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UNITED STATES DISTRICT COURT

DISTRICT OF OREGON

PORTLAND DIVISION

PAUL ENOS and DAVID FREITAS, individually and as representatives of a Class of Participants and Beneficiaries on Behalf of the Adidas Group 401(k) Savings and Retirement Plan, Plaintiffs, v. ADIDAS AMERICA, INC., Defendant.	Case No. **CLASS ACTION COMPLAINT FOR CLAIMS UNDER 29 U.S.C. § 1132(a)(2)** DEMAND FOR JURY TRIAL

NOW COME Plaintiffs Paul Enos and David Freitas, individually and as representatives of a Class of Participants and Beneficiaries on Behalf of the Adidas Group 401(k) Savings and Retirement Plan and assert to the best of their knowledge,

information and belief, formed after an inquiry reasonable under the circumstances, the following:

INTRODUCTION

1. The duties of loyalty and prudence are "the highest known to the law" and require fiduciaries to keep "an eye single to the interests of the [ERISA] participants and beneficiaries." *Donovan v. Bierwirth*, 680 F.2d 263, 271-72 n.8 (2nd Cir. 1928). This duty is incorporated as a matter of law into ERISA through 29 U.S.C. § 1002(21)(A), which provides that an entity is an ERISA fiduciary "with respect to a plan to the extent that [it] exercises any discretionary authority or discretionary control respecting management of such plan or exercises any authority or control respecting management or disposition of its assets."

2. Defendant Adidas America, Inc. is an ERISA fiduciary as it exercises discretionary authority or discretionary control over the 401(k) defined contribution plan – known as the Adidas Group 401(k) Savings and Retirement Plan– that it sponsors and provides to its employees. *For every year between 2013 and 2017 (financial information for 2018 is not yet available), the administrative fees charged to Plan participants for is greater than a minimum of approximately 75 percent of its comparator fees when fees are calculated as cost per participant. And for every year between 2013 and 2017 but two (financial information for 2018 is not yet available), the administrative fees charged to Plan participants is greater than 80 percent of its comparator fees when fees are calculated as a percent of total assets.*

3. These excessive fees cannot be justified. The high fees, occurring over years, represent something more than a sloppy business practice; they are a breach of the fiduciary duties owed by Adidas to Plan participants and beneficiaries. Prudent fiduciaries of 401(k) plans continuously monitor administrative fees against applicable benchmarks and peer groups to identify excessive and unjustifiable fees. To remedy, Plaintiffs bring this action on behalf of the Plan under 29 U.S.C. § 1132(a)(2) to enforce Adidas's liability under 29 U.S.C. § 1109(a) to make good to the Plan all losses resulting from Adidas's breaches of fiduciary duty.

JURISDICTION AND VENUE

4. This Court has jurisdiction in this ERISA matter via 28 U.S.C. § 1331.

5. Venue is appropriate in this district because Adidas may be found in this judicial district within the meaning of 29 U.S.C. § 1132(e)(2).

6. In conformity with 29 U.S.C. § 1132(h), Plaintiffs have served the original Complaint by certified mail on the Secretary of Labor and the Secretary of the Treasury.

PARTIES

7. Plaintiff Paul Enos lives in New Bedford, Massachusetts and, during the Class period, was a participant in the Plan under 29 U.S.C. § 1002(7).

8. Plaintiff David Freitas lives in Achushnet, Massachusetts and, during the Class period, was a participant in the Plan under 29 U.S.C. § 1002(7).

9. The named Plaintiffs and all participants in the Plan suffered financial harm as a result of the imprudent or excessive fee options in the Plan because Adidas's

inclusion of those options deprived participants of the opportunity to grow their retirement savings by investing in prudent options with reasonable fees, which would have been available in the Plan if Adidas had satisfied its fiduciary obligations. All participants continue to be harmed by the ongoing inclusion of these investment options.

10. Adidas America Inc. ("Adidas") is a company with its principal headquarters located at 3449 North Anchor Street, Portland, Oregon. In this Complaint, "Adidas" refers to the named defendant and all parent, subsidiary, related, predecessor, and successor entities to which these allegations pertain. Adidas is the Plan sponsor of the Adidas Group 401(k) Savings and Retirement Plan.

11. Adidas is a fiduciary with ultimate responsibility for the control, management, and administration of the Plan in accord with 29 U.S.C. § 1102(a). In combination, Adidas has 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.

12. The Plan is a "defined contribution" pension plan, meaning that Adidas's contribution to the payment of Plan costs is guaranteed but the pension benefits are not. Adidas contributes 51% of the costs; participants contribute the remainder. Of all of the eligible Plan participants, 27% are retired; 18% are eligible without a 401(k) balance; and 55% are active with a 401(k) balance. There are three service providers that provide recordkeeping and information (among other things) to the Plan: KPMG, Charles Schwab and UBS.

13. The Plan is a defined contribution, individual account employee pension benefit plan under 29 U.S.C. §§ 1002(2)(A) and 1002(34). The Plan is established and maintained under a written document in accord with 29 U.S.C. § 1102(a)(1). The Plan provides for retirement income for eligible Adidas employees and their beneficiaries.

ERISA's FIDUCIARY STANDARDS

14. ERISA imposes strict fiduciary standards of duty and loyalty and prudence on Adidas as a fiduciary to the Plan. 29 U.S.C. § 1104(a)(1) provides in relevant part:

> [A] fiduciary shall discharge his duties with respect to a plan solely in the interest of the participants and beneficiaries and –
>
> (A) for the exclusive purpose of:
>
> (i) providing benefits to participants and their beneficiaries; and
>
> (ii) defraying reasonable expenses of administering the plan; [and]
>
> (B) 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 like character and with like aims.

15. With certain exceptions not relevant here, 29 U.S.C. § 1103(c)(1) provides in relevant part:

> the assets of a plan shall never inure to the benefit of any employer and shall be held for the exclusive purposes of providing benefits to participants in the plan and their beneficiaries and defraying reasonable expenses of administering the plan.

16. 29 U.S.C. § 1109 provides in relevant part:

> Any person who is a fiduciary with respect to a plan who breaches any of the responsibilities, obligations, or duties imposed upon fiduciaries by this subchapter shall be personally liable to make good to such plan any losses to the plan resulting from each such breach, and to restore to such plan any

> profits of such fiduciary which have been made through use of assets of the plan by the fiduciary, and shall be subject to such other equitable or remedial relief as the court may deem appropriate, including removal of such fiduciary.

17. Under ERISA, fiduciaries that exercise any authority or control over plan assets, including the selection of plan investments and service providers, must act prudently and for the exclusive benefit of participants in the plan, and not for the benefit of third parties including service providers to the plan such as recordkeepers and those who provide investment products. Fiduciaries must ensure that the amount of fees paid to those service providers is no more than reasonable. DOL Adv. Op. 97-15A; DOL Adv. Op. 97-16A; *see also* 29 U.S.C. §1103(c)(1) (plan assets "shall be held for the exclusive purposes of providing benefits to participants in the plan and their beneficiaries and defraying reasonable expenses of administering the plan").

18. "[T]he 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 Litig.*, 74 F.3d 420, 435 (3d Cir. 1996); *Katsaros v. Cody*, 744 F.2d 270, 279 (2nd Cir. 1984) (fiduciaries must use "the appropriate methods to investigate the merits" of plan investments). Fiduciaries must "initially determine, and continue to monitor, the prudence of each investment option available to plan participants." *DiFelice v. U.S. Airways, Inc.*, 497 F.3d 410, 423 (4th Cir. 2007); (emphasis original); *see also* 29 C.F.R. § 2550.404a-1; DOL Adv. Opinion 98-04A; DOL Adv. Opinion 88-16A. Thus, a defined contribution plan fiduciary cannot "insulate itself from liability by the simple expedient of including a very large number of investment alternatives in its portfolio

and then shifting to the participants the responsibility for choosing among them." *Hecker v. Deere & Co.*, 569 F.3d 708, 711 (7th Cir. 2009). Fiduciaries have "a continuing duty to monitor investments and remove imprudent ones[.]" *Tibble v. Edison Int'l*, 135 S. Ct. 1823, 1828-29 (2015).

19. 29 U.S.C. § 1132(a)(2) authorizes plan participants to bring a civil action for appropriate relief under 29 U.S.C. § 1109.

THE PLAN

20. There are commercially available programs commonly used by financial advisors and plan fiduciaries to analyze plans' performance, comparative costs and so on. The programs require validated information (financial information submitted to the federal government is often incomplete or contains errors). The program used for the analysis below contains validated financial information from more than 55,000 financial plans of all types. The benchmarking analysis below is of the type often employed by fiduciaries and financial advisors to determine the productivity and efficiency of financial programs and is appropriately used here.

21. The following are tabular depictions of the Adidas Plan's fees calculated as cost per 401(k) plan participant/beneficiary *and* as a percentage of the total Plan's assets when compared to a representative group of plans with a participant count from 5,000 to 9,999 and plans with a total value of plan assets greater than $500 million (the figures relating to the Adidas Plan are highlighted in yellow and the average figures of the comparator plans between 2013 and 2017 are highlighted in green):

Adidas Plan Benchmarked Against Other Comparator Plans With Participant Count Range of Between 5,000 and 9,999 As Fee Cost Per Participant And Percentage Of Total Plan Assets

2017 – 37 Plans (not including Adidas)

Adidas	*90th % Comp.*	*50th % Comp.*	*Mean Comp.*
Asset Percentage .61% Cost Per Head $513.45	Asset Percentage .63% Cost Per Head $523.06	Asset Percentage .45% Cost Per Head $374.44	Asset Percentage .43% Cost Per Head $357.01

2016 – 37 Plans (not including Adidas)

Adidas	*90th % Comp.*	*50th % Comp.*	*Mean Comp.*
Asset Percentage .62% Cost Per Head $461.64	Asset Percentage .63% Cost Per Head $468.06	Asset Percentage .45% Cost Per Head $335.07	Asset Percentage .43% Cost Per Head $319.47

2015 – 37 Plans (not including Adidas)

Adidas	*90th % Comp.*	*50th % Comp.*	*Mean Comp.*
Asset Percentage .70% Cost Per Head $511.77	Asset Percentage .63% Cost Per Head $468.55	Asset Percentage .45% Cost Per Head $335.42	Asset Percentage .43% Cost Per Head $319.80

2014 – 37 Plans (not including Adidas) with range between 5,000-9,999

Adidas	*90th % Comp.*	*50th % Comp.*	*Mean Comp.*
Asset Percentage .70% Cost Per Head $517.20	Asset Percentage .63% Cost Per Head $465.49	Asset Percentage .45% Cost Per Head $333.23	Asset Percentage .43% Cost Per Head $317.72

2013 – 37 Plans (not including Adidas) with range between 5,000-9,999

Adidas	*90th % Comp.*	*50th % Comp.*	*Mean Comp.*
Asset Percentage .73% Cost Per Head $529.58	Asset Percentage .63% Cost Per Head $453.65	Asset Percentage .45% Cost Per Head $324.76	Asset Percentage .43% Cost Per Head $309.64

Adidas Plan Benchmarked Against Other Comparator Plans With Asset Range of Greater than $500 Million As Fee Cost Per Percentage Of Total Plan Assets

2017 – 26 Plans (not including Adidas)

Adidas	*90th % Comp.*	*50th % Comp.*	*Mean Comp.*
Asset Percentage .61%	**Asset Percentage .63 %**	**Asset Percentage .43%**	**Asset Percentage .44%**

2016 – 26 Plans (not including Adidas)

Adidas	*90th % Comp.*	*50th % Comp.*	*Mean Comp.*
Asset Percentage .62%	**Asset Percentage .63%**	**Asset Percentage .43%**	**Asset Percentage .44%**

2015 – 22 Plans with asset range of $250 million - $500 million (not including Adidas)

Adidas	*90th % Comp.*	*50th % Comp.*	*Mean Comp.*
Asset Percentage .70%	**Asset Percentage .63%**	**Asset Percentage .45%**	**Asset Percentage .43%**

2014 – 26 Plans (not including Adidas) with asset range greater than $500 million

Adidas	*90th % Comp.*	*50th % Comp.*	*Mean Comp.*
Asset Percentage .70%	**Asset Percentage .63%**	**Asset Percentage .43%**	**Asset Percentage .44%**

2013 – 22 Plans (not including Adidas) with asset range $250 million-$500 million

Adidas	*90th % Comp.*	*50th % Comp.*	*Mean Comp.*
Asset Percentage .73%	**Asset Percentage .63%**	**Asset Percentage .45%**	**Asset Percentage .43%**

22. The total difference from 2013 to 2017 between Adidas's fees and the average of its comparators based on total number of participants is **$6,242,659.**

23. The total difference from 2013 to 2017 between Adidas's fees and the average of its comparators based on plan asset size is **$6,078,234.**

24. Plaintiffs had no knowledge of how the fees charged to and paid by Adidas Plan participants compared to market norms.

25. The Adidas Plan's fees were also excessive when compared with other comparable mutual funds not offered by the Plan.

26. The charges that follow are expressed as a percentage of assets under management, or "expense ratio." For example, if the mutual fund deducts 1% of fund assets each year in fees, the fund's expense ratio would be 1%, or 100 basis points (or bps).(One basis point is equal to 1/100th of one percent (or 0.01%).The fees deducted from a mutual fund's assets reduce the value of the shares owned by fund investors.

27. Here is a comparison of the Plan's individual funds fees compared with other funds that Adidas did not make available to Plaintiffs and other participants:

PLAN FUNDS COMPARED TO IDENTICAL LOWER COST FUNDS IN 2017

Plan Fund	Plan Fee	Identical lower-cost fund	Identical lower-cost fund fee	Plan's Excess (%)
T. Rowe Price Retirement Balanced I (TRPTX)	38 bps	Vanguard LifeStrategy Cnsrv. Gr. Inv. (VSCGX)	12 bps	217%
T. Rowe Price Retirement I 2005 I (TRPFX)	40 bps	Fidelity Freedom Index 2005 Inst. Prem. (FFGFX)	8 bps	400%
T. Rowe Price Retirement I 2010 I (TRPAX)	39 bps	Fidelity Freedom Index 2010 Inst. Prem. (FFWTX)	8 bps	388%

T. Rowe Price Retirement I 2015 I (TRFGX)	43 bps	Fidelity Freedom Index 2015 Inst. Prem. (FIWFX)	8 bps	438%
T. Rowe Price Retirement I 2020 I (TRBRX)	47 bps	Fidelity Freedom Index 2020 Inst. Prem. (FIWTX)	8 bps	488%
T. Rowe Price Retirement I 2025 I (TRRHX)	50 bps	Fidelity Freedom Index 2025 Inst. Prem. (FFEDX)	8 bps	525%
T. Rowe Price Retirement I 2030 I (TRPCX)	53 bps	Fidelity Freedom Index 2030 Inst. Prem. (FFEGX)	8 bps	563%
T. Rowe Price Retirement I 2035 I (TRPJX)	56 bps	Fidelity Freedom Index 2035 Inst. Prem. (FFEZX)	8 bps	600%
T. Rowe Price Retirement I 2040 I (TRPDX)	58 bps	Fidelity Freedom Index 2040 Inst. Prem. (FFIZX)	8 bps	625%
T. Rowe Price Retirement I 2045 I (TRPKX)	59 bps	Fidelity Freedom Index 2045 Inst. Prem. (FFOLX)	8 bps	638%
T. Rowe Price Retirement I 2050 I (TRPMX)	59 bps	Fidelity Freedom Index 2050 Inst. Prem. (FFOPX)	8 bps	638%
T. Rowe Price Retirement I 2055 I (TRPNX)	59 bps	Fidelity Freedom Index 2055 Inst. Prem. (FFLDX)	8 bps	638%
T. Rowe Price Retirement I 2060 I (TRPLX)	59 bps	Fidelity Freedom Index 2060 Inst. Prem. (FFWTX)	8 bps	638%

T. Rowe Price Equity Income I (REIPX)	55 bps	American Century Income and Growth I (AMGIX)	46 bps	20%
Vanguard FTSE Social Index I (VFTNX)	12 bps	Fidelity 500 Index (FXAIX)	2 bps	500%
Vanguard Institutional Index I (VINIX)	4 bps	Vanguard Institutional Index Inst. Pl. (VIIIX)	2 bps	100%
T. Rowe Price Blue Chip Growth (TBCIX)	57 bps	Morgan Stanley Inst. Growth IS (MGRPX)	54 bps	6%
T. Rowe Price Small-Cap Stock I (OTIIX)	75 bps	T. Rowe Price Inst. Small-Cap Stock (TRSSX)	66 bps	14%
American Funds Europacific Growth R6 (RERGX)	49 bps	Vanguard International Growth Inv (VWIGX)	45 bps	9%
Parametric Emerging Markets Instl. (EIEMX)	112 bps	JP Morgan Emerging Markets Equity L (JMIEX)	95 bps	18%
Metropolitan West Total Return Bd. Plan (MWTSX)	37 bps	Bridge Builder Core Plus Bond Fund (BBCPX)	19 bps	95%
PIMCO Total Return Admin (PTRAX)	80 bps	Bridge Builder Core Plus Bond Fund (BBCPX)	19 bps	321%

28. Here is a comparison of how those funds available in the Adidas Plan performed compared with the same funds made available outside the Adidas Plan:

PLAN FUNDS' PERFORMANCE COMPARED TO THE SAME FUNDS

Plan Mutual Fund	3 Year Return	Identical lower-cost mutual fund	3 Year Return
T. Rowe Price Retirement Balanced I (TRPTX)	6.20%	Vanguard LifeStrategy Cnsrv. Gr. Inv. (VSCGX)	6.12%
T. Rowe Price Retirement I 2005 I (TRPFX)	6.85%	Fidelity Freedom Index 2005 Inst. Prem. (FFGFX)	6.05%
T. Rowe Price Retirement I 2010 I (TRPAX)	7.46%	Fidelity Freedom Index 2010 Inst. Prem. (FFWTX)	7.11%
T. Rowe Price Retirement I 2015 I (TRFGX)	8.38%	Fidelity Freedom Index 2015 Inst. Prem. (FIWFX)	8.18%
T. Rowe Price Retirement I 2020 I (TRBRX)	9.56%	Fidelity Freedom Index 2020 Inst. Prem. (FIWTX)	8.90%
T. Rowe Price Retirement I 2025 I (TRPCX)	10.57%	Fidelity Freedom Index 2025 Inst. Prem. (FFEDX)	9.58%
T. Rowe Price Retirement I 2030 I (TRPCX)	11.43%	Fidelity Freedom Index 2030 Inst. Prem. (FFEGX)	11.20%
T. Rowe Price Retirement I 2035 I (TRPJX)	12.11%	Fidelity Freedom Index 2035 Inst. Prem. (FFEZX)	12.41%
T. Rowe Price Retirement I 2040 I (TRPDX)	12.72%	Fidelity Freedom Index 2040 Inst. Prem. (FFIZX)	12.43%
T. Rowe Price Retirement I 2045 I (TRPKX)	12.91%	Fidelity Freedom Index 2045 Inst. Prem. (FFOLX)	12.44%
T. Rowe Price Retirement I 2050 I (TRPMX)	12.92%	Fidelity Freedom Index 2050 Inst. Prem. (FFOPX)	12.44%
T. Rowe Price Retirement I 2055 I (TRPNX)	12.90%	Fidelity Freedom Index 2055 Inst. Prem. (FFLDX)	12.45%

T. Rowe Price Retirement I 2060 I (TRPLX)	12.89%	Fidelity Freedom Index 2060 Inst. Prem. (FFWTX)	12.46%
T. Rowe Price Equity Income I (REIPX)	11.35%%	American Century Income and Growth I (AMGIX)	13.10%
Vanguard FTSE Social Index I (VFTNX)	16.42%%	Fidelity 500 Index (FXAIX)	14.82%
Vanguard Institutional Index I (VINIX)	14.80%	Vanguard Institutional Index Inst. Pl. (VIIIX)	14.82%
T. Rowe Price Blue Chip Growth I (TBCIX)	21.81%	Morgan Stanley Inst. Growth IS (MGRPX)	26.23%
T. Rowe Price Small-Cap Stock I (OTIIX)	16.07%	T. Rowe Price Inst. Small-Cap Stock (TRSSX)	16.19%
American Funds Europacific Growth R6 (RERGX)	9.94%	Vanguard International Growth Inv (VWIGX)	15.13%
Parametric Emerging Markets Instl. (EIEMX)	6.61%	JP Morgan Emerging Markets Equity L (JMIEX)	14.92%
Metropolitan West Total Return Bd. Plan (MWTSX)	2.32%	Bridge Builder Core Plus Bond Fund (BBTBX)	2.51%
PIMCO Total Return Admin (PTRAX)	2.54%	Bridge Builder Core Plus Bond Fund (BBCPX)	2.87%

29. Finally, here is a comparison of how those funds available in the Adidas Plan before 2017 performed compared with the same funds made available outside the Adidas Plan:

OTHER FUNDS IN THE PLAN PRIOR TO 2017

Plan Fund	Plan Fee	Identical lower-cost fund	Identical lower-cost fund fee	Plan's Excess (%)
T. Rowe Price Equity Income (PRFDX)	65 bps	Vanguard Value Index Inv. (VIVAX)	17 bps	282%
T. Rowe Price Blue Chip Growth (TRBCX)	70 bps	T. Rowe Price Inst. Large Cap Growth (TRLGX)	56 bps	25%
Vanguard Extended Market Index I (VIEIX)	6 bps	Fidelity Extended Market Index (FSMAX)	5 bps	20%
T. Rowe Price Small-Cap Stock (OTCFX)	89 bps	T. Rowe Price Instl. Small-Cap Stock (TRSSX)	66 bps	35%
PIMCO Total Return Instl. (PTTRX)	55 bps	Bridge Builder Core Plus Bond (BBCPX)	19 bps	190%
PIMCO Total Return Admin (PTRAX)	80 bps	Bridge Builder Core Plus Bond (BBCPX)	19 bps	321%

Plan Mutual Fund	3 Year Return	Identical lower-cost mutual fund	3 Year Return
T. Rowe Price Equity Income (PRFDX)	10.70%	Vanguard Value Index Inv. (VIVAX)	12.52%
T. Rowe Price Blue Chip Growth (TRBCX)	21.35%	T. Rowe Price Inst. Large Cap Growth (TRLGX)	23.27%
Vanguard Extended Market Index I (VIEIX)	14.12%	Fidelity Extended Market Index (FSMAX)	13.51%
T. Rowe Price Small-Cap Stock (OTCFX)	15.67%	T. Rowe Price Instl. Small-Cap Stock (TRSSX)	16.76%

PIMCO Total Return Instl. (PTTRX)	2.64%	Bridge Builder Core Plus Bond (BBCPX)	2.66%
PIMCO Total Return Admin (PTRAX)	2.41%	Bridge Builder Core Plus Bond (BBCPX)	2.66%

30. By selecting and retaining the Plan's excessive cost investments while failing to adequately investigate the use of superior lower-cost mutual funds from other fund companies that were readily available to the Plan or foregoing those alternatives without any prudent reason for doing so, Adidas caused Plan participants to lose millions of dollars of their retirement savings through excessive fees.

THE OVERCHARGES BREACHED DEFENDANT'S FIDUCIARY OBLIGATIONS TO THE PLAN

31. The administrative fees of the investment offerings were paid for by the Plan participants. Adidas, as a fiduciary, was responsible for ensuring that these administrative fees were reasonable.

32. A plan's fiduciaries have control over defined contribution plan expenses. The fiduciaries have exclusive control over the menu of investment options to which participants may direct the assets in their accounts. Those selections each have their own fees, which are deducted from the returns that participants receive on their investments.

33. At retirement, employees' benefits are limited to the value of their own individual investment accounts, which is determined by the market performance of employee and employer contributions, less expenses. Accordingly, excessive fees can impair the value of a participant's account. Over time, even small differences in fees and

performance can result in vast differences in the amount of savings available at retirement.

34. Prudent fiduciaries exercising control over administration of a plan and the selection and monitoring of designated investment alternatives will minimize plan expenses by hiring low-cost service providers and by curating a menu of low-cost investment options. *See* Restatement (Third) of Trusts § 90 cmt. b ("[C]ost-conscious management is fundamental to prudence in the investment function. . . .").

35. The Supreme Court has noted that the legal construction of an ERISA fiduciary's duties is "derived from the common law of trusts." *Tibble v. Edison Int'l*, 135 S. Ct. 1823, 1828 (2015). Therefore, "[i]n determining the contours of an ERISA fiduciary's duty, courts often must look to the law of trusts." *Id.* In fact, the duty of prudence imposed under 29 U.S.C. § 1104(a)(1)(B) is a codification of the common law prudent investor rule found in trust law. *Buccino v. Continental Assur. Co.*, 578 F. Supp. 1518, 1521 (S.D.N.Y. 1983).

36. Given the significant variation in total plan fees attributable to plan size, the reasonableness of administrative expenses and investment management expenses should be determined by comparison to other similarly-sized plans. *See* 29 U.S.C. § 1104(a)(1)(B) (requiring ERISA fiduciaries to discharge their duties in the manner "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").

37. A fiduciary must initially determine, and continue to monitor, the prudence of each investment option available to plan participants. A plan fiduciary

cannot assume that an investment that began as a prudent one will remain so, particularly when the original circumstances change or the investment reveals itself to be deficient. An ERISA fiduciary's investment decisions also must account for changed circumstances and a trustee who simply ignores changed circumstances that have increased the risk of loss to the trust's beneficiaries is imprudent.

38. As illustrated above, the Adidas's Plan's administrative fees are the highest among its comparator peers consistently, regardless whether the comparison is based on a cost per participant or a percentage of assets.

39. The funds chosen by Adidas from which Plan participants may elect to invest are "actively managed," which in significant measure results in the higher administrative fees. Adidas could have chosen passively managed funds to offer even as an alternative to Plan participants. These passively managed funds would have resulted in significantly lower administrative fees yet generated comparable returns.

40. As understood in the investment community, passively managed investment options should either be used or, at a minimum, thoroughly analyzed and considered in efficient markets such as large capitalization U.S. stocks. This is because it is difficult and either unheard of, or extremely unlikely, to find actively managed mutual funds that outperform a passive index, net of fees, particularly on a consistent basis.

41. Nobel Prize winners in economics have concluded that virtually no investment manager consistently beats the market over time after fees are considered. "Properly measured, the average actively managed dollar must underperform the

average passively managed dollar, net of costs." William F. Sharpe, The Arithmetic of Active Management, 47 FIN. ANALYSTS J. 7, 8 (Jan./Feb. 1991); Eugene F. Fama & Kenneth R. French, Luck Versus Skill in the Cross- Section of Mutual Fund Returns, 65 J. FIN. 1915, 1915 (2010) ("After costs . . . in terms of net returns to investors, active investment must be a negative sum game.").

42. To the extent fund managers show any sustainable ability to beat the market, the outperformance is nearly always dwarfed by mutual fund expenses. Fama & French, Luck Versus Skill in the Cross-Section of Mutual Fund Returns, at 1931–34; *see also* Russ Wermers, Mutual Fund Performance: An Empirical Decomposition into Stock-Picking Talent, Style, Transaction Costs, and Expenses, 55 J. FIN. 1655, 1690 (2000) ("on a net-return level, the funds underperform broad market indexes by one percent per year").

43. Accordingly, investment fees are of paramount importance to prudent investment selection, and a prudent investor will not select higher-cost actively managed funds unless there has been a documented process leading to the realistic conclusion that the fund is likely to be that extremely rare exception, if one even exists, that will outperform its benchmark over time, net of investment expenses.

44. Prudent fiduciaries of large defined contribution plans must conduct an analysis to determine whether actively managed funds, particularly large cap, will outperform their benchmark net of fees. Prudent fiduciaries then make a reasoned decision as to whether it is in participants' best interest to offer an actively managed

large cap option for the particular investment style and asset class, in light of the higher fees of active management.

45. Prudent fiduciaries of defined contribution plans continuously monitor the investment performance of plan options against applicable benchmarks and peer groups to identify underperforming investments. Based on this process, prudent fiduciaries replace those imprudent investments with better-performing and reasonably priced options.

46. Adidas's decision-making, monitoring and soliciting bids from investment funds was deficient in that it resulted in almost no passively-managed funds options for Plan participants, resulting in inappropriately high administrative Plan fees.

CLASS ACTION ALLEGATIONS

47. 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).

48. 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 Adidas Group 401(k) Savings and Retirement Plan from July 1, 2013 through the date of judgment, excluding the Defendant or any participant who is a fiduciary to the Plan.*

49. The Class includes more than 7,478 members and is so large that joinder of all its members is impracticable, pursuant to Federal Rule of Civil Procedure 23(a)(1).

50. There are questions of law and fact common to this Class pursuant to Federal Rule of Civil Procedure 23(a)(2), because Adidas owed fiduciary duties to the Plan and to all participants and beneficiaries 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:

- Who are fiduciaries liable for the remedies provided by 29 U.S.C. § 1109(a);
- Whether the fiduciaries of the Plan breached their fiduciary duties to the Plan;
- What are the losses to the Plan resulting from each breach of fiduciary duty; and
- What Plan-wide equitable and other relief the Court should impose in light of Adidas's breach of duty.

51. 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 Plan were harmed by Adidas's misconduct.

52. Plaintiffs will adequately represent the Class pursuant to Federal Rule of Civil Procedure 23(a)(4), because they participated in the Plan during the Class period, have no interest 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.

53. Pursuant to Federal Rule of Civil Procedure 23(b)(1), 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 their 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 (3) would substantially impair those participants' and beneficiaries' ability to protect their interests.

54. Certification is also appropriate under Fed. R. Civ. P. 23(b)(2) because Adidas has acted or refused to act on grounds that apply generally to the Class, so that final injunctive relief or corresponding declaratory relief is appropriate respecting the class as a whole.

55. A class action is the superior method for fair and efficient adjudication of this controversy because joinder of all participants and beneficiaries is impracticable, the losses suffered by individual participants and beneficiaries may be small and impracticable for individual members to enforce their rights through individual actions, and the common questions of law and fact predominate over individual questions. Given the nature of the allegations, no class member has an interest in individually controlling the prosecution of this matter, and Plaintiffs are aware of no difficulties likely to be encountered in the management of this matter as a class action. Alternatively, then, this action may be certified as a class under Federal Rule of Civil Procedure 23(b)(3), if it is not certified under Federal Rule of Civil Procedure 23(b)(1).

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

LEGAL CLAIMS

Count 1 – Breach of Duties of Loyalty and Prudence 29 U.S.C. § 1104(a)(1)(A)–(B), (D)

57. Plaintiffs restate the above allegations as if fully set forth.

58. Adidas is a fiduciary of the Plan under 29 U.S.C. §§ 1002(21) and/or 1102(a)(1). Adidas is responsible for selecting 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. Adidas had a continuing duty to evaluate and monitor the Plan's investments on an ongoing basis and to "remove imprudent ones" regardless of how long a fund has been in the plan. *Tibble v. Edison,* 135 S. Ct. 1823, 1829 (2015).

59. 29 U.S.C. § 1104 imposes fiduciary duties of prudence and loyalty upon Adidas in its administration of the Plan. The scope of the fiduciary duties and responsibilities of Adidas includes managing the assets of the Plan for the sole and exclusive benefit of Plan participants and beneficiaries, defraying reasonable expenses of administering the Plan, and acting with the care, skill, diligence, and prudence required by ERISA. These duties further required Adidas to independently assess whether each option was a prudent choice for the Plan. *DiFelice v. U.S. Airways, Inc.*, 497 F.3d 410, 423 (4th Cir. 2007); *see Braden v. Wal-Mart Stores, Inc.*, 588 F.3d 585, 590, 595–96 (8th Cir. 2009).

60. Adidas was directly responsible for ensuring that the Plan's fees were reasonable, selecting investment options in a prudent fashion in the best interest of Plan participants, prudently evaluating and monitoring the Plan's investments on an ongoing basis and eliminating funds that did not serve the best interest of Plan participants, and taking all necessary steps to ensure that the Plan's assets were invested prudently and appropriately.

61. Adidas failed to employ a prudent and loyal process by failing to critically or objectively evaluate the cost and performance of the Plan's investments and fees in comparison to other investment options. Adidas selected and retained for years as Plan investment options mutual funds with high expenses relative to other investment options that were readily available to the Plan at all relevant times.

62. Adidas failed to engage in a prudent process for monitoring the Plan's investments and removing imprudent ones within a reasonable period. This resulted in the Plan continuing to offer excessively expensive funds compared to equivalent and/or comparable low-cost alternatives that were available to the Plan.

63. Thus, Adidas failed to make Plan investment decisions based solely on the merits of each investment and in the best interest of Plan participants; failed to ensure the Plan was invested in the lowest-cost investment vehicles. Through these actions and omissions, Adidas failed to discharge its duties with respect to the Plan solely in the interest of the participants and beneficiaries of the Plan, and for the exclusive purpose of providing benefits to participants and their beneficiaries and defraying reasonable

expenses of administering the Plan, in violation of its fiduciary duty of loyalty under 29 U.S.C. § 1104(a)(1)(A).

64. Adidas failed to discharge its 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, thereby breaching its duties under 29 U.S.C. § 1104(a)(1)(B).

65. Adidas is liable under 29 U.S.C. §§ 1109(a) and 1132(a)(2) to make good to the Plan the losses resulting from the breaches, to restore to the Plan any profits Adidas 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, Adidas is subject to other equitable relief pursuant to 29 U.S.C. §§ 1109(a) and 1132(a)(3).

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs, on behalf of the Plan and all similarly situated participants and beneficiaries of the Plan, request the following:

- A declaration that Adidas breached its fiduciary duties as described above;
- An order that requires Adidas to make good to the Plan all losses resulting from each breach of fiduciary duty, and to otherwise restore the Plan to the position it would have occupied but for the breaches of fiduciary duty;
- Order an accounting to determine the amounts that Adidas must make good to the Plan;
- Remove the fiduciaries who have breached their fiduciary duties;

- Certify the Class, appointing each of the named Plaintiffs as a class representative and appoint undersigned counsel as Class Counsel;

- Awarding to Plaintiffs and the Class their attorneys' fees and costs under 29 U.S.C. § 1132(g)(1) and the common fund doctrine;

- Award interest to the extent it is allowed by law; and

- Grant all other equitable and/or remedial relief the Court deems appropriate.

JURY TRIAL DEMANDED

Plaintiffs demand a trial by jury for all issues so triable.

RESPECTFULLY SUBMITTED AND DATED this 10th day of July, 2019.

TERRELL MARSHALL LAW GROUP PLLC

By: /s/ Jennifer Rust Murray, OSB #100389

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* *Pro Hac Vice* Application Forthcoming

Attorneys for Plaintiffs

JS 44 (Rev. 02/19)

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. *(SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)*

I. (a) PLAINTIFFS

PAUL ENOS and DAVID FREITAS

(b) County of Residence of First Listed Plaintiff Bristol County, MASS
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys *(Firm Name, Address, and Telephone Number)*

DEFENDANTS

ADIDAS AMERICA, INC.,

County of Residence of First Listed Defendant _____
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys *(If Known)*

II. BASIS OF JURISDICTION *(Place an "X" in One Box Only)*

- ❒ 1 U.S. Government Plaintiff
- ☒ 3 Federal Question *(U.S. Government Not a Party)*
- ❒ 2 U.S. Government Defendant
- ❒ 4 Diversity *(Indicate Citizenship of Parties in Item III)*

III. CITIZENSHIP OF PRINCIPAL PARTIES *(Place an "X" in One Box for Plaintiff and One Box for Defendant)*

(For Diversity Cases Only)

	PTF	DEF		PTF	DEF
Citizen of This State	❒ 1	❒ 1	Incorporated *or* Principal Place of Business In This State	❒ 4	❒ 4
Citizen of Another State	❒ 2	❒ 2	Incorporated *and* Principal Place of Business In Another State	❒ 5	❒ 5
Citizen or Subject of a Foreign Country	❒ 3	❒ 3	Foreign Nation	❒ 6	❒ 6

IV. NATURE OF SUIT *(Place an "X" in One Box Only)*

Click here for: Nature of Suit Code Descriptions.

CONTRACT
- ❒ 110 Insurance
- ❒ 120 Marine
- ❒ 130 Miller Act
- ❒ 140 Negotiable Instrument
- ❒ 150 Recovery of Overpayment & Enforcement of Judgment
- ❒ 151 Medicare Act
- ❒ 152 Recovery of Defaulted Student Loans (Excludes Veterans)
- ❒ 153 Recovery of Overpayment of Veteran's Benefits
- ❒ 160 Stockholders' Suits
- ❒ 190 Other Contract
- ❒ 195 Contract Product Liability
- ❒ 196 Franchise

REAL PROPERTY
- ❒ 210 Land Condemnation
- ❒ 220 Foreclosure
- ❒ 230 Rent Lease & Ejectment
- ❒ 240 Torts to Land
- ❒ 245 Tort Product Liability
- ❒ 290 All Other Real Property

TORTS

PERSONAL INJURY
- ❒ 310 Airplane
- ❒ 315 Airplane Product Liability
- ❒ 320 Assault, Libel & Slander
- ❒ 330 Federal Employers' Liability
- ❒ 340 Marine
- ❒ 345 Marine Product Liability
- ❒ 350 Motor Vehicle
- ❒ 355 Motor Vehicle Product Liability
- ❒ 360 Other Personal Injury
- ❒ 362 Personal Injury - Medical Malpractice

PERSONAL INJURY
- ❒ 365 Personal Injury - Product Liability
- ❒ 367 Health Care/ Pharmaceutical Personal Injury Product Liability
- ❒ 368 Asbestos Personal Injury Product Liability

PERSONAL PROPERTY
- ❒ 370 Other Fraud
- ❒ 371 Truth in Lending
- ❒ 380 Other Personal Property Damage
- ❒ 385 Property Damage Product Liability

CIVIL RIGHTS
- ❒ 440 Other Civil Rights
- ❒ 441 Voting
- ❒ 442 Employment
- ❒ 443 Housing/ Accommodations
- ❒ 445 Amer. w/Disabilities - Employment
- ❒ 446 Amer. w/Disabilities - Other
- ❒ 448 Education

PRISONER PETITIONS

Habeas Corpus:
- ❒ 463 Alien Detainee
- ❒ 510 Motions to Vacate Sentence
- ❒ 530 General
- ❒ 535 Death Penalty

Other:
- ❒ 540 Mandamus & Other
- ❒ 550 Civil Rights
- ❒ 555 Prison Condition
- ❒ 560 Civil Detainee - Conditions of Confinement

FORFEITURE/PENALTY
- ❒ 625 Drug Related Seizure of Property 21 USC 881
- ❒ 690 Other

LABOR
- ❒ 710 Fair Labor Standards Act
- ❒ 720 Labor/Management Relations
- ❒ 740 Railway Labor Act
- ❒ 751 Family and Medical Leave Act
- ❒ 790 Other Labor Litigation
- ☒ 791 Employee Retirement Income Security Act

IMMIGRATION
- ❒ 462 Naturalization Application
- ❒ 465 Other Immigration Actions

BANKRUPTCY
- ❒ 422 Appeal 28 USC 158
- ❒ 423 Withdrawal 28 USC 157

PROPERTY RIGHTS
- ❒ 820 Copyrights
- ❒ 830 Patent
- ❒ 835 Patent - Abbreviated New Drug Application
- ❒ 840 Trademark

SOCIAL SECURITY
- ❒ 861 HIA (1395ff)
- ❒ 862 Black Lung (923)
- ❒ 863 DIWC/DIWW (405(g))
- ❒ 864 SSID Title XVI
- ❒ 865 RSI (405(g))

FEDERAL TAX SUITS
- ❒ 870 Taxes (U.S. Plaintiff or Defendant)
- ❒ 871 IRS—Third Party 26 USC 7609

OTHER STATUTES
- ❒ 375 False Claims Act
- ❒ 376 Qui Tam (31 USC 3729(a))
- ❒ 400 State Reapportionment
- ❒ 410 Antitrust
- ❒ 430 Banks and Banking
- ❒ 450 Commerce
- ❒ 460 Deportation
- ❒ 470 Racketeer Influenced and Corrupt Organizations
- ❒ 480 Consumer Credit
- ❒ 485 Telephone Consumer Protection Act
- ❒ 490 Cable/Sat TV
- ❒ 850 Securities/Commodities/ Exchange
- ❒ 890 Other Statutory Actions
- ❒ 891 Agricultural Acts
- ❒ 893 Environmental Matters
- ❒ 895 Freedom of Information Act
- ❒ 896 Arbitration
- ❒ 899 Administrative Procedure Act/Review or Appeal of Agency Decision
- ❒ 950 Constitutionality of State Statutes

V. ORIGIN *(Place an "X" in One Box Only)*

☒ 1 Original Proceeding ❒ 2 Removed from State Court ❒ 3 Remanded from Appellate Court ❒ 4 Reinstated or Reopened ❒ 5 Transferred from Another District *(specify)* ❒ 6 Multidistrict Litigation - Transfer ❒ 8 Multidistrict Litigation - Direct File

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing ***(Do not cite jurisdictional statutes unless diversity)***:
29 U.S.C. § 1132(a)(2)

Brief description of cause:
ERISA fiduciary violations

VII. REQUESTED IN COMPLAINT:

☒ CHECK IF THIS IS A **CLASS ACTION** UNDER RULE 23, F.R.Cv.P.

DEMAND $

CHECK YES only if demanded in complaint:

JURY DEMAND: ☒ Yes ❒ No

VIII. RELATED CASE(S) IF ANY

(See instructions):

JUDGE _____ DOCKET NUMBER _____

DATE
07/10/2019

SIGNATURE OF ATTORNEY OF RECORD
/s/ Jennifer Rust Murray, OSB #100389

FOR OFFICE USE ONLY

RECEIPT # _____ AMOUNT _____ APPLYING IFP _____ JUDGE _____ MAG. JUDGE _____

INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS 44

Authority For Civil Cover Sheet

The JS 44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleading or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. The attorney filing a case should complete the form as follows:

I.(a) **Plaintiffs-Defendants.** Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.

(b) **County of Residence.** For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the "defendant" is the location of the tract of land involved.)

(c) **Attorneys.** Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section "(see attachment)".

II. **Jurisdiction.** The basis of jurisdiction is set forth under Rule 8(a), F.R.Cv.P., which requires that jurisdictions be shown in pleadings. Place an "X" in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.
United States plaintiff. (1) Jurisdiction based on 28 U.S.C. 1345 and 1348. Suits by agencies and officers of the United States are included here.
United States defendant. (2) When the plaintiff is suing the United States, its officers or agencies, place an "X" in this box.
Federal question. (3) This refers to suits under 28 U.S.C. 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked.
Diversity of citizenship. (4) This refers to suits under 28 U.S.C. 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below**; NOTE: federal question actions take precedence over diversity cases.**)

III. **Residence (citizenship) of Principal Parties.** This section of the JS 44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.

IV. **Nature of Suit.** Place an "X" in the appropriate box. If there are multiple nature of suit codes associated with the case, pick the nature of suit code that is most applicable. Click here for: Nature of Suit Code Descriptions.

V. **Origin.** Place an "X" in one of the seven boxes.
Original Proceedings. (1) Cases which originate in the United States district courts.
Removed from State Court. (2) Proceedings initiated in state courts may be removed to the district courts under Title 28 U.S.C., Section 1441.
Remanded from Appellate Court. (3) Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.
Reinstated or Reopened. (4) Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.
Transferred from Another District. (5) For cases transferred under Title 28 U.S.C. Section 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.
Multidistrict Litigation – Transfer. (6) Check this box when a multidistrict case is transferred into the district under authority of Title 28 U.S.C. Section 1407.
Multidistrict Litigation – Direct File. (8) Check this box when a multidistrict case is filed in the same district as the Master MDL docket. **PLEASE NOTE THAT THERE IS NOT AN ORIGIN CODE 7.** Origin Code 7 was used for historical records and is no longer relevant due to changes in statue.

VI. **Cause of Action.** Report the civil statute directly related to the cause of action and give a brief description of the cause. **Do not cite jurisdictional statutes unless diversity.** Example: U.S. Civil Statute: 47 USC 553 Brief Description: Unauthorized reception of cable service

VII. **Requested in Complaint.** Class Action. Place an "X" in this box if you are filing a class action under Rule 23, F.R.Cv.P.
Demand. In this space enter the actual dollar amount being demanded or indicate other demand, such as a preliminary injunction.
Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.

VIII. **Related Cases.** This section of the JS 44 is used to reference related pending cases, if any. If there are related pending cases, insert the docket numbers and the corresponding judge names for such cases.

Date and Attorney Signature. Date and sign the civil cover sheet.

AO 440 (Rev. 06/12) Summons in a Civil Action

UNITED STATES DISTRICT COURT

for the

District of Oregon

PAUL ENOS and DAVID FREITAS, individually and as representatives of a Class of Participants and Beneficiaries on Behalf of the Adidas Group 401(k) Savings and Retirement Plan,

Plaintiff(s)

v.

ADIDAS AMERICA, INC.,

Defendant(s)

Civil Action No.

SUMMONS IN A CIVIL ACTION

To: *(Defendant's name and address)* ADIDAS AMERICA, INC.,
c/o Davis Wright Tremaine LLP, Registered Agent
1300 SW Fifth Avenue, Suite 2400
Portland, Oregon 97201

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it) — or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3) — you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are:

Beth E. Terrell
Jennifer Rust Murray, OSB #100389
TERRELL MARSHALL LAW GROUP PLLC
936 North 34th Street, Suite 300
Seattle, Washington 98103-8869

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

CLERK OF COURT

Date: _____

_____
Signature of Clerk or Deputy Clerk

Civil Action No.

PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 4 (l))

This summons for *(name of individual and title, if any)* _____ was received by me on *(date)* _____ .

❒ I personally served the summons on the individual at *(place)* _____ on *(date)* _____ ; or

❒ I left the summons at the individual's residence or usual place of abode with *(name)* _____ , a person of suitable age and discretion who resides there, on *(date)* _____ , and mailed a copy to the individual's last known address; or

❒ I served the summons on *(name of individual)* _____ , who is designated by law to accept service of process on behalf of *(name of organization)* _____ on *(date)* _____ ; or

❒ I returned the summons unexecuted because _____ ; or

❒ Other *(specify):*

My fees are $ _____ for travel and $ _____ for services, for a total of $ 0.00 .

I declare under penalty of perjury that this information is true.

Date: _____

_____
Server's signature

_____
Printed name and title

_____
Server's address

Additional information regarding attempted service, etc: