph and Defendants restate and incorporate by reference all responses to the allegations in the previous

paragraphs of the Complaint.

91. Answering Paragraph 91 of the Complaint, Defendants state that said paragraph asserts Plaintiff's legal position and conclusions of law, to which no response is required; to the extent that such allegations require a response, Defendants admit that the Committee and the Individual Defendants have the duties assigned to them under the Plan's governing instruments and refer to those instruments for their contents; and, except as admitted, deny each and every allegation in said paragraph.

92. Answering Paragraph 92 of the Complaint, Defendants state that said paragraph asserts Plaintiff's legal position, to which no response is required; to the extent that such allegations require a response, Defendants deny each and every allegation in said paragraph.

93. Answering Paragraph 93 of the Complaint, Defendants state that said paragraph asserts Plaintiff's legal position and conclusions of law, to which no response is required; to the extent that such allegations require a response, Defendants deny each and every allegation in said paragraph.

94. Answering Paragraph 94 of the Complaint, Defendants state that said paragraph asserts Plaintiff's legal position, to which no response is required; to the extent that such allegations require a response, Defendants deny each and every allegation in said paragraph, and specifically deny that they failed to review and evaluate investment options, or that they failed to review whether appropriate mutual fund share classes were being offered or whether less expensive alternative were available.

95. Answering Paragraph 95 of the Complaint, Defendants state that said paragraph asserts Plaintiff's legal position and conclusions of law, to which no response is required; to the extent that such allegations require a response, Defendants deny each and every allegation in said paragraph.

96. Answering Paragraph 96 of the Complaint, Defendants state that said paragraph asserts Plaintiff's legal position and conclusions of law, to which no response is required; to the extent that such allegations require a response, Defendants deny each and every allegation in said

paragraph and deny Plaintiff's entitlement to any of the requested relief.

97. Answering Paragraph 97 of the Complaint, Defendants state that said paragraph asserts Plaintiff's legal position and conclusions of law, to which no response is required; to the extent that such allegations require a response, Defendants deny each and every allegation in said paragraph and deny Plaintiff's entitlement to any of the requested relief.

### **SECOND CLAIM FOR RELIEF**

#### **Breach of Duties of Loyalty and Prudence—Unreasonable Administrative Fees Against the Committee and the Individual Defendants**

98. Answering Paragraph 98 of the Complaint, Defendants state that said paragraph asserts Plaintiff's legal position, to which no response is required; to the extent that such allegations require a response, Defendants admit that Plaintiff purports to reallege each of the allegations set forth in the foregoing paragraphs as if fully set forth in this paragraph and Defendants restate and incorporate by reference all responses to the allegations in the previous paragraphs of the Complaint.

99. Answering Paragraph 99 of the Complaint, Defendants state that said paragraph asserts Plaintiff's legal position and conclusions of law, to which no response is required; to the extent that such allegations require a response, Defendants admit that the Committee and the Individual Defendants have the duties assigned to them under the Plan's governing instruments and refer to those instruments for their contents; and, except as admitted, deny each and every allegation in said paragraph.

100. Answering Paragraph 100 of the Complaint, Defendants state that said paragraph asserts Plaintiff's legal position and conclusions of law, to which no response is required; to the extent that such allegations require a response, Defendants state that Plaintiff appears to rely on specific court opinions, and that such opinions speak for themselves.

101. Answering Paragraph 101 of the Complaint, Defendants state that said paragraph asserts Plaintiff's legal position and conclusions of law, to which no response is required; to the extent that such allegations require a response, Defendants deny each and every allegation in said paragraph.

102. Answering Paragraph 102 of the Complaint, Defendants state that said paragraph asserts Plaintiff's legal position, to which no response is required; to the extent that such allegations require a response, Defendants deny each and every allegation in said paragraph, and specifically deny that they failed to review and monitor the expenses of administering the Plan, that they failed to solicit competing bids, or that they failed to evaluate whether the fees were reasonable.

103. Answering Paragraph 103 of the Complaint, Defendants state that said paragraph asserts Plaintiff's legal position and conclusions of law, to which no response is required; to the extent that such allegations require a response, Defendants deny each and every allegation in said paragraph and deny Plaintiff's entitlement to any of the requested relief.

104. Answering Paragraph 104 of the Complaint, Defendants state that said paragraph asserts Plaintiff's legal position and conclusions of law, to which no response is required; to the extent that such allegations require a response, Defendants deny each and every allegation in said paragraph and deny Plaintiff's entitlement to any of the requested relief.

### **THIRD CLAIM FOR RELIEF**

#### **Breach of Duties of Loyalty and Prudence—Failure to Remove the Money Market Fund Against the Committee and the Individual Defendants**

105. Answering Paragraph 105 of the Complaint, Defendants state that said paragraph asserts Plaintiff's legal position, to which no response is required; to the extent that such allegations require a response, Defendants admit that Plaintiff purports to reallege each of the allegations set forth in the foregoing paragraphs as if fully set forth in this paragraph and Defendants restate and incorporate by reference all responses to the allegations in the previous paragraphs of the Complaint.

106. Answering Paragraph 106 of the Complaint, Defendants state that said paragraph asserts Plaintiff's legal position and conclusions of law, to which no response is required; to the extent that such allegations require a response, Defendants admit that the Committee and the Individual Defendants have the duties assigned to them under the Plan's governing instruments and refer to those instruments for their contents; and, except as admitted, deny each and every

allegation in said paragraph.

107. Answering Paragraph 107 of the Complaint, Defendants state that said paragraph asserts Plaintiff's legal position, to which no response is required; to the extent that such allegations require a response, Defendants admit that the Plan offered participants the option of investing in Vanguard money market funds; and, except as admitted, deny each and every allegation in said paragraph.

108. Answering Paragraph 108 of the Complaint, Defendants state that said paragraph asserts Plaintiff's legal position, to which no response is required; to the extent that such allegations require a response, Defendants deny each and every allegation in said paragraph.

109. Answering Paragraph 109 of the Complaint, Defendants state that said paragraph asserts Plaintiff's legal position, to which no response is required; to the extent that such allegations require a response, Defendants deny each and every allegation in said paragraph.

110. Answering Paragraph 110 of the Complaint, Defendants state that said paragraph asserts Plaintiff's legal position, to which no response is required; to the extent that such allegations require a response, Defendants deny each and every allegation in said paragraph.

111. Answering Paragraph 111 of the Complaint, Defendants state that said paragraph asserts Plaintiff's legal position and conclusions of law, to which no response is required; to the extent that such allegations require a response, Defendants deny each and every allegation in said paragraph and deny Plaintiff's entitlement to any of the requested relief.

112. Answering Paragraph 112 of the Complaint, Defendants state that said paragraph asserts Plaintiff's legal position and conclusions of law, to which no response is required; to the extent that such allegations require a response, Defendants deny each and every allegation in said paragraph and deny Plaintiff's entitlement to any of the requested relief.

**FOURTH CLAIM FOR RELIEF**  
**Failure to Monitor Fiduciaries Against Pioneer USA**

113. Answering Paragraph 113 of the Complaint, Defendants state that said paragraph asserts Plaintiff's legal position, to which no response is required; to the extent that such

allegations require a response, Defendants admit that Plaintiff purports to reallege each of the allegations set forth in the foregoing paragraphs as if fully set forth in this paragraph and Defendants restate and incorporate by reference all responses to the allegations in the previous paragraphs of the Complaint.

114. Answering Paragraph 114 of the Complaint, Defendants state that said paragraph asserts Plaintiff's legal position, to which no response is required; to the extent that such allegations require a response, Defendants admit that Pioneer is responsible for the appointment and removal of the Committee and its members to serve as Plan Administrator; and, except as admitted, deny each and every allegation in said paragraph.

115. Answering Paragraph 115 of the Complaint, Defendants state that said paragraph asserts Plaintiff's legal position and conclusions of law, to which no response is required; to the extent that such allegations require a response, Defendants deny each and every allegation in said paragraph.

116. Answering Paragraph 116 of the Complaint, Defendants state that said paragraph asserts Plaintiff's legal position and conclusions of law, to which no response is required; to the extent that such allegations require a response, Defendants deny each and every allegation in said paragraph.

117. Answering Paragraph 117 of the Complaint, Defendants state that said paragraph asserts Plaintiff's legal position and conclusions of law, to which no response is required; to the extent that such allegations require a response, Defendants deny each and every allegation in said paragraph.

118. Answering Paragraph 118 of the Complaint, Defendants state that said paragraph asserts Plaintiff's legal position and conclusions of law, to which no response is required; to the extent that such allegations require a response, Defendants deny each and every allegation in said paragraph.

119. Answering Paragraph 119 of the Complaint, Defendants state that said paragraph asserts Plaintiff's legal position and conclusions of law, to which no response is required; to the

extent that such allegations require a response, Defendants deny each and every allegation in said paragraph.

120. Answering Paragraph 120 of the Complaint, Defendants state that said paragraph asserts Plaintiff's legal position and conclusions of law, to which no response is required; to the extent that such allegations require a response, Defendants deny each and every allegation in said paragraph and deny Plaintiff's entitlement to any of the requested relief.

### **PRAYER FOR RELIEF**

Answering Plaintiff's Prayer for Relief, Defendants state that said paragraph asserts Plaintiff's legal position, to which no response is required; to the extent that such allegations require a response, Defendants admit that Plaintiff purports to assert claims under ERISA and to seek the relief described; and, except as admitted, deny each and every allegation in said paragraph and deny Plaintiff's entitlement to any of the requested relief.

### **AFFIRMATIVE DEFENSES**

Defendants assert the following affirmative defenses. By alleging these affirmative defenses, Defendants do not agree or concede that they have the burden of proof on any of the issues raised in these defenses or that any particular issue or subject matter herein is relevant to Plaintiff's allegations.

#### **First Affirmative Defense**

##### **(Failure to State a Claim)**

Plaintiff fails to state a claim or cause of action upon which relief can be granted.

#### **Second Affirmative Defense**

##### **(Standing)**

Plaintiff lacks constitutional and/or statutory standing to bring the claims alleged.

**Third Affirmative Defense**

**(Standing–No Injury)**

Plaintiff lacks constitutional and/or statutory standing to bring the claims alleged because he has suffered no injury related to the purported breaches of fiduciary duties.

**Fourth Affirmative Defense**

**(Statutes of Limitations and Repose)**

Plaintiff's claims are barred in whole or in part by the applicable statute of limitations and statute of repose, including but not limited to ERISA § 413, 29 U.S.C. § 1113.

**Fifth Affirmative Defense**

**(Failure to Allege Fraud with Particularity)**

Insofar as Plaintiff purports to allege claims of breach of fiduciary duty as a result of misrepresentations, the circumstances constituting the alleged fraud or mistake have not been alleged with the requisite particularity required by Federal Rule of Civil Procedure 9(b).

**Sixth Affirmative Defense**

**(Not Appropriate Relief under ERISA § 502(a)(2))**

The requested relief does not constitute appropriate relief under ERISA § 502(a)(2), 29 U.S.C. § 1132(a)(2).

**Seventh Affirmative Defense**

**(Prudent Action)**

Without conceding that any Defendant is a fiduciary with respect to the conduct complained of by Plaintiff, Plaintiff's claims are barred in whole or in part because Defendants' actions were both procedurally and substantively prudent and cannot give rise to fiduciary



liability under ERISA § 409(a), 29 U.S.C. § 1109(a).

**Eighth Affirmative Defense**

**(Laches)**

Plaintiff's claims are barred in whole or in part by the doctrine of laches.

**Ninth Affirmative Defense**

**(Independent Control)**

Plaintiff's claims, and those of the members of the putative classes, are barred in whole or in part to the extent that Plaintiff and the putative classes exercised independent control over their Plan accounts.

**Tenth Affirmative Defense**

**(Independent Control/ERISA § 404(c))**

Plaintiff's claims, and those of the members of the putative classes, are barred in whole or in part by application of ERISA § 404(c), 29 U.S.C. § 1104(c).

**Eleventh Affirmative Defense**

**(Causation)**

Plaintiff's claims are barred in whole or in part because any losses alleged by Plaintiff were not caused by any alleged breach of fiduciary duty by the Defendants.

**Twelfth Affirmative Defense**

**(Waiver)**

Plaintiff's claims are barred in whole or in part by the doctrine of waiver.

**Thirteenth Affirmative Defense**  
**(Estoppel)**

Plaintiff's claims are barred in whole or in part by the doctrine of estoppel.

**Fourteenth Affirmative Defense**  
**(Reasonable Fees)**

Plaintiff's claims, and those of the members of the putative classes, are barred, in whole or in part, because the challenged fees and expenses are not excessive or unreasonable.

**Fifteenth Affirmative Defense**  
**(No Fiduciary Status)**

Plaintiff's claims, and those of the members of the putative class, are barred, in whole or in part, because Defendants are not ERISA fiduciaries with respect to the conduct alleged in the Complaint.

**Sixteenth Affirmative Defense**  
**(Failure to Satisfy Rule 23)**

This action may not be maintained as a class action because Plaintiff cannot satisfy the prerequisites of Federal Rule of Civil Procedure 23.

**Seventeenth Affirmative Defense**  
**(Failure to Satisfy Rule 23)**

Plaintiff's claims may not be maintained as a class action because any alleged injury cannot be proven on a class-wide basis with common methods of proof.

**Eighteenth Affirmative Defense**

**(Failure to Satisfy Rule 23)**

Plaintiff's claims may not be maintained as a class action because damages cannot be proven on a class-wide basis.

**Nineteenth Affirmative Defense**

**(Failure to Satisfy Rule 23)**

Plaintiff's claims may not be maintained as a class action because Plaintiff does not adequately represent the interests of proposed class members.

**Twentieth Affirmative Defense**

**(Failure to Satisfy Rule 23)**

Plaintiff's claims may not be maintained as a class action because Plaintiff's claim is not typical of claims of the putative classes.

**Twenty-First Affirmative Defense**

**(Prohibited Transaction Exemptions)**

To the extent that Plaintiff has alleged that Defendants have committed any transactions prohibited by ERISA § 406, 29 U.S.C. § 1106, Plaintiff's claims are barred in whole or in part because ERISA § 408, 29 U.S.C. § 1108, and the Prohibited Transactions Exemptions promulgated by the Department of Labor pursuant thereto, exempt all such transactions.

**Reservation of Rights to Assert Additional Defenses**

Defendants reserve the right to assert, and hereby give notice that they intend to rely upon, any other defense that may become available or appear during discovery proceedings or otherwise in this case and hereby reserve the right to amend their Answer to assert any such defense.

Dated: September 14, 2017

Respectfully submitted,

By: /s/ Catalina J. Vergara  
Catalina J. Vergara

O'MELVENY & MYERS LLP  
400 South Hope Street  
Los Angeles, CA 90071-2899  
Telephone: (213) 430-6000  
Facsimile: (213) 430-6407  
Email: cvergara@omm.com

*Attorneys for Defendants*

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLORADO

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**CERTIFICATE OF SERVICE**

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I hereby certify that on September 14, 2017, I electronically filed the foregoing with the Clerk of Court using the CM/ECF system, which will send notification of such filing to the following e-mail addresses:

Franklin David Azar, azarf@fdazar.com

Hugh Zachary Balkin, balkinz@fdazar.com

Keith Richard Scranton, scrantonk@fdazar.com

Paul R. Wood, woodp@fdazar.com

All parties have consented to electronic service in this matter.

By: /s/ Catalina J. Vergara  
Catalina J. Vergara

O'MELVENY & MYERS LLP  
400 South Hope Street  
Los Angeles, CA 90071-2899  
Telephone: (213) 430-6000  
Facsimile: (213) 430-6407  
Email: cvergara@omm.com

*Attorneys for Defendants*