IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS

BRIAN BABINSKI, individually and on behalf of all others similarly situated, Plaintiff, v. SIEMENS ENERGY, INC., THE BOARD OF DIRECTORS OF SIEMENS ENERGY, INC., THE SIEMENS ENERGY, INC. ADMINISTRATIVE COMMITTEE, THE SIEMENS ENERGY, INC. INVESTMENT COMMITTEE and JOHN DOES 1-40, Defendants.	)	**CIVIL ACTION NO.**:

COMPLAINT

Plaintiff, Brian Babinski ("Plaintiff"), by and through his attorneys, on behalf of the Siemens Energy, Inc. Savings Plan (the "Plan"),[1] himself and all others similarly situated, states and alleges as follows:

I. INTRODUCTION

1. This is a class action brought pursuant to §§ 409 and 502 of the Employee Retirement Income Security Act of 1974 ("ERISA"), 29 U.S.C. §§ 1109 and 1132, against the Plan's fiduciaries, Siemens Energy, Inc. ("Siemens"), the Board of Directors of Siemens Energy, Inc. (the "Board"), the Siemens Energy, Inc. Administrative Committee ("Administrative

[1] The Plan is a legal entity that can sue and be sued. ERISA § 502(d)(1), 29 U.S.C. § 1132(d)(1). However, in a breach of fiduciary duty action such as this, the Plan is not a party. Rather, pursuant to ERISA § 409, and the law interpreting it, the relief requested in this action is for the benefit of the Plan and its participants.

Committee") and the Siemens Energy, Inc. Investment Committee (the "Investment Committee") (collectively, Siemens, the Board, the Administrative Committee and the Investment Committee are referred to as the "Defendants") for breaches of their fiduciary duties.

2. The Plan is a defined contribution retirement plan, established pursuant to 29 U.S.C. § 1002(2)(A) and § 1002(34) of ERISA, that enables eligible participants to make tax-deferred contributions from their salaries to the Plan. *See* Siemens Energy, Inc. Savings Plan Summary Plan Description, as of January 1, 2024 ("SPD"), at 34, ("This Plan is a defined contribution plan. This means that Company contributions are made in specific (defined) amounts, but the benefit you receive at retirement or termination depends on a number of variable factors."); *see also* Independent Auditor's Report ("Auditor's Report"), attached to 2023 Form 5500 for the Plan, at 7 ("The Plan is a defined contribution plan sponsored by Siemens Energy, Inc. (the Company or the Plan Sponsor). The Plan is subject to the provisions of the Employee Retirement Income Security Act of 1974 (ERISA), as amended.").

3. To safeguard plan participants and beneficiaries, ERISA imposes strict fiduciary duties of loyalty and prudence upon employers and other plan fiduciaries. Fiduciaries must act "solely in the interest of the participants and beneficiaries," 29 U.S.C. § 1104(a)(1)(A), with the "care, skill, prudence, and diligence" that would be expected in managing a plan of similar scope. 29 U.S.C. § 1104(a)(1)(B). These twin fiduciary duties are "the highest known to the law." *Ma Kujanek v. Houston Poly Bag I Ltd.*, 658 F.3d 483 at 489 (5th Circuit 2011), *Martin on Behalf of Cal–Tex Protective Coatings v. Frail*, 2011 WL 13175089 at *14 (W.D. Tex. 2011), *Main v. American Airlines Inc.*, 248 F.Supp.3d 786 at 792 (N.D. Tex. 2017).

4. The Department of Labor ("DOL") has also explicitly stated that employers are held to a "high standard of care and diligence" and must, among other duties, both "establish a

prudent process for selecting investment options and service providers."[2]; *see also Tibble v. Edison Int'l*, 135 S. Ct. 1823, 1823 (2015) ("*Tibble I*") (reaffirming the ongoing fiduciary duty to monitor a plan's investment options).

5. Under 29 U.S.C. § 1104(a)(1), a plan fiduciary must give substantial consideration to the cost of investment options. "Wasting beneficiaries' money is imprudent. In devising and implementing strategies for the investment and management of trust assets, trustees are obligated to minimize costs." Uniform Prudent Investor Act (the "UPIA"), § 7.

6. "The Restatement … instructs that 'cost-conscious management is fundamental to prudence in the investment function,' and should be applied 'not only in making investments but also in monitoring and reviewing investments.'" *Tibble v. Edison Int'l*, 843 F.3d 1187, 1197-98 (9th Cir. 2016) (*en banc*) (quoting Restatement (Third) of Trusts, § 90, cmt. b) ("*Tibble II*").

7. Because cost-conscious management is fundamental to prudence, the concept applies not only to investments, but to a fiduciary's obligation to continuously monitor all fees incurred by plan participants, including a plan's recordkeeping and administration fees ("RKA").

8. Additional fees of only 0.18% or 0.4% can have a large effect on a participant's investment results over time because "[b]eneficiaries subject to higher fees … lose not only money spent on higher fees, but also lost investment opportunity; that is, the money that the portion of their investment spent on unnecessary fees would have earned over time." *Tibble II*, 843 F.3d at 1198 ("It is beyond dispute that the higher the fees charged to a beneficiary, the more the beneficiary's investment shrinks.").

[2] *See* U.S. Dep't of Labor, *A Look at 401(k) Plan Fees*, (Sept. 2019), at 2, available at https://www.dol.gov/sites/dolgov/files/EBSA/about-ebsa/our-activities/resource-center/publications/a-look-at-401k-plan-fees.pdf (last visited July 24, 2024).

9. The Supreme Court reiterated that interpreting "ERISA's duty of prudence in light of the common law of trusts" a fiduciary "has a continuing duty of some kind to monitor investments and remove imprudent ones" and a plaintiff may allege that a fiduciary breached the duty of prudence by failing to properly monitor investments and remove imprudent ones. *Hughes v. Northwestern Univ.*, 142 S. Ct. 737, 741 (2022).

10. Plaintiff alleges that during the putative Class Period, Defendants, as the "fiduciaries" of the Plan, as that term is defined under ERISA § 3(21)(A), 29 U.S.C. § 1002(21)(A), breached the duties owed to the Plan, to Plaintiff, and to the other participants of the Plan by, *inter alia*, failing to objectively and adequately review the Plan's investment portfolio, initially and on an ongoing basis, with due care to ensure that each investment option was prudent, in terms of performance.

11. At all times during the Class Period, the Plan had over three billion dollars in assets under management. At the start of the Class Period in 2020, the Plan had $3,348,215,099 in assets under management. *See* 2020 Form 5500s for the Plan, Schedule H at 2.

12. By 2023, the Plan had $3,529,024,968 in assets under management. *See* 2023 Form 5500s for the Plan, Schedule H at 2.

13. The Plan's assets under management qualifies it as a jumbo plan in the defined contribution plan marketplace, and among the largest plans in the United States. In 2021, only 0.2 percent (1,011 of 641,747) of plans in the country had more than $1 billion in assets under management.[3] In addition, this was true at the start of the Class Period in 2019 where only 0.1 percent (776 of 603,217) of 401(k) plans in the country were as large as the Plan" to "In addition,

[3] *See* The BrightScope/ICI Defined Contribution Plan Profile: A Close Look at Plans, 2021 at Ex. 1.2, p. 7., available at https://www.ici.org/system/files/2024-08/24-ppr-dcplan-profile-401k.pdf.

this was true at the start of the Class Period in 2020 where only 0.1 percent (892 of 616,050) of 401(k) plans in the country were as large as the Plan." Also, the cite for the footnote should be "*See* The BrightScope/ICI Defined Contribution Plan Profile: A Close Look at Plans, 2020 at Ex. 1.2, p. 7., available at https://www.ici.org/system/files/2023-09/23-rpt-dcplan-profile-401k.pdf.[4]

14. As a jumbo plan, the Plan had substantial bargaining power regarding the fees and expenses that were charged against participants' investments.

15. The Plan is also large in terms of the number of its participants. At the beginning of the Class Period, the Plan had 13,844 participants. *See* Schedule H, attached to 2020 Form 5500 for the Plan, at 2. By 2023, the Plan had 14,552 participants. *See* Schedule H, attached to 2023 Form 5500 for the Plan, at 2.

16. For comparison, according to information derived from ERISApedia.com's database, a service that compiles all Form 5500s filed with the Dept. of Labor ("DOL") by retirement plans, in 2020, there were only 198 defined contribution plans (401k, 401a, and 403b) in the country with between 15,000 and 19,999 participants.

17. The marketplace for retirement plan services is established and competitive. Accordingly, as a jumbo plan, in addition to the large number of participants, the Plan had substantial bargaining power to obtain high-quality, low-cost RKA and managed account services. The Plan's fiduciaries, however, did not try to reduce the Plan's expenses to ensure they were prudent. Rather, the Plan's fiduciaries allowed unreasonable expenses to be charged to participants for RKA services and managed account services.

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[4] *See* The BrightScope/ICI Defined Contribution Plan Profile: A Close Look at 401(k) Plans, 2019 at Ex. 1.2, p. 7, available at https://www.ici.org/system/files/2022-09/22-ppr-dcplan-profile-401k.pdf.

18. Defendants caused the Plan to enter into an arrangement with Alight Financial Solutions, LLC ("Alight"), a party in interest, under which Alight received millions of dollars in exchange for recordkeeping services and managed account services rendered to the Plan. This arrangement with Alight is a prohibited transaction because it "amounts to a 'direct or indirect ... furnishing of services ... between the plan and a party in interest,' 29 U.S.C. § 1106(a)(1)(C)." *Braden v. Wal-Mart Stores, Inc.*, 588 F.3d 585, 601 (8th Cir. 2009).

19. With regard to the Plan's investments, Defendants breached their fiduciary duty of prudence by selecting and/or maintaining certain guaranteed investment contracts ("GICs") in the Plan with lower crediting rate when compared to available similar or identical investments with higher crediting rates. The crediting rate is the guaranteed rate of return for the investment fund.

20. Specifically, Defendants allowed substantial assets in the Plan to be invested in the Plan's Stable Value Fund ("Siemens SVF"), that "primarily consist of individual direct investments in synthetic guaranteed investment contracts." Auditor's Report, attached to the 2023 Form 5500 for the Plan, at 12. The Siemens SVF invested in synthetic GICs offered by Nationwide Life Insurance Company ("Nationwide"), Pacific Life ("PacLife"), Prudential Insurance Company of America ("Prudential"), State Street Bank and Trust ("State Street"); Transamerica Life Insurance Company ("TransAm"), and Voya Retirement Insurance and Annuity Company ("Voya"), (collectively, Nationwide, PacLife, Prudential, State Street, TransAm, and Voya are referred to as the "Insurance Companies"), that provided significantly lower rates of return than comparable stable value funds that Defendants could have made available to Plan participants.

21. A prudent fiduciary would not have included this underperforming investment option that also carried significantly more risk than other investment options that had similar goals, *i.e.,* preservation of investment assets.

22. The Insurance Companies benefited significantly from participants in the Plan investing in the Siemens SVF. A prudent fiduciary who adequately monitored the Plan's investments and placed the interests of participants in the Plan above all would have recognized that the Siemens SVF was benefiting the Insurance Companies at the expense of Plan participants.

23. Plaintiff also alleges that Defendants breached the duties they owed to the Plan, to Plaintiff, and to the other participants of the Plan by failing to defray[] reasonable expenses of administering the [Plan]. 29 U.S.C. § 1104(a)(A)(ii). Its failure stems from the use of Plan participant forfeited funds to reduce employer contributions to the Plan instead of using the funds to reduce or eliminate the amounts charged to Plan participants for Plan administrative costs. This action by the Defendants was a clear breach of the duties of prudence and loyalty to Plan participants and cost Plan participants millions of dollars.

24. During the putative Class Period, Defendants, as the "fiduciaries" of the Plan, as that term is defined under ERISA § 3(21)(A), 29 U.S.C. § 1002(21)(A), breached the duties owed to the Plan, to Plaintiff, and to the other participants of the Plan by, *inter alia*: (1) failing to objectively and adequately review the Plan's investment portfolio with due care to ensure that each investment option was prudent, in terms of cost and performance; (2) failing to control the Plan's RKA and managed account services costs; (3) engaging in prohibited transactions in violation of 29 U.S.C. § 1106 (a)(1)(C); and (4) failing to defray reasonable expenses of administering the Plan.

25. Defendants' mismanagement of the Plan, to the detriment of participants and beneficiaries, constitutes a breach of the fiduciary duties of prudence, in violation of 29 U.S.C. § 1104. Their actions were contrary to actions of a reasonable fiduciary and cost the Plan and its participants millions of dollars.

26. Based on this conduct, Plaintiff asserts claims against Defendants for breach of the fiduciary duty of prudence (Count I), breach of the fiduciary duty of loyalty (Count II), breach of ERISA's Anti-Inurement Provision (Count III), failure to monitor fiduciaries (Count IV) and violation of ERISA's prohibited transactions (Count V).

II. JURISDICTION AND VENUE

27. This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. § 1331 because it is a civil action arising under the laws of the United States, and pursuant to 29 U.S.C. § 1332(e)(1), which provides for federal jurisdiction of actions brought under Title I of ERISA, 29 U.S.C. § 1001, *et seq*.

28. This Court has personal jurisdiction over Defendants because they transact business in this District, reside in this District, and/or have significant contacts with this District, and because ERISA provides for nationwide service of process. Specifically, Siemens conducts business in Texas and has an office located at 405 Deerwood Glen Drive, Deer Park, Texas. *See* https://omtraining.siemens-energy.com/w/us/venues/2-siemens-energy-fsp-houston.

29. Venue is proper in this District pursuant to ERISA § 502(e)(2), 29 U.S.C. § 1132(e)(2) and 28 U.S.C. § 1391, because some or all of the acts, omissions and/or violations of ERISA giving rise to the action occurred in this District, Plaintiff Babinski resides within this District, and Defendants reside and may be found in this District.

III. PARTIES

Plaintiff

30. Brian Babinski ("Babinski") resides in Baytown, Texas. During his employment, Plaintiff Babinski participated in the Plan. Mr. Winters invested in the Stability Fund in the Plan and suffered injury to his Plan account due to the significant underperformance of the Siemens

SVF. In addition, Plaintiff Babinski also suffered injury to his Plan account by paying excessive RKA costs, including managed account fees.

31. Plaintiff has standing to bring this action on behalf of the Plan because he participated in the Plan and was injured by Defendants' unlawful conduct. Plaintiff is entitled to receive benefits in the amount of the difference between the value of his account currently, or as of the time his account was distributed, and what his account is or would have been worth, but for Defendants' breaches of fiduciary duties as described herein.

32. Plaintiff did not have knowledge of all material facts necessary to understand that Defendants breached their fiduciary duties and engaged in other unlawful conduct in violation of ERISA until shortly before this suit was filed.

Defendants

Company Defendant

33. Siemens Energy, Inc. is the sponsor and a named fiduciary of the Plan with a principal place of business at 4400 N. Alafaya Trail, Orlando, Florida. *See* 2023 Form 5500 for the Plan, at 1. Siemens is a global leader in energy technology.[5]

34. The Company is a plan sponsor and a fiduciary of the Plan, within the meaning of ERISA Section 3(21)(A), 29 U.S.C. § 1002(21)(A). *See* Siemens Energy, Inc. Savings Plan, effective September 28, 2020 ("Plan Doc."), at 3 ("'Committee' or 'Committees' means the Administrative Committee and the Investment Committee appointed by the Board of Directors to manage and administer the Plan").

[5] *See* https://www.siemens-energy.com/us/en/home.html, last accessed on July 1, 2025.

35. Through its Board, Siemens appointed the Plan's Administrators. *See id*. Under ERISA, fiduciaries with the power to appoint have a concomitant fiduciary duty to monitor and supervise their appointees.

Board Defendants

36. The Company acted through the Board to perform the Company's Plan-related fiduciary functions. As indicated above, the Board appointed the members of the Administrative Committee and Investment Committee to serve as the Plan Administrators.

37. Accordingly, the Board had the fiduciary duty to monitor and supervise the Committees while they performed their fiduciary role.

38. Each member of the Board during the putative Class Period (referred to herein as John Does 1-10) is/was a fiduciary of the Plan, within the meaning of ERISA Section 3(21)(A), 29 U.S.C. § 1002(21)(A), during the Class Period, because each exercised discretionary authority to appoint and/or monitor the Committees, which had control over Plan management and/or authority or control over management or disposition of Plan assets.

39. Members of the Board of Directors for Siemens during the Class Period are collectively referred to herein as the "Board Defendants."

Administrative Committee Defendants

40. "The Administrative Committee shall be responsible for the administration, interpretation and compliance requirements pertaining to the Plan. These responsibilities include, but are not limited to, reviewing claims and adjudicating appeals; monitoring Plan compliance with laws, regulations and court decisions as related to Plan design, administration, communication and reporting requirements; approving actuarial tables for optional forms of benefit payments; and approving, jointly with the Investment Committee, the payment of administrative expenses from the Fund." Plan Doc., at 41.

41. The Administrative Committee and each of its members were fiduciaries of the Plan during the Class Period, within the meaning of ERISA Section 3(21)(A), 29 U.S.C. § 1002(21)(A) because each exercised discretionary authority over management or disposition of Plan assets.

42. The Administrative Committee and unnamed members of the Administrative Committee during the Class Period (referred to herein as John Does 11-20), are collectively referred to herein as the "Administrative Committee Defendants."

Investment Committee Defendants

43. "The Investment Committee shall be responsible for investing the assets of the Plan and monitoring the investment performance of the investment funds made available from time to time under the Plan for investment of Members' Accounts." Plan Doc., at 41.

44. The Investment Committee and each of its members were fiduciaries of the Plan during the Class Period, within the meaning of ERISA Section 3(21)(A), 29 U.S.C. § 1002(21)(A) because each exercised discretionary authority over management or disposition of Plan assets.

45. The Investment Committee and unnamed members of the Investment Committee during the Class Period (referred to herein as John Does 21-30), are collectively referred to herein as the "Investment Committee Defendants."

Benefits Committee Defendants

46. The Administrative Committee and the Investment Committee may have been combined into one committee, the Siemens Energy, Inc. Benefits Committee ("Benefits Committee"). *See* Plan Doc., at 40 ("The Plan shall be administered by the Administrative Committee and the Investment Committee, ***which may be combined in one Committee***, and which shall have the respective powers, duties and responsibilities set forth in specific provisions of the Plan.") (emphasis added).

47. The SPD identifies the Benefits Committee as the Plan Administrator and also describes the responsibilities of the Benefits Committee, which are the same as the Administrative Committee and Investment Committee's responsibilities. *See* SPD, at 34 ("The Benefits Committee of the Plan is responsible for the administration, interpretation and compliance requirements pertaining to the Plan. This includes reviewing claims for benefits under this Plan and deciding appeals on denied benefit claims. The Benefits Committee is also responsible for investing the assets of the Siemens Energy, Inc. Pension Plan and monitoring the investment performance of the various investment funds comprising the trust fund of this Plan.").

48. Further the Auditor's Reports attached to the Form 5500s for the Plan were addressed to the Benefits Committee. *See* Auditor's Report, attached to the 2023 Form 5500 for the Plan, at 1; *see also id.*, at 7 ("The Siemens Energy, Inc. Benefits Committee (Benefits Committee) is responsible for administering the Plan's operations and for monitoring investments by the Plan.").

49. The Benefits Committee and each of its members were fiduciaries of the Plan during the Class Period, within the meaning of ERISA Section 3(21)(A), 29 U.S.C. § 1002(21)(A) because each exercised discretionary authority over management or disposition of Plan assets.

50. The Benefits Committee and unnamed members of the Benefits Committee during the Class Period (referred to herein as John Does 31-40), are collectively referred to herein as the "Benefits Committee Defendants."

51. Collectively, the Administrative Committee, Investment Committee and Benefits Committee are referred to as the "Committees."

IV. CLASS ACTION ALLEGATIONS[6]

52. Plaintiff brings this action as a class action pursuant to Rule 23 of the Federal Rules of Civil Procedure on behalf of himself and the following proposed class ("Class"):

> All persons, except Defendants and any fiduciary of the Plan and their immediate family members, who were participants in or beneficiaries of the Siemens Energy, Inc Savings Plan at any time between September 28, 2020 to the date of judgment (the "Class Period").[7]

53. The members of the Class are so numerous that joinder of all members is impractical. The 2023 Form 5500 lists 14,552 "participants with account balances as of the end of the plan year." 2023 Form 5500, at 2.

54. Plaintiff's claims are typical of the claims of the members of the Class. Like other Class members, Plaintiff participated in the Plan and has suffered injuries as a result of Defendants' mismanagement of the Plan. Defendants treated Plaintiff consistently with other Class members, and managed the Plan as a single entity. Plaintiff's claims and the claims of all Class members arise out of the same conduct, policies, and practices of Defendants as alleged herein, and all members of the Class have been similarly affected by Defendants' wrongful conduct.

55. There are questions of law and fact common to the Class, and these questions predominate over questions affecting only individual Class members. Common legal and factual questions include, but are not limited to:

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[6] Although this is a proposed class action, the allegations in this complaint are alternatively pled in derivative fashion on behalf of the Plan because class certification is not necessarily required for Plaintiff to prosecute claims on behalf of the Plan and all participants. *See, e.g.*, *In re: Wilmington Trust Corp.,* 2013 WL 4757843, at *3 (D. Del. Sept. 4, 2013) (granting plaintiffs' motion to proceed derivatively on behalf of all plan participants without class certification, because of the nature of such claims). ERISA Section 502(a), 29 U.S.C. § 1132(a), authorizes pension plan participants to bring suit on behalf of a plan to recover losses to a plan.

[7] Plaintiff reserves his right to seek modification of the close of the Class Period in the event that further investigation/discovery reveals a more appropriate end period.

A. Whether Defendants are/were fiduciaries of the Plan;

B. Whether Defendants breached their fiduciary duties of prudence by engaging in the conduct described herein;

C. Whether the Defendants failed to adequately monitor the Committees and other fiduciaries to ensure the Plan was being managed in compliance with ERISA;

D. The proper form of equitable and injunctive relief; and

E. The proper measure of monetary relief.

56. Plaintiff will fairly and adequately represent the Class, and has retained counsel experienced and competent in the prosecution of ERISA class action litigation. Plaintiff has no interests antagonistic to those of other members of the Class. Plaintiff is committed to the vigorous prosecution of this action, and anticipates no difficulty in the management of this litigation as a class action.

57. This action may be properly certified under Rule 23(b)(1). Class action status in this action is warranted under Rule 23(b)(1)(A) because prosecution of separate actions by the members of the Class would create a risk of establishing incompatible standards of conduct for Defendants. Class action status is also warranted under Rule 23(b)(1)(B) because prosecution of separate actions by the members of the Class would create a risk of adjudications with respect to individual members of the Class that, as a practical matter, would be dispositive of the interests of other members not parties to this action, or that would substantially impair or impede their ability to protect their interests.

58. In the alternative, certification under Rule 23(b)(2) is warranted because the Defendants have acted or refused to act on grounds generally applicable to the Class, thereby

making appropriate final injunctive, declaratory, or other appropriate equitable relief with respect to the Class as a whole.

V. THE PLAN

59. "This Plan is a defined contribution plan. This means that Company contributions are made in specific (defined) amounts, but the benefit you receive at retirement or termination depends on a number of variable factors." SPD, at 34.

60. "The purpose of the Siemens Energy, Inc. Savings Plan is to encourage and assist eligible employees to save part of their income on a regular basis through payroll deductions and salary reduction, supplemented by contributions by the participating employers." Plan Doc., at 1.

61. Included in the Plan's available funds was the Siemens SVF. *See* Auditor's Report, attached to 2023 Form 5500 for the Plan, at 12 ("The Stable Value Fund is a Separately Managed Account, the objective of which is to provide liquidity and safety of principal while providing a higher return over time than the return offered by many money market funds. The assets of this investment option primarily consist of individual direct investments in synthetic guaranteed investment contracts (Synthetic GIC) and a money market fund.").

62. The chart below demonstrates the amount of Plan assets invested in the Siemens SVF during the Class Period.

Plan Year	Plan Assets in Siemens SVF[8]
2020	$467,112,262
2021	$431,356,726
2022	$478,224,910
2023	Unknown

Eligibility

[8] As identified in the Form 5500s for the Plan at Schedule H, Line 4i – Schedule of Assets (held at end of year).

63. Employees are typically eligible to participate in the Plan when they are hired by the Company. *See* Plan Doc., at 10 ("[E]ach other Employee will be eligible to become a Member of the Plan as of the Enrollment Date coincident with or next succeeding the date on which such Employee's Continuous Employment commenced if he then is employed by an Employer.").

64. After thirty (30) days of becoming eligible to participate in the Plan, employees are automatically enrolled in the Plan. *See* SPD, at 3.

65. "A Temporary Employee shall be eligible to become a Member of the Plan as of any Enrollment Date coincident with or next succeeding the date on which such Temporary Employee completes a Year of Service if he is then employed by an Employer." *Id*.

Contributions

66. Eligible employees can make the following types of contributions to their Plan accounts: "either before-tax contributions, Roth 401(k) contributions, after-tax contributions, or a combination." SPD, at 3.

67. Employees may "may save up to 50% of your pay (in 1% increments) in the Plan." SPD, at 5.

68. "If you are a non-union employee, the Company will match 100% of your "Basic Contributions". Effective January 1, 2024, these matching contributions are considered "safe harbor" matching contributions." SPD, at 11; *see also id*. ("'Basic Contributions' are the first 6% of your pay that you contribute, regardless of whether you save on a before-tax, Roth 401(k), or after-tax basis.").

Vesting

69. Employees are 100% vested in their contributions to their Plan account. *See* SPD, at 26 ("You are 100% vested in (entitled to) your before-tax, Roth 401(k), after-tax, catch-up, rollover, Roth rollover, and SBCC contributions, along with related earnings, at all times.").

70. Employees are 100% vested in Company matching contributions made after January 1, 2024 after two years of service. *See* SPD, at 26 ("You become vested in your safe harbor matching contributions made or after January 1, 2024, and related earnings, once you complete two years of vesting service.").

71. For employees that left the Company prior to January 1, 2024, they become fully vested in matching contributions based upon years of service as demonstrated below:

Years of Vesting Service	Percent Vested
Fewer than 2	0%
2 but fewer than 3	40%
3 but fewer than 4	60%
4 but fewer than 5	80%
5 or more	100%

SPD, at 26-27

Forfeitures

72. "If you leave the Company before you are fully vested in Company contributions, the non-vested portion of these contributions and related earnings will be forfeited." SPD, at 29.

73. "Any amount which shall be forfeited by a Member pursuant to Section 4.2, 5.2, 6.8 or 11.2 shall be used, as soon as practicable, to pay reasonable administrative expenses of the Plan, other than such reasonable administrative expenses charged to Members' Accounts monthly

or otherwise, as determined by the Company, or to reduce Employer Contributions." Plan Doc., at 38.

VI. THE TOTALITY OF THE CIRCUMSTANCES DEMONSTRATES THAT DEFENDANTS FAILED TO ADMINISTER THE PLAN IN A PRUDENT MANNER

A. ERISA Fiduciaries Are Held to the Highest Standards Regarding Process and Methodology of Evaluating Investments

74. As described in the "Parties" section above, Defendants were fiduciaries of the Plan.

75. ERISA "imposes a 'prudent person' standard by which to measure fiduciaries' investment decisions and disposition of assets." *Fifth Third Bancorp v. Dudenhoeffer*, 134 S. Ct. 2459, 2467 (2014) (quotation omitted). In addition to a duty to select prudent investments, under ERISA, a fiduciary "has a continuing duty to monitor [plan] investments and remove imprudent ones" that exist "separate and apart from the [fiduciary's] duty to exercise prudence in selecting investments." *Tibble I*, 135 S. Ct. at 1828; *see also Hughes*, 142 S. Ct. at 741.

76. As stated by the DOL: ERISA "requires plan fiduciaries, when selecting and monitoring service providers and plan investments, to act prudently and solely in the interest of the plan's participants and beneficiaries. Responsible plan fiduciaries also must ensure that arrangements with their service providers are 'reasonable' and that only 'reasonable' compensation is paid for services. …" DOL 408(b)(2) Regulation Fact Sheet.

77. The duty "…to act solely in the best interest of participants has been a key tenet of ERISA since its passage." "Best Practices for Plan Fiduciaries," at 36, published by Vanguard, 2019.[9]

[9] Available at https://institutional.vanguard.com/iam/pdf/FBPBK.pdf?cbdForceDomain.

78. Acting in the sole interest of plan participants is all encompassing. A fiduciary must monitor all investment options in a 401(k) plan as a prudent investment professional. *See* the U.S. Department of Labor, Employee Benefits Security Administration (EBSA)'s "Meeting Your Fiduciary Responsibilities," at 2 ("The duty to act prudently is one of a fiduciary's central responsibilities under ERISA. It requires expertise in a variety of areas, such as investments."), available at https://www.dol.gov/sites/dolgov/files/EBSA/about-ebsa/our-activities/resource-center/publications/meeting-your-fiduciary-responsibilities.pdf.

79. A prudent investment professional, and hence a fiduciary, must regularly evaluate a fund's performance history, the portfolio manager's experience and tenure, changes to the fund's investment strategy, changes to the underlying assets in the investment, total assets under management within the fund, fees, and other relevant factors.

80. With respect to investment returns, diligent investment professionals monitor the performance of their selected investments using appropriate industry-recognized "benchmarks" and prudently managed equivalents.

81. The measurement of investments against prudently managed alternatives is critical given that these alternatives represent other investments available to a plan, which may increase the likelihood that participants reach/live their preferred lifestyle in retirement.

82. Whether a plan fiduciary enlists the assistance of an investment manager, consultant, or advisor, the plan's fiduciaries are not relieved of fiduciary liability for selecting and monitoring the plan's investment options.

83. It is black letter law that a fiduciary's duty to conduct an "independent investigation into the merits of a particular investment," is the "most basic of ERISA's investment fiduciary duties." *In re Unisys Savings Plan Litigation*, 74 F.3d 420, 435 (3d Circ. 1996). *Hughes*, 142 S.

Ct. at 738 (noting ERISA fiduciaries are required to "conduct their own independent evaluation to determine which investments may by prudently included in the plan's menu of options.").

84. To the extent plan fiduciaries have adopted an investment policy statement, those fiduciaries "must comply with the plan's written statements of investment policy, insofar as those written statements are consistent with the provisions of ERISA." *Lauderdale v. NFP Retirement, Inc.*, 2022 WL 17260510, at * 10 (S.D. Cal. Nov. 17, 2022). That is, the investment policy statement must be written with the sole interest of the plan participant in mind.

85. Plaintiff did not have and does not have actual knowledge of the specifics of Defendants' decision-making process with respect to the Plan, including Defendants' processes (and execution of such) for selecting, monitoring, and removing the Plan's investments because this information is solely within the possession of Defendants prior to discovery. *See Braden*, 588 F.3d 585 at 598 ("If Plaintiffs cannot state a claim without pleading facts which tend systematically to be in the sole possession of defendants, the remedial scheme of [ERISA] will fail, and the crucial rights secured by ERISA will suffer.").

86. Among other things, Plaintiff does not have access to any meeting minutes of the Committees to the extent they exist. Reviewing meeting minutes, when they exist, is the bare minimum needed to peek into a fiduciary's monitoring process. But in most cases, even that is not sufficient. For, "[w]hile the absence of a deliberative process may be enough to demonstrate imprudence, the presence of a deliberative process does not … suffice in every case to demonstrate prudence. Deliberative processes can vary in quality or can be followed in bad faith. In assessing whether a fiduciary fulfilled her duty of prudence, we ask 'whether a fiduciary employed the *appropriate* methods to investigate and determine the merits of a particular investment,' not

merely whether there were any methods whatsoever." *Sacerdote v. New York Univ.*, 9 F.4th 95, 111 (2d Cir. 2021) (emphasis in original).

87. For the purposes of this Complaint, Plaintiff has drawn reasonable inferences regarding these processes and methods based upon several factors as described below.

88. Defendants' breaches of their fiduciary duties, relating to their overall decision-making, resulted in, *inter alia*, the selection (and maintenance) of the Siemens SVF in the Plan through at least 2022 that wasted the assets of the Plan and the assets of participants because of unnecessary costs and underperformance.

B. Defendants Breached Their Fiduciary Duties by Causing the Plan to Offer the Siemens SVF

1. Overview of GICs

89. For defined-contribution retirement plans, stable value investments are intended to provide participants with an option that protects their assets and is shielded from risks of loss, hence why they are called Guaranteed Investment Contracts or GICs.

90. GICs are issued by insurance companies in the form of a fixed annuity contract. Pursuant to the terms of those contracts, the GICs provide for a guaranteed rate of return or "crediting rate" during a specified period.

91. There are several different types of stable value investments in the retirement plan marketplace that largely fulfil the same purpose, income preservation. Large plans often offer "synthetic" stable value funds where the principal is guaranteed by multiple "wrap providers" and the fund owns the assets of the underlying funds.

92. In separate account products, the assets of the underlying funds are held in the separate account of an insurance carrier and there is only one "wrap" provider. For separate

account GICs, the insurer's payment obligations are putatively backed by a separate account, which is less susceptible to claims and liabilities against the insurer.

93. In general account products funds are held unrestricted in the general account of the insurance carrier.

94. Notwithstanding the different labels of the GICs, their purpose remains identical to all income preservation funds. Accordingly, plan fiduciaries should select stable value funds based on crediting rates that in the best interests of participants.

2. The Plan's Inclusion of the Siemens SVF

95. At all relevant times, Defendants maintained the authority to exercise control over the Plan's investments, including the Plan's Siemens SVF.

96. The Insurance Companies established the crediting rates for the underlying GICS in the Siemens SVF with the Plan.

97. Where applicable, the Insurance Companies earn a "spread" equal to the difference between the crediting rate and the returns the Insurance Companies earn on the funds in its general accounts.

3. There are Many GICs in the Marketplace with Competitive Crediting Rates

98. The marketplace for GICs is robust with many insurance companies offering GICs with competitive rates.

99. Throughout the Class Period, identical or substantially identical stable value funds with higher crediting rates were available to the Plan, but were not selected by Defendants.

100. The Siemens SVF in the Plan was comprised of GICs with underwhelming crediting rates when compared against GICs provided by other comparable carriers for other

retirement plans. These other GICs would have filled the same role as the Siemens SVF (*i.e.* income preservation) with the same if not less risk, but with higher crediting rates:

Year	Plan Name	No. of Participants	Plan Assets	Insurance Carrier	Crediting Rate[10]
2020	Baylor College of Medicine Retirement Plan	12,905	$1,493,377,139	Lincoln Financial Group	4.16%
	Alina 401(k) Retirement Savings Plan	32,203	$2,690,046,457	Brighthouse Life Insurance Company	3.72%
	HCC Insurance Holdings Inc. 401(k) Plan	2,711	$428,308,461	Massachusetts Mutual Life Insurance Company	3.56%
	American United Life Progress Sharing Plan and Trust	2,699	$435,970,029	American United Life Insurance Company	3.54%
	Siemens Plan	**13,844**	**$3,348,215,099**	**The Prudential Insurance Company of America**	**2.42%**
				Nationwide Life Insurance Company	**0.19%**
				Transamerica Life Insurance Company	**2.19%**
				State Street Bank & Trust	**2.23%**
				Pacific Life Insurance Co.	**2.68%**
				Voya Retirement Insurance	**2.14%**

[10] For crediting rates not identified in the plans' Form 5500s, the calculated yield is interest credited divided by the end of year balance.

2021	Gemba Group Annuity Plan	969	$118,565,852	National Ohio Financial Services	4.97%
	Baylor College of Medicine Retirement Plan	13,391	$1,692,013,731	Lincoln Financial Group	4.23%
	Holzer Health System 401(a) Profit Sharing Plan	2,017	$203,815,263	American United Life Insurance Company	4.02%
	American United Life Progress Sharing Plan and Trust	3,183	$493,267,284	American United Life Insurance Company	3.87%
	Gemba Group Annuity Plan	969	$118,565,852	Principal Life Insurance Company	3.84%
	Siemens Plan	**13,311**	**$3,710,144,086**	**The Prudential Insurance Company of America**	**2.08%**
				Nationwide Life Insurance Company	**1.59%**
				Transamerica Life Insurance Company	**1.86%**
				State Street Bank & Trust	**1.84%**
				Pacific Life Insurance Co.	**2.30%**
				Voya Retirement Insurance	**1.83%**

2022	International Imaging Materials Inc. Retirement and Investment Plan	445	$59,443,888	Lincoln National Life Insurance Co.	4.89%
	Baylor College of Medicine Retirement Plan	14,036	$1,434,738,254	Lincoln Financial Group	4.37%
	American United Life Progress Sharing Plan and Trust	3,235	$439,262,320	American United Life Insurance Company	3.90%
	Jackson National Life Insurance Company Defined Contribution Plan	4,650	$1,149,061,601	Jackson National Life Insurance	3.83%
	Trugreen Profit Sharing and Retirement Plan	11,408	$371,495,784	Massachusetts Mutual Life Insurance Company	3.67%
	Siemens Plan	**13,426**	**$3,104,111,508**	**The Prudential Insurance Company of America**	**2.11%**
				Nationwide Life Insurance Company	**1.84%**
				Transamerica Life Insurance Company	**1.94%**
				State Street Bank & Trust	**1.88%**

				Pacific Life Insurance Co.	**2.10%**
				Voya Retirement Insurance	**1.89%**

101. Through at least 2022, the Siemens SVF in the Plan underperformed the comparator funds by an average of over 51%, as demonstrated in the table below.

Year	Siemens SVF Average Rate of Return	Comparator Average Rate of Return	Siemens SVF Percentage of Underperformance
2020	1.94%	3.75%	48.27%
2021	1.91%	4.19%	54.42%
2022	1.96%	4.13%	52.54%
Average Underperformance during Class Period			51.74%

102. In short, because the Plan held between $3.1 billion and $3.7 billion combined in assets under management throughout the Class Period, it had considerable leverage to bargain for higher crediting rates.

C. Defendants Committed a Prohibited Transaction Resulting in Excessive RKA costs and managed account services for the Plan and its Participants

103. During the Class Period, Defendants entered into a contract with Alight to provide RKA services and managed account services to the Plan. However, such an engagement is a prohibited transaction under ERISA.

104. 29 U.S.C. §§ 1106(a)(1)(C) provides that "(1) A fiduciary with respect to a plan shall not cause the plan to engage in a transaction, if he knows or should know that such transaction constitutes a direct or indirect … (C) furnishing of goods, services, or facilities between the plan and a party in interest."

105. Here, Alight was a party in interest to the Plan as it was receiving compensation for RKA services, as well as compensation from managed account services from the Plan.

1. Costs for Recordkeeping Services Vary Little Between Competing Providers for a Plan with a Substantial Number of Participants

106. The term "recordkeeping" is a catchall term for the suite of administrative services typically provided to a defined contribution plan by the plan's "recordkeeper." Recordkeeping and administrative services fees are one and the same and the terms are used synonymously herein and referred to as RKA.

107. There are two types of essential recordkeeping services provided by all national recordkeepers for large plans with substantial bargaining power (like the Plan). First, an overall suite of recordkeeping services is provided to large plans as part of a "bundled" fee for a buffet style level of service (meaning that the services are provided, in retirement industry parlance, on an "all-you-can-eat" basis), including, but not limited to, the following services:

A. Basic account recordkeeping (e.g. demographic, source, investment and vesting records);

B. Multi-channel participant and plan sponsor access (e.g. phone, web);

C. Daily participant transaction accounting (e.g., purchases, redemptions, exchanges);

D. Payroll service (e.g. hardships, in-service withdrawals, termination distributions);

E. Participant tax reporting services (e.g., IRS Form 1099-R);

F. Participant confirmations, statements, and standard notices;

G. Plan-level reporting and annual financial package (excluding IRS Form 5500);

H. Participant education (e.g. newsletters, web articles, standard communication materials);

I. Plan consulting (e.g., preapproved document services, operational materials);

J. Plan consulting (e.g. preapproved document services, operational compliance support).

108. This suite of essential recordkeeping services can be referred to as "Bundled" services. These services are offered by all recordkeepers for one price (typically at a per capita price), regardless of the services chosen or utilized by the plan. As explained in more detail below, the services chosen by a large plan do not affect the amount charged by recordkeepers for such basic and fungible services.

109. The second type of essential recordkeeping services, hereafter referred to as "A La Carte" services, provided by all national recordkeepers, often has separate, additional fees based on the conduct of individual participants and the usage of the services by individual participants. These fees are distinct from the bundled arrangement described above to ensure that one participant is not forced to help another cover the cost of, for example, taking a loan from their plan account balance. These A La Carte services typically include, but are not limited to, the following:

a. Loan processing;

b. Brokerage services/account maintenance (if offered by the plan);

c. Distribution services; and

d. Processing of qualified domestic relations orders.

110. All national recordkeepers have the capability to provide all of the aforementioned recordkeeping services at very little cost to all large defined contribution plans, including those

much smaller than the Plan. In fact, several of the services, such as managed account services, self-directed brokerage, Qualified Domestic Relations Order processing, and loan processing are often a profit center for recordkeepers.

111. The cost of providing recordkeeping services depends in large part on the number of participants in a plan. Plans with large numbers of participants can take advantage of economies of scale by negotiating a lower per-participant recordkeeping fee. *See* 1998 DOL Study,[11] at 4.2.2. ("Basic per-participant administrative charges typically reflect minimum charges and sliding scales that substantially reduce per capita costs as plan size increases."). When more participants in a plan are on a recordkeeping platform, the recordkeeper allocates its fixed costs over a larger participant base, which reduces the per-participant cost. As a result, the cost to add a new participant to a plan is relatively low. And as the overall number of participants increases, the average cost per participant decreases. ***Because recordkeeping expenses are driven by the number of participants in a plan, the vast majority of plans are charged on a per-participant basis.***[12]

112. In general, the level, number and character of participant services provided by the recordkeeper have minimal impact upon the costs of providing recordkeeping. That is because building and maintaining a robust, intuitive, web-based participant interactive 401(k) account system incurs large fixed costs. Each additional participant placed on the system causes a minimal

[11] https://www.dol.gov/sites/dolgov/files/EBSA/researchers/analysis/retirement/study-of-401k-plan-fees-and-expenses.pdf ("1998 DOL Study").

[12] "[T]he actual cost of administrative services is more dependent on the number of participants in the plan." There is no "logical or practical correlation between an increase in administrative fees and an increase in plan assets." Hewitt Associates, LLC, *Be a Responsible Fiduciary: Ask the Right Questions About 401(k) Plan Fees*, Oct. 2008; *see also* Mercer Investment Consulting, Inc., *DC Fee Management – Mitigating Fiduciary Risk and Maximizing Plan Performance* (2013), https://www.mercer.com/content/dam/mercer/.

incremental/marginal cost to the record keeper ***notwithstanding the level, number and character of the services provided to that additional participant.***

113. Recordkeepers for large 401(k) plans such as Fidelity, Vanguard, Empower, and Voya, among others, invest in technology infrastructure necessary to provide recordkeeping and transaction services to all clients (*e.g.*, website, call center, and some print services).

114. Accordingly, a plan sponsor or fiduciary has the leverage to negotiate favorable rates given that costs of implementation do not change for the service provider.

2. Managed Account Services Are Among the Services A Recordkeeper Can Provide for Minimal costs

115. As noted above, Plan consulting services, including assistance in selecting the investment lineup offered to participants, are among the core services that recordkeepers provide to retirement plans. Managed accounts are investment services under which providers make investment decisions for specific participants to allocate their retirement savings among a mix of assets, commonly referred to as asset allocation. Managed account providers in 401(k) plans limit the investment options they consider to those funds chosen by the plan sponsor to create Plan participants' asset allocations.

116. Most managed account service providers utilize computer programs to create plan participants' asset allocations.

117. In general, managed account services are investment services under which a participant pays a fee to have a managed account provider invest the participant's account in a portfolio of preselected investment options.

118. Managed account providers "generally offer the same basic service—initial and ongoing investment management of a 401(k)-plan participant's account based on generally accepted industry methods." The United States Government Accountability Office ("GAO"),

401(K) PLANS: Improvements Can Be Made to Better Protect Participants in Managed Accounts, at 14 (June 2014), available at https://www.gao.gov/assets/gao-14-310.pdf.

119. Generally, two types of strategies are employed, "customized" or "personalized." Customized service—allocating a participant's account based solely on age or other factors that can be easily obtained from the plan's recordkeeper, such as gender, income, current account balance, and current savings rate; or personalized service, which purports to take into account additional personal information to inform asset allocations, such as risk tolerance or spousal assets. In practice, little to no material customization is provided to the vast majority of plan participants which results in no material value to most participants relative to the fees paid.

120. Managed account services merely mimic the asset allocations available through a target date fund while charging additional unnecessary fees for their services. Indeed, customized or personalized managed accounts offer little to no advantage over lower-cost funds of funds, such as target-date funds, risk-based funds and balanced funds.

121. Participants who sign up for managed account services are generally charged an annual fee that is a percentage of the participant's account balance regardless of which investment approach they choose.

122. The Plan participant has no control over the fee rate they are charged. The fee levels are determined at the Plan level through a contractual agreement between the service provider and the Plan fiduciaries.

123. For at least the past decade, jumbo plans have been able to negotiate multiple facets of the fees charged by managed account providers. Managed account services are offered by covered service providers to increase the revenue they generate through their relationship with a retirement plan.

124. As with any service provider, one of the most important factors when selecting a managed account provider is fees. Managed account services have historically been expensive compared to other alternatives, such as target date funds that provide the materially same service at a much lower cost. Vanguard reported in August 2013 that managed account services generally return less than or equal to the returns of Vanguard's lower-cost professionally managed allocation products, such as target-date funds, risk-based funds, and balanced funds.[13]

125. Prudent fiduciaries should regularly monitor the amount of managed account service fees the plan is paying and ensure the fees are reasonable compared to what is available in the market for materially identical services. The most effective way to ensure a plan's managed account service fees are reasonable is to periodically solicit bids from other managed account service providers, stay abreast of the market rates for managed account solutions, and/or negotiate better rates with the managed account service providers.

3. The Plan's Recordkeeping Fees were Excessive

126. Because recordkeeping costs are not principally affected by individual account asset size, prudent fiduciaries of defined contribution plans negotiate recordkeeping fees as a fixed dollar amount rather than as a percentage of assets. *See* Mercer Best Practices at 3. Otherwise, as plan assets grow, the recordkeeping compensation increases without any change in the recordkeeping services, leading to unreasonable fees.

127. As demonstrated in the charts below, the Plan's participants were saddled with above-market administrative and recordkeeping fees throughout the Class Period.

[13] Vanguard, Professionally Managed Allocations and the Dispersion of Participant Portfolios (Valley Forge, PA; August 2013).

128. The Plan's per participant RKA fees were as follows:

Siemens Plan			
Plan Year	**Participants**	**Total Direct Costs**	**Per Participant Charge $PP**
2020	13,844	$159,780	$11.54
2021	13,311	$2,536,210	$190.53
2022	13,426	$1,969,527	$146.69
2023	14,552	$2,980,761	$204.84

129. Looking at recordkeeping costs for plans similar in size to the combined assets and participant size of the Plan during the Class Period shows that the Plan was paying higher recordkeeping fees than its peers.[14]

Recordkeeper	Plan Name	Plan Year	Assets Under Management	Participants	Schedule C Codes	Indirect Compensation	<u>Cost</u>
Fidelity	Optumcare Management, LLC 401(k) Retirement Savings Plan	2021	$1,341,037,601	10,170	37 60 64 65 71	Yes - $0	$28
Fidelity	Pacific Architects and Engineers, LLC 401(k) Savings Plan	2021	$693,883,632	14,583	37 60 64 65	Yes - $0	$5
Fidelity	The Tax Sheltered Annuity Plan of Texas Children's Hospital	2021	$1,706,447,554	15,788	37, 60, 64, 65, 71	Yes - $0	$26
Alight	**Siemens Plan**	**2021**	**$3,710,144,086**	**13,311**	**15 50**	**Yes - $0**	**$191**
Fidelity	The Tax Sheltered Annuity Plan of Texas Children's Hospital	2022	$1,475,238,032	16,973	37, 60, 64, 65, 71	Yes - $0	$29
Fidelity	Optumcare Management, LLC 401(k) Retirement Savings Plan	2022	$1,099,817,927	11,787	37 60 64 65 71	Yes - $0	$30
Alight	**Siemens Plan**	**2022**	**$3,104,111,508**	**13,426**	**15 50**	**Yes - $0**	**$147**
Fidelity	The Tax Sheltered Annuity Plan of Texas Children's Hospital	2023	$1,837,546,518	18,163	37, 60, 64, 65, 71	Yes - $0	$32

[14] Unless otherwise noted, these fees are taken from the Form 500.

Fidelity	Fortive Retirement Savings Plan	2023	$1,915,519,824	13,503	37, 64, 65, 71	Yes - $0	$30
Alight	**Siemens Plan**	**2023**	**$3,529,024,968**	**14,552**	**15 50**	**Yes - $0**	**$205**

130. The above chart demonstrates that for similar plans, regarding assets and participants, the Plan had one of the highest recordkeeping fees over the course of the Class Period.

131. The 2021-2024 Plan Fee Disclosure identifies the below fees for Professional Management Program Fees. Specifically, the Fee Disclosure states, "If you are enrolled in the Professional Management Program offered by Alight Financial Advisors, you are charged an annual fee that is based on the size of your account:

- The first $100,000 0.50% of assets
- The next $150,000 0.45% of assets
- Above $250,000 0.30% of assets

The fee is calculated based on the average assets under management in your account for the month and is automatically deducted from your SESP account at the start of the following month, or at the time plan activity brings your account balance to $0 if mid-month." 2021-2024 Fee Disclosure, at 2.

132. To the extent the total reported RKA amounts in the Form 5500s included the Plan's managed account service, that service did not justify any material increase in the RKA costs to the Plan.

133. Defendants could have offered the exact same managed account services at a lower cost by using a different managed account provider or relying on index or target date funds as alleged herein. As addressed below, Defendants failed to take advantage of the Plan's size to timely negotiate lower fees from Alight or Defendants could have obtained the materially same managed

account services for less through another provider if it had solicited competitive bids for the same services.

134. Further, Defendants could have utilized a target date fund instead of the managed account but did not do so. As the GAO recognized in its reports on managed accounts, "Similar advantages … can be achieved through other retirement investment vehicles outside of a managed account and without paying the additional managed account fee. For example, in one recent study, a record keeper that offers managed accounts through its platform showed that there are other ways to diversify using professionally managed allocations, such as target date funds, which can be less costly." *See* GAO report.

135. As a result, based on the value provided, the reasonable fee for the managed account service was zero or very close to zero, and the use of the managed account services provided by Alight cost the Plan at least $7.4 million from 2021 to 2023. *See* Tables at ¶ 128, *supra*.

136. Of additional importance, even if some portion of the managed account service fee was warranted, the fees charged were grossly excessive. Alight's managed account service charged fees based on the amount of assets in a participants' Plan account rather than a per capita charge. This had the effect of increasing costs to Plan participants without an increase in service level. This is unreasonable.

137. The Plan's $181 per participant fee from 2021 to 2023 is 602% greater than the average fee of $26 per participant from 2021 to 2023 for the seven (7) plans listed above.

138. This vast discrepancy between the Plan's RKA fees and comparable plans existed from 2021 through 2023. Indeed, the figures in the above chart are just an example of the Plan's excessive RKA fees from 2021 through 2023.

139. Further, because Alight was a party-in-interest, the Plan's fiduciaries should have taken these additional sources of income into consideration to reduce the excessive RKA fees paid to Alight.

140. Given the size of the Plan's assets during the Class Period and total number of participants, in addition to the general trend towards lower recordkeeping expenses in the marketplace as a whole, the Plan could have obtained recordkeeping services that were comparable to or superior to the typical services provided by the Plan's recordkeeper at a lower cost.

141. For the above reasons, Defendants committed prohibited transactions as it relates to the Plan and its participants' payment of RKA fees, inclusive of any account management fees.

D. The Company Improperly Reduced its Plan Contributions Through Forfeiture Amounts

142. During the Class Period, Defendants breached their ERISA fiduciary duties by misusing the Plan's assets for Defendants' own benefit and to the detriment of Plan participants.

143. As alleged above, Defendants had a choice on how to utilize forfeited amounts. At the discretion of Defendants in their fiduciary capacity, forfeitures may be used to either pay the Plan's expenses or reduce the Company's contributions to the Plan.

144. Using the forfeitures to reduce Company contributions is always in the best interest of Siemens because that option would decrease its own contribution costs.

145. Absent any risk that Siemens would be unable to satisfy its contribution obligations, using forfeitures to pay Plan expenses would be in the participants' best interest because that option would reduce or eliminate amounts otherwise charged to their accounts to cover such expenses.

146. In deciding between using forfeitures to benefit the Company or using forfeitures to benefit the participants, Defendants are presented with a conflict of interest in administering the Plan and managing and disposing of the Plan assets.

147. Despite the conflict of interest presented by this decision, Defendants failed to undertake any investigation into which option was in the best interest of the Plan's participants and beneficiaries.

148. Defendants did not, for example, investigate whether there was a risk that Siemens would be unable to satisfy its contribution obligations if forfeitures were used to pay Plan expenses, or evaluate whether there were sufficient forfeitures to eliminate the Plan's expenses charged to participants and still offset a portion of Siemens' own contribution obligations, as a prudent person would have done.

149. To illustrate the Company's financial soundness, the Company's recent Press Release touted its financial strength by recognizing "the significant progress Siemens Energy has made in the past two years in improving margins, strengthening cash flow and reinforcing its financial position." [15]

150. Defendants also failed to consult with an independent, non-conflicted decisionmaker to advise them in deciding upon the best course of action for allocating the forfeitures in the Plan, as a prudent person would have done.

151. Although ERISA requires fiduciaries to manage the Plan's assets solely in the interest of participants and although the Plan grants Defendants discretion to use forfeitures to pay Plan expenses, thereby reducing or eliminating the amounts charged to participant accounts to cover such expenses, Defendants have consistently declined to use the Plan's assets for such purpose during the putative class period.

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[15] June 17, 2025 Press Release (quoting Maria Ferraro, Chief Financial Officer of Siemens Energy), available at https://www.siemens-energy.com/us/en/home/press-releases/Siemens_Energy_secures_grade_ratingU_from_Moodys.html.

152. Since at least the beginning of the Class Period, Defendants have improperly used forfeited non-vested Plan assets for the Company's own benefit to reduce future Company contributions instead of using the funds to benefit Plan participants.

153. According to information from the Plan's Form 5500s, the following represents the amount of the forfeiture improperly used to offset the Company's contributions to the Plan, and the amounts used to pay for Plan administration costs:

Plan Year	Forfeiture Amount	Offset Company Contributions	Offset Plan Expenses
2020	Unknown	$335,043	$0
2021	Unknown	$1,517,223	$0
2022	Unknown	$1,135,338	$0
2023	Unknown	$1,324,984	$0
TOTAL		$4,312,588	**$0**

154. For these reasons, Defendants violated their fiduciary duties.

COUNT I
Breaches of Fiduciary Duty of Prudence
(against the Committee Defendants)

155. Plaintiff re-alleges and incorporates herein by reference all prior allegations in this Complaint as if fully set forth herein.

156. At all relevant times, the Committees and their members ("Prudence Defendants") were fiduciaries of the Plan within the meaning of ERISA § 3(21)(A), 29 U.S.C. § 1002(21)(A), in that it exercised discretionary authority or control over the administration and/or management of the Plan or disposition of the Plan's assets.

157. As fiduciaries of the Plan, the Prudence Defendants were subject to the fiduciary duties imposed by ERISA § 404(a), 29 U.S.C. § 1104(a). These fiduciary duties included managing the assets of the Plan for the sole and exclusive benefit of Plan's participants and beneficiaries,

and acting with the care, skill, diligence, and prudence under the circumstances that a prudent person acting in a like capacity and familiar with such matters would use in the conduct of an enterprise of like character and with like aims.

158. The Prudence Defendants breached these fiduciary duties in multiple respects as discussed throughout this Complaint. Prudence Defendants did not make decisions regarding the Plan's investment lineup based solely on the merits of each investment and what was in the interest of Plan's participants. Instead, the Prudence Defendants selected and retained investment options in the Plan despite poor performance in relation to other comparable investments.

159. As a direct and proximate result of the breaches of fiduciary duties alleged herein related to the GICs, the Plan suffered millions of dollars of losses due to excessive costs and lower net investment returns. Had the Prudence Defendants complied with their fiduciary obligations, the Plan would not have suffered these losses, and the Plan's participants would have had more money available to them for their retirement.

160. Pursuant to 29 U.S.C. §§ 1109(a) and 1132(a)(2), the Prudence Defendants are liable to restore to the Plan all losses caused by their breaches of fiduciary duties, and also must restore any profits resulting from such breaches. In addition, Plaintiff is entitled to equitable relief and other appropriate relief for Defendants' breaches as set forth in his Prayer for Relief.

161. The Prudence Defendants knowingly participated in each breach, knowing that such acts were a breach, and failed to make any reasonable and timely effort under the circumstances to remedy the breaches.

COUNT II
Breach of Fiduciary Duty of Loyalty
(Asserted against the Company, the Committees and Board Defendants)

162. Plaintiff re-alleges and incorporates herein by reference all prior allegations in this Complaint as if fully set forth herein.

163. At all relevant times, the Company, the Committee Defendants, and the Board Defendants ("Loyalty Defendants") were fiduciaries of the Plan within the meaning of ERISA § 3(21)(A), 29 U.S.C. § 1002(21)(A), in that they exercised discretionary authority or control over the administration and/or management of the Plan or disposition of the Plan's assets.

164. As fiduciaries of the Plan, these Defendants were subject to the fiduciary duties imposed by ERISA § 404(a), 29 U.S.C. § 1104(a).

165. The Loyalty Defendants were required to discharge their duties to the Plan solely in the interest of the participants and beneficiaries and for the exclusive purpose of providing benefits to participants and their beneficiaries and defraying reasonable expenses of administering the Plan.

166. The Loyalty Defendants failed to exercise their duty of loyalty to the Plan and its participants by utilizing forfeited funds in the Plan for the benefit of the Company instead of the sole interest of the Plan participants and beneficiaries.

167. The Loyalty Defendants used these Plan assets for the purpose of reducing the Company's own contributions to the Plan, thereby saving the Company millions of dollars each year at the expense of the Plan which received decreased Company contributions, and its participants and beneficiaries were forced to incur avoidable expense deductions to their individual accounts.

168. As a direct and proximate result of the breaches of fiduciary duties alleged herein, the Plan suffered millions of dollars in losses.

169. Pursuant to 29 U.S.C. §§ 1109(a) and 1132(a)(2), the Loyalty Defendants are liable to restore to the Plan all losses caused by their breaches of fiduciary duties, and also must restore any profits resulting from such breaches. In addition, Plaintiff is entitled to equitable relief and other appropriate relief for Defendants' breaches as set forth in his Prayer for Relief.

Each Loyalty Defendant is also liable for the breaches of its co-fiduciaries under 29 U.S.C. § 1105(a).

COUNT III
Breach of ERISA's Anti-Inurement Provision
(Asserted against the Company and the Board Defendants)

170. Plaintiff re-alleges and incorporates herein by reference all prior allegations in this Complaint as if fully set forth herein.

171. Pursuant to 29 U.S.C. § 1103(c)(1), "the assets of a plan shall never inure to the benefit of any employer and shall be held for the exclusive purpose of providing benefits to participants in the plan and their beneficiaries and defraying reasonable expenses of administering the plan."

172. Because all forfeited Plan participant funds are initially placed in the Plan's trust, these forfeited funds are Plan assets.

173. The Company's use of the forfeited funds to defray its own contributions to the Plan in order to save itself millions of dollars in funds that the Company would otherwise have to contribute to the Plan, caused the assets of the Plan to inure to the benefit of the Company in violation of 29 U.S.C. § 1103(c)(1).

174. Pursuant to 29 U.S.C. §§ 1109(a) and 1132(a)(2), the Loyalty Defendants are liable to restore to the Plan all losses caused by their breaches of ERISA's anti-inurement provision, and also must restore any profits resulting from such breaches. In addition, Plaintiff is entitled to equitable relief and other appropriate relief for Defendants' breaches as set forth in their Prayer for Relief.

175. Each Loyalty Defendant is also liable for the breaches of its co-fiduciaries under 29 U.S.C. § 1105(a).

COUNT IV
Failure to Adequately Monitor Other Fiduciaries
(against the Company and the Board)

1. Plaintiff re-alleges and incorporates herein by reference all prior allegations in this Complaint as if fully set forth herein.

2. Siemens, through its Board (the "Monitoring Defendants") had the authority to appoint and remove members of the Committees, and the duty to monitor the Committees and were aware that the Committees had critical responsibilities as fiduciaries of the Plan.

3. In light of this authority, the Monitoring Defendants had a duty to monitor the Committees to ensure that the Committees were adequately performing their fiduciary obligations, and to take prompt and effective action to protect the Plan in the event that the Committees were not fulfilling those duties.

4. The Monitoring Defendants also had a duty to ensure that the members of the Committees possessed the needed qualifications and experience to carry out their duties; had adequate financial resources and information; maintained adequate records of the information on which they based their decisions and analysis with respect to the Plan's investments; and reported regularly to the Company.

5. The Monitoring Defendants breached their fiduciary monitoring duties by, among other things, failing to monitor and evaluate the performance of the Committees or have a system in place for doing so, standing idly by as the Plan suffered significant losses as a result of the Committee's imprudent actions and omissions.

6. As a consequence of the foregoing breaches of the duty to monitor, the Plan suffered millions of dollars in losses. Had the Monitoring Defendants complied with their fiduciary obligations, the Plan would not have suffered these losses, and the Plan's participants would have had more money available to them for their retirement.

7. Pursuant to 29 U.S.C. §§ 1109(a) and 1132(a)(2), the Monitoring Defendants are liable to restore to the Plan all losses caused by their failure to adequately monitor the Committees. In addition, Plaintiff is entitled to equitable relief and other appropriate relief as set forth in the Prayer for Relief.

COUNT V
Prohibited Transactions
(Against All Defendants)

8. Plaintiff re-alleges and incorporates herein by reference all prior allegations in this Complaint as if fully set forth herein.

9. ERISA § 406(a)(1), 29 U.S.C. § 1106(a)(1), provides, in pertinent part, that "a fiduciary with respect to a plan shall not cause the plan to engage in a transaction, if he knows or should know that such transaction constitutes a direct or indirect . . . (C) furnishing of goods, services, or facilities between the plan and a party in interest; [or] (D) transfer to, or use by or for the benefit of, a party in interest, of any assets of the plan and a party in interest."

10. ERISA § 3(14), 29 U.S.C. § 1002(14), defines a "party in interest" to include (A) "any fiduciary . . . of such employee benefit plan;" (B) "a person providing services to such plan;"

(C) "an employer any of whose employees are covered by such plan," and "(H) any employee, officer, or director of such employer."

11. ERISA § 3(9), 29 U.S.C. § 1002(9) defines "person" as "an individual, partnership, joint venture, corporation, mutual company, joint-stock company, trust, estate, unincorporated organization, association, or employee organization."

12. Defendants' decision to agree to pay excessive fees to Alight as recordkeeper for the Plan amounted to a direct or indirect "furnishing of goods, services, or facilities between the plan and a party in interest" pursuant to ERISA § 406(a)(1)(C) and the "transfer to, or use by or for the benefit of a party in interest, of any assets of the plan" pursuant to ERISA § 406(a)(1)(D).

13. Pursuant to 29 U.S.C. § 1109(a) and 1132(a)(2), Defendants, as fiduciaries to the Plan, are liable to restore to the Plan all losses caused by their violations of ERISA §§ 406(a)(1)(C) and (D).

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays that judgment be entered against Defendants on all claims and requests that the Court awards the following relief:

A. A determination that this action may proceed as a class action under Rule 23(b)(1), or in the alternative, Rule 23(b)(2) of the Federal Rules of Civil Procedure;

B. Designation of Plaintiff as Class Representative and designation of Plaintiff's counsel as Class Counsel;

C. A Declaration that the Defendants have breached their fiduciary duties under ERISA;

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

E. An order requiring the Company to disgorge all profits received from, or in respect of, the Plan, and/or equitable relief pursuant to 29 U.S.C. § 1132(a)(3) in the form of an accounting for profits, imposition of a constructive trust, as necessary to effectuate said relief, and to prevent the Defendants' unjust enrichment;

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

G. An order enjoining Defendants from any further violations of their ERISA fiduciary responsibilities, obligations, and duties;

H. Other equitable relief to redress Defendants' illegal practices and to enforce the provisions of ERISA as may be appropriate, including appointment of an independent fiduciary or fiduciaries to run the Plan and removal of Plan fiduciaries deemed to have breached their fiduciary duties;

I. An award of pre-judgment interest;

J. An award of costs pursuant to 29 U.S.C. § 1132(g);

K. An award of attorneys' fees pursuant to 29 U.S.C. § 1132(g) and the common fund doctrine; and

L. Such other and further relief as the Court deems equitable and just.

Dated: July 22, 2025

Respectfully submitted,

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