EXHIBIT A

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

HARVEY MILLER and TODD K. LAMUNYON, individually, and as Representatives of a Class of Participants and Beneficiaries of the Packaging Corporation of America Retirement Savings Plan For Salaried Employees,

Plaintiffs,

v.

PACKAGING CORPORATION OF AMERCIA, INC.,

and

THE BOARD OF DIRECTORS OF PACKAGING CORPORATION OF AMERCIA, INC., MARK W. KOWLZAN, CHERYL K. BEEBE, DUANE FARRINGTON, DONNA A. HARMAN, ROBERT C. LYONS, THOMAS P. MAURER, SAMUEL M. MENCOFF, ROGER B. PORTER, THOMAS A. SOULELES, AND PAUL T. STECKO

and

INVESTMENT COMMITTEE OF THE PACKAGING CORPORATION OF AMERCIA, INC., MICHELLE WOJDYLA, ROBERT P. MUNDY, AND PAMELA A. BARNES

Defendants

Case No: 1:22-cv-00271

Judge Hala Y. Jarbou

Magistrate Judge Ray Kent

CLASS ACTION SECOND AMENDED COMPLAINT FOR CLAIMS UNDER 29 U.S.C. § 1132(a)(2)

COMES NOW Plaintiff, Harvey Miller and Todd K. Lamunyon, individually and as representatives of a Class of Participants and Beneficiaries of the Packaging Corporation of America Retirement Savings Plan for Salaried Employees (the "Plan" or "PCA Plan"), by their counsel, WALCHESKE & LUZI, LLC and HANEY LAW FIRM, P.C., as and for a claim against Defendants, allege and assert to the best of their knowledge, information, and belief, formed after an inquiry reasonable under the circumstances, the following:

INTRODUCTION

1. Under the Employee Retirement Income Security Act ("ERISA"), 29 U.S.C. § 1001 *et seq.*, plan fiduciaries must discharge their duty of prudence "with the care, skill, prudence, and diligence under the circumstances then prevailing that a prudent man acting in a like capacity and familiar with such matters would use in the conduct of an enterprise of a like character and with like aims." ERISA Section 404(a)(1)(B), 29 U.S.C. § 1104(a)(1)(B).

2. The ERISA fiduciary duty of prudence governs the conduct of plan fiduciaries and imposes on them "the highest duty known to the law." *Donovan v. Bierwirth*, 680 F.2d 263, 272 n. 8 (2d Cir. 1982.)

3. The law is settled under ERISA that, "a categorical rule is inconsistent with the context-specific inquiry that ERISA requires," *Hughes v. Northwestern Univ.*, 142 S. Ct. 737, 739 (2022), and "[a] plaintiff may allege that a fiduciary breached the duty of prudence by failing to properly monitor investments and remove imprudent ones." *Id.* (*citing Tibble v. Edison Int'l*, 575 U.S. 523 (2015).)

4. Even in a defined contribution plan in which participants are responsible for selecting their plan investments, *see* ERISA Section 404(c), 29 U.S.C. § 1104(c), "plan fiduciaries are required to conduct *their own independent evaluation* to determine which investments may be prudently included in the plan's menu of options." *See Hughes*, 142 S. Ct. at 742 (*citing Tibble*, 575 U.S. at 529–530) (emphasis

added.) "If the fiduciaries fail to remove an imprudent investment from the plan within a reasonable time," fiduciaries "breach their duty [of prudence]." *Id.*

5. Defendants, Packaging Corporation of America ("PCA"), the Board of Directors of the Packaging Corporation of America ("Board Defendants"), including individual Directors, Mark W. Kowlzan, Cheryl K. Beebe, Duane Farrington, Donna A. Harman, Robert C. Lyons, Thomas P. Maurer, Samuel M. Mencoff, Roger B. Porter, Thomas A. Souleles, and Paul T. Stecko, and the Investment Committee of the Packaging Corporation of America, including individual members Michelle Wojdyla, Robert P. Mundy, and Pamela A. Barnes ("Committee Defendants) (collectively, "Defendants"), are ERISA fiduciaries as they exercise discretionary authority or discretionary control over the 401(k) defined contribution pension plan – known as Packaging Corporation of America Retirement Savings Plan for Salaried Employees (the "Plan" or "PCA Plan") – that it sponsors and provides to its employees.

6. During the putative Class Period (March 23, 2016, through the date of judgment), Defendants, as fiduciaries of the Plan, as that term is defined under ERISA Section 3(21)(A), 29 U.S.C. § 1002(21)(A), breached their fiduciary duty of prudence by "offer[ing] needlessly expensive investment options," including unnecessary, high-cost share classes. *See Hughes*, 142 S. Ct. at 740.

7. These objectively unreasonable investment fees cannot be contextually justified and do not fall within "the range of reasonable judgments a fiduciary may make based on her experience and expertise." *See Hughes*, 142 S. Ct. at 742.

8. Defendants breached their fiduciary duty of prudence by offering higher cost and low-performing investments to the Plan's participant when it could have offered the same investment opportunities at a lower cost and with better performance. Defendants unreasonably failed to leverage the size of the Plan to pay reasonable fees for investment services.

9. ERISA's duty of prudence applies to the conduct of the plan fiduciaries in selecting and retaining investments based on what is reasonable (not the *cheapest* or *average*) in the applicable market.

10. There is no requirement to allege the actual inappropriate fiduciary actions taken because "a breach of fiduciary duty claim under ERISA can survive a motion to dismiss without 'well-pleaded factual allegations relating directly to the methods employed by the ERISA fiduciary if the complaint alleges facts that, if proved, would show that an adequate investigation would have revealed to a reasonable fiduciary that the investment at issue was improvident." *Comau LLC v. Blue Cross Blue Shield of Michigan*, 2020 WL 7024683, at *7 (E.D. Mich. Nov. 30, 2020) (quoting *Pension Ben. Guar. Corp. ex rel. St. Vincent Catholic Med. Ctrs. Ret. Plan v. Morgan Stanley Inv. Mgmt. Inc.*, 712 F.3d 705, 718 (2d Cir. 2013)).

11. The unreasonable selection and retention of Plan share classes and investments, inferentially tells the plausible story that Defendants breached their fiduciary duty of prudence under ERISA.

12. These breaches of fiduciary duty caused Plaintiffs and Class Members tens of millions of dollars of harm in the form of lower retirement account balances than they otherwise should have had in the absence of these unreasonable Plan fees and poorly-performing Plan funds.

13. To remedy these fiduciary breaches, Plaintiffs brings this action on behalf of the Plan under 29 U.S.C. § 1132(a)(2) to enforce Defendants' liability under 29 U.S.C. § 1109(a), to make good to the Plan all losses resulting from these breaches of the duty of prudence.

JURISDICTION AND VENUE

14. This Court has subject matter jurisdiction in this ERISA matter under 28 U.S.C. § 1331 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.*

15. This Court has personal jurisdiction over Defendants because they transact business in this District, reside in this District, and have significant contacts with this District, and because ERISA provides for nationwide service of process.

16. Venue is appropriate in this District within the meaning of 29 U.S.C. §1132(e)(2) because some or all of the violations of ERISA occurred in this District and Defendants reside and may be found in this District.

17. In conformity with 29 U.S.C. § 1132(h), Plaintiff served the initial Complaint on the Secretary of Labor and the Secretary of the Treasury.

PARTIES

18. Plaintiff, Harvey Miller, is a resident of the State of Michigan and currently resides in Ludington, Michigan, and during the Class Period, was a participant and former participant in the Plan under ERISA § 3(7), 29 U.S.C. § 1002(7).

19. Plaintiff Miller was a Shift Supervisor at the PCA Filer City Containerboard Mill facility in Filer City, Michigan from August 7, 1995, through August 12, 2014.

20. Plaintiff Miller was a participant in the Plan through August 17, 2016. During the Class Period, Plaintiff held investments in the State Street Target Retirement Date 2020 and 2025 Funds, PCA Common Stock Fund, and EuroPacific Growth Fund.

21. Plaintiff, Todd K. Lamunyon, is a resident of the State of Michigan and currently resides in Onekama, Michigan, and during the Class Period, was a participant and former participant in the Plan under ERISA § 3(7), 29 U.S.C. § 1002(7).

22. Plaintiff Lamunyon during his over twenty-one year career with PCA supervised pulp mill maintenance, supervised machine maintenance, and supervised the machine/roll rebuild, all at the PCA Filer City Containerboard Mill facility in Filer City, Michigan from October 18, 1999 through May 25, 2021.

23. Plaintiff Lamunyon was a participant in the Plan through February 4, 2022. During the Class Period, Plaintiff Lamunyon held investments in the State Street Target Retirement Date 2030 Fund, JP Morgan Stable Value Fund, Metropolitan West Total Return Bond Fund, Prudential Core Plus Bond Fund, Loomis Sayles Value Fund, Invesco Diversified Dividend Fund, Boston Partners Large Cap Value CIT, Fidelity Growth Company Fund, Northern Trust Collective Extended Equity Market Index Fund, BNY Mellon Small/Mid Cap Growth Fund, State Street International Index Fund, Northern Trust Collective S&P 500 Index Fund, and PCA Common Stock Fund.

24. Plaintiffs have Article III standing as both a current and former Plan participant to bring this action on behalf of the Plan because they suffered actual injuries to their own Plan account through paying excessive investment fees and holding poorly-performing investments during the Class Period, that injury is fairly traceable to Defendants' unlawful conduct in maintaining those challenged investments in the Plan, and the harm is likely to be redressed by a favorable judgment providing equitable relief to the Plaintiffs and Class.

25. Although Plaintiffs are former participants in the Plan, they "ha[ve] participant standing under Section 502(a)(2) because they still retains a colorable claim for vested benefits. For instance, in the event that their lawsuit on behalf of the Plan is successful, a restoration of benefits back to the Plan would result in a financial benefit to individual participants. Thus, Plaintiff sufficiently meets the requirements for statutory standing under ERISA §502(a)(2)." *See Allison v. L Brands, Inc.,* No. 2:20-CV-6018, 2021 WL 4224729, at *3 (S.D. Ohio Sept. 16, 2021.) Plaintiff also "satisfies the requirements necessary to establish constitutional standing." *Id.* at *4.

26. Having established Article III standing, Plaintiffs may seek recovery under 29 U.S.C. § 1132(a)(2), ERISA § 502(a)(2), on behalf of the Plan and for relief that sweeps beyond their own injuries, including for: high-cost share classes and high-cost, low-performing investments they did not hold and for time periods when they were not participants in the Plan.

27. The Plaintiffs and all participants in the Plan did not have knowledge of all material facts (including, among other things, the investment fees and investment underperformance) necessary to understand that Defendants breached their fiduciary duty of prudence until shortly before this suit was filed.

28. Having never managed a mega 401(k) Plan, meaning a plan with over $500 million dollars in assets, *see Center for Retirement and Policy Studies, Retirement Plan Landscape Report* 18 (March 2022) ("Mega plans have more than $500 million in assets,") Plaintiffs, and all participants in the Plan, lacked actual knowledge of reasonable fee levels available to the Plan.

29. The Packaging Corporation of America ("PCA") has approximately 15,200 employees, with operations primarily in the United States. The company's network consists of six containerboard mills, two white paper mills, ninety-five converting facilities, ten creative design centers, three fulfillment centers and eight packaging and supply centers. Its headquarters are located at 1 North Field Court, Lake Forest, IL 60045. In this Complaint, "PCA" refers to the named Defendants and all parent, subsidiary, related, predecessor, and successor entities to which these allegations pertain.

30. PCA has six (6) facilities in Michigan, of which five (5) facilities are located in this District, including the Filer City location at which Plaintiffs worked.

31. PCA acted through its officers, including the Board of Directors and its individual Directors ("Board Defendants"), and the Investment Committee and its individual Members ("Committee Defendants"), to perform Plan-related fiduciary functions in the course and scope of their business. PCA appointed other Plan fiduciaries, and accordingly had a concomitant fiduciary duty to monitor and supervise those appointees. For these reasons, PCA is a fiduciary of the Plan, within the meaning of 29 U.S.C. § 1002(21)(A).

32. The Plan Administrator is the Investment Committee of the Packaging Corporation of America and its individual members, including Defendants Wojdyla, Mundy, and Barnes (collectively "Committee Defendants"). As the Plan Administrator, Committee Defendants are fiduciaries with day-to-day administration and operation of the Plan under 29 U.S.C. § 1002(21)(A). The Committee Defendants have exclusive responsibility and complete discretionary authority to control the operation, management, and administration of the Plan, with all powers necessary to properly carry out such responsibilities.

33. The Plan is a Section 401(k) "defined contribution" pension plan under 29 U.S.C. § 1002(34), meaning that PCA's contributions to the payment of Plan costs is guaranteed but the pension benefits are not. In a defined contribution plan, the value of participants' investments is "determined by the market performance of employee and employer contributions, less expenses." *Tibble*, 575 U.S. at 525.

34. In 2021, the Plan had about $1,457,670,855 in assets entrusted to the care of the Plan's fiduciaries. The Plan thus had substantial bargaining power regarding Plan fees and expenses. Defendants, however, did not regularly monitor Alight to ensure that the Plan investments selected remained the prudent and objectively reasonable choices.

35. With 5,812 participants in 2021, the Plan had more participants than 99.75% of the defined contribution plans in the United States that filed 5500 forms for the 2021 Plan year. Similarly, with $1,457,670,855 in assets in 2021, the Plan had more assets than 99.91% of the defined contribution plans in the United States that filed 5500 forms for the 2021 Plan year.

ERISA'S FIDUCIARY STANDARDS IN THE DEFINED CONTRIBUTION INDUSTRY

36. Over the past three decades, defined contribution plans have become the most common employer-sponsored retirement plan. A defined contribution plan allows employees to make pre-

tax elective deferrals through payroll deductions to an individual account under a plan. An employer may also make matching contribution based on an employee's elective deferrals.

37. Employees with money in a plan are referred to as "participants" under ERISA Section 3(7), 29 U.S.C. § 1002(7).

38. Although PCA contributed significant amounts in employer matching contributions to Plan participants during the Class Period, these matching contributions are irrelevant to whether a Plan has paid excessive plan fees or other types of Plan expenses.

39. While contributions to a plan account and the earnings on investments will increase retirement income, fees and expenses paid by the plan may substantially reduce retirement income. Fees and expenses are a significant factor that affect plan participant's investment returns and impact their retirement income.

40. Employers must: (1) establish a prudent process for selecting investment options and service providers; (2) ensure that fees paid to service providers and other plan expenses are reasonable in light of the level and quality of services provided; and (3) monitor investment options and service providers once selected to make sure they continue to be appropriate choices.

Investments and Share Classes

41. Plan fiduciaries of a defined contribution plan have a continuing and regular duty of prudence to monitor all investment options they make available to Plan participants on a regular basis and remove imprudent ones.

42. The primary purpose in selecting plan investments is to give all participants the opportunity to create an appropriate asset allocation under modern portfolio theory by providing diversified investment alternatives.

43. When choosing an active investment option, the analysis is focused on determining whether the portfolio manager is likely to outperform an appropriate benchmark.

44. Accordingly, the primary focus when choosing an active investment option to make available to plan participants is the skill of the portfolio manager.

45. In many cases, a plan sponsor can receive the investment management services of the same portfolio manager through different share classes.

46. When the same investment management services are provided through a mutual fund with different share classes, the fee paid to the portfolio manager is the same for all share classes.

47. The difference in the share class fees is the amount of additional fees which can be used to pay for, among other things, recordkeeping services through revenue sharing.

48. When a prudent plan fiduciary can select from among several alternative share classes of the identical investment option, the prudent plan fiduciary should select the share class that provides the greatest benefit to plan participants in the form of having the lowest *net* expense, which is the expense ratio minus revenue sharing.

49. CapTrust, one of the largest providers of fiduciary services to retirement plan sponsors, specifically identifies on its website a fiduciary "pitfall" is "benchmarking only the total expense ratio" and failing to consider the net expense, i.e., "expense ratio minus revenue sharing" pointing out that, "what should be compared to the investment managers of that same asset class or category is expense ratio minus revenue sharing." See CapTrust Website, Understanding and Evaluating Retirement Plan Fees|Part Two: Benchmarking Investment Fees, https://www.captrust.com/understanding-and-evaluating-retirement-plan-fees-part-two- benchmarking-investment-fees/.

STANDARD OF CARE FOR PRUDENT FIDUCIARIES SELECTING & MONITORING INVESTMENT OPTIONS

50. For all practical purposes, there is a commonly accepted process to select and monitor investment options which is based on modern portfolio theory and the prudent investor standard.

51. That accepted process involves, among other things, evaluating the performance history, tenure, and stability of the current portfolio manager, the risk adjusted returns, and the fees.

52. When an active investment option is chosen, one of the most critical aspects of the analysis is to choose a portfolio manager because it is the skill of the portfolio manager that differentially impacts the performance of the investment.

53. From the perspective of a plan participant, the other critical component of the analysis is the fees. The total expense ratio of an investment option is often comprised of multiple different types of fees, only one of which is specifically associated with the fee of the actual portfolio manager.

54. As a result, a plan fiduciary is required to understand the interrelationship between the pricing structure it has negotiated with the recordkeeper as well as the different fee components of the investment options selected to be made available to plan participants.

55. Plan fiduciaries of plans as large as the Defendant's Plan are deemed to be "institutional investors" and are deemed to have a higher level of knowledge and understanding of the different investment share classes and the different components of fees within the total expense ratio of an investment option.

56. As "institutional investors," retirement plans often have the ability to access investment options and service structures that are not available or understood by retail investors such as individual plan participants like Plaintiff.

57. For example, minimum investment requirements and other fees or restrictions are routinely waived for large retirement plans and were waived with the Plan's investments.

58. As a result, when a plan fiduciary can choose among different share classes (or other types of investment options, e.g., collective trusts) to receive the services of a specific portfolio manager, the plan fiduciary is required to understand all the fees related to the different share classes and collective trusts and choose the share class or collective trust that is in the best interest of the plan

participants.

59. This process is especially critical when the pricing structure provides compensation to the recordkeeping from revenue sharing paid by plan participants as part of the total expense ratio of the investment options selected by the plan fiduciaries, like it did in the PCA Plan.

60. If a plan fiduciary chooses an active investment option, whether either a less costly active investment option or an alternative index option within the same asset category, the plan fiduciary must make a specific and informed finding that the probability that the active portfolio manager will outperform the alternative active investment option or index warrants the higher fees charged by the active portfolio manager and the risk/reward tradeoffs show the potential of outperformance.

61. If a plan fiduciary chooses an active investment option when a less costly active investment option or alternative index option is available in the same asset category, but the plan fiduciary does not make a specific and informed finding that the probability that the active portfolio manager will outperform the index (and warranting the higher fees charged by the active portfolio manager) and the risk/reward tradeoffs show the potential of outperformance, the plan fiduciary has acted unreasonably and/or imprudently.

THE PLAN PAID UNREASONABLY HIGH FEES FOR IMPRUDENT SHARE CLASSES

62. Many mutual funds offer multiple classes of shares in a single mutual fund that are targeted at different investors. Generally, more expensive shares are targeted at small investors with less bargaining power, while lower cost shares are targeted at larger investors with greater assets.

63. There is no material difference between share classes other than costs – the funds hold identical investments and have the same portfolio manager.

64. Mutual fund companies routinely waive investment minimums for large retirement plans and did so with the Plan.

65. Mega defined contribution plans such as the PCA Plan have sufficient assets to qualify for the lowest cost share classes.

66. Unlike individual or retail investors, retirement plan fiduciaries often have access to several different share classes. A prudent plan fiduciary ensures that the plan selects the share class that provides the greatest benefit to plan participants given the institutional advantages provided to retirement plans in relation to retail investors.

67. During the Class Period, Defendants did not use share classes that provide the greatest benefit to plan participants in the form of lowest net expense ratio.

68. During the Class Period, Defendants did not engage in an objectively reasonable search for and selection of the share classes that provide the greatest benefit to plan participants in the form of lowest net expense ratio.

69. The following charts identify Defendants' challenged share class investments during the Class Period vis-à-vis the prudent alternatives that provide the greatest benefit to Plan participants:

Defendants' Investment					Prudent Alternative Share Class					
Ticker	Fund Name	Exp Ratio (%)	Revenue Sharing (%)	Net Investment Expense to Retirement Plans (%)	Ticker	Fund Name	Exp Ratio (%)	Revenue Sharing (%)	Net Investment Expense to Retirement Plans (%)	Defendants' Plan's Investment Excessive Fees (%)
DDFIX	Invesco Diversified Dividend R5	0.54%	0.10%	0.44%	LCEIX	Invesco Diversified Dividend Investor	0.78%	0.50%	0.28%	57%
MWTSX	Metropolitan West Total Return Bond Fund	0.37%	0.00%	0.37%	MWTNX	Metropolitan West Total Return Bd Admin	0.78%	0.50%	0.28%	32%
MVSSX	Victory-Integrity Small Cap Value Fund R6	0.96%	0.00%	0.96%	VSVIX	Victory Integrity Small-Cap Value Y	1.08%	0.25%	0.83%	16%
	Average	*0.62%*	*0.03%*	*0.59%*		*Average*	*0.88%*	*0.42%*	*0.46%*	*34.98%*

70. The underlying data and information reflected in the charts above are truthful, accurate, and derived from publicly available information, which was equally as available to Defendants during the Class Period, including, but not limited to, standard reports prepared by Alight.

71. Based upon data and information reflected in the charts above, the excessive fee paid by Participants during the Class Period as a result of Defendants' failure to use the prudent alternative share class that provided the greatest benefit to Plan Participants was approximately 35%.

72. There is no rational reason for a prudent plan fiduciary to choose an investment option that effectively charges a fee that is approximately 35% higher than an alternative investment option that provides the identical services of the same portfolio manager.

73. During the entirety of the Class Period, Defendants selected a share class that resulted in higher fees to Plan participants when a share class of the identical investment option was available that would have resulted in lower fees, to the substantial detriment of Plaintiffs and the Plan's participants.

74. Although the United States Supreme Court noted in *Hughes* that "[a]t times, the circumstances facing an ERISA fiduciary will implicate difficult tradeoffs, and courts must give due regard to the range of reasonable judgments a fiduciary may make based on her experience and expertise," *Hughes*, 142 S. Ct. at 742, these share class allegations are not about reasonable tradeoffs between differently managed investments. The higher cost share classes selected by Defendants were identical to those lower-cost shares class identified in the chart above.

75. As an example, the Metropolitan West Total Return Bond Plan Fund (MWTSX), was selected by Plan fiduciaries and made available to participants in the Plan from 2016 through at least 2018. Plaintiff Lamunyon held this Fund during the Class Period.

76. As of December 31, 2018, Plan Participants had invested more than $58,141,272 in this investment option. The portfolio managers of this investment option were Stephen M. Kane, Laird R. Landmann and Bryan T. Whalen (Kane, Landmann & Whalen). Plan participants can receive the identical portfolio management services of Kane, Landmann & Whalen through several different investment options (share classes) with different fee structures. The fee structures for the varying share

classes of this investment option, all managed by Kane, Landmann & Whalen, are set forth in the chart below:

Example of Different Share Class Fee Levels for Identical Portfolio Management Services		
	Metropolitan West Total Return Bd Admin	Metropolitan West Total Return Bond Plan Fund
Share Class	Admin	Plan
Investment Advisor	Metropolitan West	Metropolitan West
Portfolio Managers	Stephen M. Kane, Laird R Landmann & Bryan T. Whalen	Stephen M. Kane, Laird R Landmann & Bryan T. Whalen
Ticker	MWTNX	MWTSX
Portfolio Management Fee	0.35%	0.35%
Total Expense Ratio	0.78%	0.37%
Revenue Sharing Credit	0.50%	0.00%
Net Investment Expense to Retirement Plans	0.28%	0.37%

77. The underlying data and information reflected in the chart above is truthful, accurate, and derived from publicly available information, which was equally as available to Defendants during the Class Period including, but not limited to, standard reports prepared by Alight.

78. In the second to last row of the chart above, "Revenue Sharing Credit," is the portion of the "Total Expense Ratio" that is allocable to the provision of RKA.

79. As a result, the fee paid for the portfolio management services of the portfolio managers Kane, Landmann & Whalen to pursue the identical investment strategy with the same goals, objectives, and risk profile is the "Net Investment Expense to Retirement Plans" set forth in the bottom row.

80. The Metropolitan West Total Return Bd Admin (MWTNX) has the lowest net investment expense at 0.28%.

81. Despite the *Total* Expense Ratio being higher, the Metropolitan West Total Return Bd Admin (MWTNX) provides the greatest benefit to Plan participants because the 0.50% in revenue sharing that is allocable to RKA services is a credit that is returned to the participants directly or used as a credit against the RKA fee.

82. Because the 0.50% allocable to RKA services exceeded the actual RKA fee, this excess was returned in full to the Plan and its participants.

83. When two identical service options are readily available (in this case the portfolio management services of Kane, Landmann & Whalen) and would be known as part of the standard of care related to selecting and monitoring investment options, a prudent plan fiduciary ensures that the least expensive of those options is selected.

84. The industry standard is also clear when it comes to the lowest *net* expense ratio being the most prudent share class. CapTrust is "one of the largest providers of fiduciary services to retirement plan sponsors" and has "more than $660 billion in assets under advisement as of September 30, 2021" with at least $300 billion of that being assets in retirement plans. *See* CAPTRUST WEBPAGE, https://www.captrust.com/captrust-announces-addi-tion-of-new-jersey-based-portfolio-evaluations-inc/.

85. With regard to net expense ratios and share classes, CapTrust specifically identifies on its website a fiduciary "pitfall" is "benchmarking only the total expense ratio" and failing to consider the net expense, i.e., "expense ratio minus revenue sharing," pointing out that, "what should be compared to other investment managers of that same asset class or category is *expense ratio minus revenue sharing*." See CAPTRUST WEBPAGE, *Understanding and Evaluating Retirement Plan Fees|Part Two: Benchmarking Investment Fees*, https://www.captrust.com/understanding-and-evaluating-retirement-plan-fees-part-two-benchmarking-investment-fees/ (emphasis added.)

86. A hypothetical prudent fiduciary conducting an impartial and objectively reasonable review of the Plan's investments during the Class Period would have conducted a review on a quarterly basis, would have identified the share class that provided the greatest benefit to Plan Participants, and would have transferred the Plan's investments into the prudent share classes at the earliest opportunity.

87. During the entirety of the Class Period, Defendants: 1) did not conduct an impartial and objectively reasonable review of the Plan's investments on a quarterly basis; 2) did not identify the prudent share classes available to the Plan; and 3) did not transfer the Plan's investments into this prudent share class at the earliest opportunity.

88. During the Class Period and because Defendants failed to act in the best interests of the Plan's Participants by engaging in an objectively reasonable process when selecting its share classes, Defendants caused unreasonable and unnecessary losses to the Plan's Participants through 2020 in the amount of approximately $316,460 and as detailed in the following chart:

Actual Investment Lineup					
	2016	2017	2018	2019	2020
Net Investment Expense to Retirement Plans	$1,407,829	$2,120,535	$2,017,994	$2,225,322	$2,878,658
Prudent Alternative Share Class					
Net Investment Expense to Retirement Plans	$1,371,248	$2,061,733	$1,922,801	$2,218,441	$2,872,375
Est. Investment Damages	$36,581	$58,802	$95,193	$6,881	$6,283
Compounding Percentage (VIIIX)		21.82%	-4.41%	31.48%	18.41%
Est. Cumulative Investment Damages	$36,581	$103,365	$194,000	$261,952	$316,460

89. During the entirety of the Class Period, and by failing to recognize that the Plan was invested in share classes that resulted in higher fees when share classes that resulted in lower fees to Plan participants was available for the same investment, and/or by failing to take effective remedial

actions as described herein, Defendants breached their fiduciary duties of prudence to Plaintiffs and the Plan participants.

<u>DEFENDANTS' INVESTMENTS IN THE PLAN</u>

90. *Hughes v. Northwestern Univ.* holds that every investment on an ERISA plan's menu must be prudent, and "participants' ultimate choice over their investments [does not] excuse allegedly imprudent decisions by [fiduciaries]." 142 S. Ct. at 742.

91. For each of challenged imprudent investments discussed below, Plaintiffs have provided a prudent alternative investment option that satisfied the same role in the same asset category as the challenged fund with respect to the plan fiduciaries' duty to provide a diversified lineup of investment options.

92. Each prudent alternative investment option is in the same Morningstar Investment category as the challenged option it should have replaced throughout the Class Period.

93. Each prudent investment option provided equivalent or superior risk adjusted returns compared to the challenged option at a lower net investment cost.

94. During the Class Period, Defendants did not engage in an objectively reasonable process when selecting funds for the Plan.

95. During the Class Period and had Defendants been acting prudently, Defendants would have selected funds with lower expense ratios and with better performance than those funds actually selected by Defendants, such as the ones identified in the chart above.

96. During the Class Period, Plaintiffs had no knowledge of Defendants' process for selecting investments and for regularly monitoring them to ensure they remained prudent.

97. During the Class Period, Plaintiffs had no knowledge of how the fees charged to and paid by the Plan participants compared to any other funds, nor how the performance of the challenged funds compared to readily-available prudent alternative investments.

98. During the Class Period, Plaintiffs did not know about the availability of lower-cost and better-performing (and other essentially identical) investment options that Defendants failed to reasonably offer at the beginning of the Class Period in March 2016 because Defendants provided no comparative information to allow Plaintiffs to evaluate and compare Defendants' investment options.

99. During the Class Period and because Defendants imprudently chose investment options that were not similar or identical to the lower cost and better performing comparator funds identified below at the beginning of the Class Period, Defendants caused unreasonable and unnecessary losses to Plaintiffs and Plan's participants in the tens of millions of dollars.

100. During the Class Period, Defendants failed to act prudently by engaging in an objectively reasonable investigation process and imprudently retained and failed to replace the following five under-performing and costly Fund investments in March 2016: (1) EuroPacific Growth Fund (RERGX) (Foreign Large Growth); (2) Loomis Sayles Value Fund (LSVNX) (Large Value); (3) Victory-Integrity Small Cap Value Fund R6 (MVSSX) (Small Value); (4) Templeton Global Bond Fund R6 (FBNRX) (Global Bond); and (5) Metropolitan West Total Return Bond Fund (MWTSX) (Intermediate Core-Plus Bond).

101. Because Defendants did not prudently replace the five challenged actively-managed funds at the beginning of the Class Period with the following actively-managed, alternative prudent investments in the same asset category in March 2016, Defendants caused objectively unreasonable and unnecessary losses to Plaintiffs and the Plan's participants in the amount of approximately $17,260,698 through March 31, 2023, as detailed in the following chart:

Replacement Fund Name	Fund Ticker	Morningstar Category	Damages as 3/31/23
Vanguard International Growth	VWILX	Foreign Large Growth	$10,448,023
Adm Vanguard Windsor Inv. Sh.	VWNDX	Large Value	$ 2,592,586
DFA US Targeted Value I	DFFVX	Small Value	$ 254,672
Dodge & Cox Global Bond I	DODLX	Global Bond	$ 508,495
Dodge & Cox Income I	DODIX	Interm. Core-Plus Bond	$ 3,456,922
		Total:	$17,260,698

102. The underlying data and information reflected in the chart above is truthful, accurate, and derived from publicly available information, which was equally available to Defendants at the beginning of the Class Period. More specifically, the methodology utilizes observed balances as of December 31, 2016, from the audited financials from the Plan's Form 5500 from 2017, with computations starting on March 31, 2016 (the start of the Class Period.)

103. Suitable replacement funds identified in the chart above were selected based on fiduciary performance measures available in real time to determine replacement funds. This methodology does not rely in any way on hindsight.

104. These identified alternative prudent investments are not unique in their ability to replace the challenged funds. Other alternative prudent investments exist in addition to the ones employed in the chart above.

105. Because no access to any fee rebate or revenue sharing data is publicly-available, this variable is not included in the damages analysis.

106. Defendants should have realized in real-time in March 2016, based on commonly use quantitative and qualitative performance metrics, and not in hindsight, that the challenged funds should have been replaced by suitable and available prudent alternatives.

107. By failing to engage in an objectively reasonable investigation process when selecting, retaining, and replacing its investments, Defendants breached their fiduciary duties of prudence to Plaintiffs and Plan participants and are liable to Plaintiffs and Class Members for the retirement monies lost by the challenged funds' poor investment performance net of fees during the Class Period.

CLASS ACTION ALLEGATIONS

108. 29 U.S.C. § 1132(a)(2) authorizes any participant or beneficiary of the Plan to bring an action individually on behalf of the Plan to enforce a breaching fiduciary's liability to the Plan under 29 U.S.C. § 1109(a).

109. In acting in this representative capacity, Plaintiffs seek to certify this action as a class action on behalf of all participants and beneficiaries of the Plan. Plaintiffs seek to certify, and to be appointed as representatives of, the following Class:

> All participants and beneficiaries of the Packaging Corporation of America Retirement Savings Plan for Salaried Employees (excluding the Defendants or any participant/beneficiary who is a fiduciary to the Plan) who held one of the challenged investments or share classes beginning March 23, 2016, and running through the date of judgment.

110. The Class includes over 5,000 members and is so large that joinder of all its members is impracticable, pursuant to Federal Rule of Civil Procedure 23(a)(1).

111. There are questions of law and fact common to this Class pursuant to Federal Rule of Civil Procedure 23(a)(2), because Defendants owed fiduciary duties to the Plan and took the actions and omissions alleged as the Plan and not as to any individual participant. Common questions of law and fact include but are not limited to the following:

a. Whether Defendants are fiduciaries liable for the remedies provided by 29 U.S.C. § 1109(a);

b. Whether Defendants breached their fiduciary duties to the Plan;

c. What are the losses to the Plan resulting from each breach of fiduciary duty; and

d. What Plan-wide equitable and other relief the Court should impose in light of Defendants' breach of duty.

112. Plaintiffs' claims are typical of the claims of the Class pursuant to Federal Rule of Civil Procedure 23(a)(3), because Plaintiffs were Participants during the time period at issue and all Participants in the proposed Class were harmed similarly by Defendants' misconduct.

113. Plaintiffs will adequately represent the Class pursuant to Federal Rule of Civil Procedure 23(a)(4), because they are Participants in the Plan during the Class period, have no interests that conflicts with the Class, are committed to the vigorous representation of the Class, and have engaged experienced and competent lawyers to represent the Class.

114. Certification is appropriate under Federal Rule of Civil Procedure 23(b)(1), because prosecution of separate actions for these breaches of fiduciary duties by individual participants and beneficiaries would create the risk of (1) inconsistent or varying adjudications that would establish incompatible standards of conduct for Defendant concerning its discharge of fiduciary duties to the Plan and personal liability to the Plan under 29 U.S.C. § 1109(a), and (2) adjudications by individual participants and beneficiaries regarding these breaches of fiduciary duties and remedies for the Plan would, as a practical matter, be dispositive of the interests of the participants and beneficiaries who are not parties to the adjudication, or would substantially impair those participants' and beneficiaries' ability to protect their interests.

115. Certification is also appropriate under Federal Rule of Civil Procedure 23(b)(2) because Defendants have acted or refused to act on grounds that apply generally to the Class, so that final injunctive relief or corresponding declaratory relief is appropriate respecting the class as a whole.

116. Plaintiffs' attorneys are experienced in complex ERISA and class litigation and will adequately represent the Class.

117. The claims brought by the Plaintiffs arise from fiduciary breaches as to the Plan in its entirety and do not involve mismanagement of individual accounts.

118. The claims asserted on behalf of the Plans in this case fall outside the scope of any exhaustion language in individual participants' Plans. Exhaustion is intended to serve as an administrative procedure for participants and beneficiaries whose claims have been denied and not where a participant or beneficiary brings suit on behalf of a Plan for breaches of fiduciary duty.

119. Under ERISA, an individual "participant" or "beneficiary" are distinct from an ERISA Plan. A participant's obligation – such as a requirement to exhaust administrative remedies – does not, by itself, bind the Plan.

120. Moreover, any administrative appeal would be futile because the entity hearing the appeal (the Plan Administrator) is the same Plan Administrator that made the decisions that are at issue in this lawsuit. Policy supporting exhaustion of administrative remedies in certain circumstances – that the Court should review and where appropriate defer to a Plan administrator's decision – does not exist here because courts will not defer to Plan administrator's legal analysis and interpretation.

FIRST CLAIM FOR RELIEF
Breaches of Duty of Prudence of ERISA, as Amended
(Plaintiffs, on behalf of themselves and Class, Against Committee Defendants – Underperforming Investments)

121. Plaintiffs restate the above allegations as if fully set forth herein.

122. Committee Defendants are fiduciaries of the Plan under 29 U.S.C. §§ 1002(21) and/or 1102(a)(1).

123. 29 U.S.C. § 1104(a)(1)(B) imposes a fiduciary duty of prudence upon Committee Defendants in managing the investments, including share classes, of the Plan.

124. Committee Defendants, as fiduciaries of the Plan, are responsible for selecting and maintaining prudent investment options, ensuring that those options charge only reasonable fees, and taking any other necessary steps to ensure that the Plan's assets are invested prudently.

125. During the Class Period, Committee Defendants had a fiduciary duty to do all of the following: manage the assets of the Plan prudently; defray reasonable expenses of administering the Plan; and act with the care, skill, diligence, and prudence required by ERISA.

126. During the Class Period, Committee Defendants breached their fiduciary duties of prudence to Plan Participants, including Plaintiffs, by failing to manage the assets of the Plan prudently, defray reasonable expenses of administering the Plan, act with the care, skill, diligence, and prudence required by ERISA.

127. Committee Defendants, as fiduciaries of the Plan, had a continuing duty to regularly monitor and independently assess whether the Plan's investments were prudent choices for the Plan and to remove imprudent investment options regardless of how long those investments had been in the Plan.

128. During the Class Period, Committee Defendants breached their fiduciary duties of prudence to Plan Participants, including Plaintiffs, by failing to engage in a prudent process for monitoring the Plan's investments and by failing to remove imprudent investments within a reasonable period.

129. Committee Defendants were directly responsible for ensuring that the Plan's investment management fees were reasonable, selecting investment options in a prudent fashion, prudently evaluating and monitoring the Plan's investments on an ongoing basis, eliminating funds or share classes that were not prudent, and taking all necessary steps to ensure that the Plan's assets were invested prudently and appropriately.

130. Committee Defendants failed to employ a prudent process by failing to evaluate the performance and cost of the Plan's investments critically or objectively in comparison to other more reasonable investment options.

131. Committee Defendants selected and retained for years as Plan investment options mutual funds with high expenses and low performance relative to other investment options that were readily available to the Plan at all relevant times in same asset category and in the same investment style.

132. Committee Defendants failure to discharge their duties with respect to the Plan with the care, skill, prudence, and diligence under the circumstances then prevailing that a prudent person acting in a like capacity and familiar with such matters would have used in the conduct of an enterprise of like character and with like aims, breaching its duties under 29 U.S.C. § 1104(a)(1)(B).

133. As a result of Committee Defendants' breach of their fiduciary duties of prudence with respect to the Plan, the Plaintiffs and Plan participants suffered unreasonable and unnecessary monetary losses.

134. Committee Defendants are liable under 29 U.S.C. §§ 1109(a) and 1132(a)(2) for Plan-wide relief to make good to the Plan the losses resulting from the breaches, to restore to the Plan any profits defendants made through the use of Plan assets, and to restore to the Plan any profits resulting from the breaches of fiduciary duties alleged in this Count. In addition, Committee Defendants are subject to other equitable relief pursuant to 29 U.S.C. §§ 1109(a) and 1132(a)(2).

SECOND CLAIM FOR RELIEF
Failure to Adequately Monitor Other Fiduciaries under ERISA, as Amended
(Plaintiffs, on behalf of themselves and Class, Against Defendants PCA and Board - Underperforming Investments)

135. Plaintiffs restate the above allegations as if fully set forth herein.

136. Defendants PCA and Board had the authority to appoint and remove members or individuals responsible for Plan investment management fees and performance on the Committee and knew or should have known that these fiduciaries had critical responsibilities for the Plan.

137. In light of this authority, Defendants PCA and Board had a duty to monitor those individuals responsible for Plan investment management fees and performance on the Committee to ensure that they were adequately performing their fiduciary obligations, and to take prompt and effective action to protect the Plan in the event that these individuals were not fulfilling those duties.

138. Defendants PCA and Board had a duty to ensure that the individuals responsible for Plan administration on the Committee possessed the needed qualifications and experience to carry out their duties (or use qualified advisors and service providers to fulfill 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 Defendants.

139. The objectively unreasonable and excessive investment management fees paid by the Plan, as well as the underperformance by the challenged funds, inferentially suggest that Defendants PCA and Board breached their duty to monitor by, among other things:

a. Failing to monitor and evaluate the performance of individuals responsible for Plan investment management fees and performance on the Committee or have a system in place for doing so, standing idly by as the Plan suffered significant losses;

b. Failing to monitor the process by which the Plan's recordkeeper, Alight, was evaluated and failing to investigate the availability of more reasonably-priced investment management fees and better-performing funds; and

c. Failing to remove individuals responsible for Plan investment management fees and performance on the Committee whose performance was inadequate in that these individuals continued to pay the same investment management costs and retain the same underperforming investments even though other comparable plans had less-costly share classes and better-performing reasonable prudent alternative investments in the same asset categories, all to the detriment of the Plan and Plan participants' retirement savings.

140. As the consequences of the foregoing breaches of the duty to monitor for investment management fees and performance, the Plaintiffs and Plan participants suffered tens of millions of dollars of objectively unreasonable and unnecessary monetary losses.

141. Pursuant to 29 U.S.C. §§1109(a) and 1132(a)(2), Defendants PCA and Board are liable to restore to the PCA Plan all loses caused by their failure to adequately monitor individuals responsible for Plan investment management fees and performance. In addition, Plaintiffs are entitled to equitable relief and other appropriate relief as set forth in the Prayer for Relief.

WHEREFORE, Plaintiffs pray that judgment be entered against Defendants on all claims and requests that the Court award 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 Plaintiffs as Class Representatives and designation of Plaintiffs' counsel as Class Counsel;

C. A Declaration 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 fiduciary duty, including restoring to the Plan all losses resulting from paying investment management costs and retaining underperforming funds, restoring to the Plan all profits the Defendants made through use of the Plan's assets, and restoring to the Plan all profits which the Participants would have made if the Defendants had fulfilled their fiduciary obligations;

E. An Order requiring Defendant PCA 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 constructive trust, or surcharge against PCA as necessary to effectuate relief, and to prevent PCA's unjust enrichment;

F. An Order enjoining Defendants from any further violation of their ERISA fiduciary responsibilities, obligations, and duties;

G. 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;

H. An award of pre-judgment interest;

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

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

Dated this 12th day of May, 2023

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