**STATE OF MINNESOTA** | **DISTRICT COURT**

**HENNEPIN COUNTY** | **FOURTH JUDICIAL DISTRICT**

**CASE TYPE: OTHER CIVIL**

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|---|---|
| PASTOR DAVID BACON, PASTOR TIMOTHY HEPNER, RUTH DOLD, AND SHARON HVAM, individually and as representatives of a class of similarly situated persons, and on behalf of the Evangelical Lutheran Church in America Retirement Plan and the ELCA Retirement Plan for the Evangelical Lutheran Good Samaritan Society,<br><br>Plaintiffs,<br>v.<br><br>BOARD OF PENSIONS OF THE EVANGELICAL LUTHERAN CHURCH IN AMERICA (D/B/A PORTICO BENEFIT SERVICES), A MINNESOTA NON-PROFIT CORPORATION.<br><br>Defendant. | Case No. ______________<br><br>**CLASS ACTION COMPLAINT**<br><br>**JURY TRIAL DEMANDED** |

## I. INTRODUCTION

1. Plaintiffs David Bacon, Timothy Hepner, Ruth Dold, and Sharon Hvam, bring this action individually and as representatives of a class of similarly situated persons, and on behalf of the Evangelical Lutheran Church in America Retirement Plan and the ELCA Retirement Plan for the Evangelical Lutheran Good Samaritan Society[1] (collectively referred to as "Plans"), maintained and administered by the Board of Pensions of the Evangelical Lutheran Church in America (d/b/a Portico Benefit Services, "Portico"). Plaintiffs bring this class action to remedy Portico's breaches of fiduciary duty and breach of trust in its management and

[1] The Evangelical Lutheran Church in America Retirement Plan is referred to herein as "ELCA Plan", the ELCA Retirement Plan for the Evangelical Lutheran Good Samaritan Society is referred to herein as the "GSS Plan", and the Evangelical Lutheran Church in America is referred to herein as "ELCA".

administration of Plaintiffs' Plans. Plaintiffs seek damages resulting from Portico's breaches and appropriate equitable relief.

2. Portico had fiduciary responsibility over the Plans and selected and retained ELCA investment funds as Plan investments that charged unreasonable fees and had a history of poor performance relative to institutional investments that were available to the Plans. Portico controlled the operation and administration of the Plans and imposed administrative and recordkeeping fees to benefit itself that were far in excess of reasonable expenses for administering the Plans. These unreasonable fees for administrating the Plans were charged without any prudent process to determine whether such compensation was reasonable for Plan services. This conduct has harmed and will continue to harm Plaintiffs' and Plan participants' retirement savings.

## II. JURISDICTION AND VENUE

3. This Court has jurisdiction under Minn. Stat. § 484.01, subd. 1(1) because this is a civil action brought within its District. This action arises under Minnesota law: The document by which the ELCA Plan is established and governed provides that the "Plan shall be construed and administered according to the laws of the State of Minnesota to the extent that such laws are not preempted by the laws of the United States of America." On information and belief, the document by which the GSS Plan is established and governed has the same choice-of-law provision.

4. Venue in this District is proper under Minn. Stat. § 542.09 because Portico resides in Hennepin County, Minnesota and Plaintiffs' causes of action, in part, arose in this County. Venue is proper in this District also because the Plan documents contain a venue selection clause

providing that "[a]ll controversies, disputes, and claims arising hereunder shall be submitted to the Minnesota Fourth Judicial District Court, Hennepin County".

## III. PARTIES

### A. Plaintiffs

5. Pastor David Bacon is an ordained minister, a participant in the ELCA Plan, and a resident of Sioux Falls, South Dakota.

6. Pastor Timothy Hepner is an ordained minister, a participant in the ELCA Plan, and a resident of Minneapolis, Minnesota.

7. Ruth Dold is a registered nurse, a participant in the GSS Plan, and a resident of Howard, South Dakota.

8. Sharon Hvam is a registered nurse, a participant in the GSS Plan, and a resident of Fedora, South Dakota.

### B. Defendant Portico Benefit Services

9. In 1988, ELCA incorporated The Board of Pensions of the Evangelical Lutheran Church in America as a non-profit corporation under Chapter 317A of the Minnesota Non-Profit Corporation Act to provide and administer retirement, health, and related benefits and services to more than 50,000 individuals and their families who serve or are employed by the ELCA and other faith-based organizations controlled by or associated with the ELCA. Since November 10, 2011, the Board of Pensions of the Evangelical Lutheran Church in America has been doing business as "Portico Benefit Services." This Complaint uses the term "Portico" to refer to the Board of Pensions of the Evangelical Lutheran Church in America both before and after November 10, 2011.

10. Portico is governed by a 14- to 18-member Board of Trustees that is elected by the ELCA Churchwide Assembly, which is the primary decision-making body of the ELCA. Portico's corporate activities are directed, controlled and coordinated by its employees and officers from its corporate headquarters in Minneapolis, Minnesota. Portico provides benefit services to more than 7,000 congregations and organizations.

11. As of December 31, 2013, there were 52,598 total members enrolled in benefit programs administered by Portico, of which 39,145 participated in the ELCA Pension and Other Benefits Program that included the ELCA Plan. Since 2008, over 30,000 members annually have participated in retirement benefit plans maintained by Portico.

12. Portico controls and manages the operation and administration of the Plans and, upon information and belief, is the trustee of the Plans. In addition to its responsibility for all administrative decisions, Portico is responsible for payments from the Plans.

13. Portico is not a registered investment adviser under the Investment Advisers Act of 1940.

14. Portico acknowledges as a nonprofit corporation incorporated in Minnesota, it is governed by Minn. Stat. § 501B.151, which sets the statutory requirements governing trust investments.

## IV. FACTUAL ALLEGATIONS

### A. The Plans

15. The Plans are defined-contribution plans under which participating employers make contributions to the individual accounts of each Plan participant based on a defined percentage of compensation and participants may elect to make further contributions. Plan

participants invest their contributions by selecting from a menu of ELCA investment funds, including equity funds, balanced funds, bond funds, or a money-market fund.

16. Plan participants do not have the ability to invest in the thousands of options in the market, but instead can invest only in the twenty funds selected and maintained by Portico as the exclusive menu of Plan investment options. Throughout the time in question, Portico has provided only ELCA investments funds as options in which participants can invest.

17. As of December 31, 2012, the ELCA Plan had approximately $3.8 billion in assets, and the GSS Plan had approximately $183 million in assets. Upon information and belief, the assets of both Plans are held in a single trust of which Portico is the trustee, or which is otherwise controlled by Portico.

18. The Plans are established and maintained according to the terms of written Plan documents. The Plan documents define Portico's responsibilities owed to the Plans and Plan participants.

19. The Plan documents specify the "Eligible Employers" and "Eligible Employees" who may participate in the Plans.

20. Under the ELCA Plan document, "Eligible Employers" generally include: the ELCA, or an ELCA synod, seminary or Churchwide Unit; current or former ELCA congregations; ELCA qualified church-controlled organizations; 501(c)(3) organizations that employ an ELCA Ordained Minister or an ELCA Rostered Layperson; non-501(c)(3) organizations that employ an ELCA Ordained Minister; and ELCA Ordained Ministers who are self-employed.

21. The ELCA Plan document specifies that "Eligible Employees" generally include: common-law employees of an Eligible Employer who is an ELCA Ordained Minister or ELCA

Rostered Layperson serving under a letter of call and who is regularly scheduled to work fifteen (15) or more hours per week for six (6) or more months per year; any other common-law employee of an Eligible Employer who is regularly scheduled to work twenty (20) or more hours per week for six (6) or more months per year and has completed any probationary period specified by the Employer not to exceed ninety (90) days; an ELCA Ordained Minister; a non-ELCA rostered clergy person serving under a letter of call at an ELCA congregation or organization who is regularly scheduled to work fifteen (15) or more hours per week for six (6) or more months per year.

22. The GSS Plan document contains similar eligibility provisions.

23. The ELCA Churchwide Assembly, the ELCA Church Council, or Portico may propose amendments to the Plans. All proposed amendments must be submitted to Portico for recommendation before final action is taken by the ELCA Church Council.

**B. Portico's Fiduciary Responsibilities to the Plans**

24. The ELCA Constitutions, Bylaws, and Continuing Resolutions govern the ELCA. Chapter 17.20.A11 of the ELCA Constitution establishes the responsibilities of Portico, stating in relevant part that Portico shall (emphasis added):

> A. manage and operate the Pension and Other Benefits Program[2] for this church and plans for other organizations operated exclusively for religious purposes, and shall invest the assets *according to fiduciary standards* set forth in the plans and trusts.
>
> B. provide retirement, health, and other benefits exclusively for the benefit of eligible members working within the structure of this church and other organizations operated exclusively for religious purposes.

25. Section 1.03 of the ELCA Plan document grants Portico the "responsib[ility] for all administrative decisions with regard to the form, commencement and amount of payments"

[2] The Pension and Other Benefits Program specifically includes the ELCA Plan.

from the ELCA Plan. Upon information and belief, the GSS Plan document grants the same authority to Portico with respect to the GSS Plan.

26. Section 8.01 of the ELCA Plan document authorizes Portico "in its sole discretion, [to] select" the investment funds in which the ELCA Plan shall invest. Upon information and belief, the GSS Plan document grants the same authority to Portico with respect to the GSS Plan.

27. Section 12.01 of the ELCA Plan document grants Portico the authority to "control and manage the operation and administration" of the ELCA Plan and "make all decisions and determinations related thereto." Upon information and belief, the GSS Plan document grants the same authority to Portico with respect to the GSS Plan.

28. Section 12.02 of the ELCA Plan document provides:

> The Retirement Plan Trustee shall pay [Portico] from the Trust a fee for the administrative and record keeping services provided to the Retirement Plan and the Trust by [Portico] and its Agent, in accordance with the provisions of the administrative services agreement in effect between [Portico] and the Agent. In addition, the Retirement Plan Trustee shall pay from the Trust any investment and custody fees associated with various Investment Funds in which Trust assets are from time to time invested.

Upon information and belief, the GSS Plan contains a similar provision. Upon information and belief, Portico is the "Retirement Plan Trustee" of the ELCA and GSS Plans.

29. Section 12.07 of the ELCA Plan document enumerates the fiduciary standards for Plan fiduciaries, including Portico:

> Each fiduciary shall discharge her/his duties with respect to the Retirement Plan, solely in the interests of Members, and in accordance with the following requirements:
>
> A. For the exclusive purpose of providing benefits to Members and defraying reasonable expenses of administering the Retirement Plan,

B. 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 use in the conduct of an enterprise of a like character and with like aims,

C. By diversifying the investments of the Retirement Plan so as to minimize the risk of large losses, unless under the circumstances it is clearly prudent not to do so, and

D. In accordance with the provisions of this Retirement Plan and the [Retirement Plan] Trust.

30. Upon information and belief, the Plan document for the GSS Plan sets forth the same fiduciary standards for GSS Plan fiduciaries, including Portico. The Plans' Summary Plan Descriptions, which summarize the terms of the Plan documents, also set forth the same fiduciary standards.

31. The fiduciary standards set forth in the Plan documents and Summary Plan Descriptions are modeled after the fiduciary standards imposed by the Employee Retirement Income Security Act ("ERISA"), 29 U.S.C. §1001 *et seq*. Under 29 U.S.C. §1104(a)(1), an ERISA fiduciary is required to:

> 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;
>
> (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 a like character and with like aims;
>
> (C) by diversifying the investments of the plan so as to minimize the risk of large losses, unless under the circumstances it is clearly prudent not to do so; and

> (D) in accordance with the documents and instruments governing the plan insofar as such documents and instruments are consistent with the provisions of this subchapter and subchapter III of this chapter.

32. While 29 U.S.C. §1003(b)(2) provides that church plans are not subject to ERISA, in light of the virtually identical fiduciary duties of the Plans and ERISA's fiduciary provisions, cases interpreting ERISA [29 U.S.C. §1104(a)(1)] provide guidance to this Court when evaluating Portico's fiduciary conduct.

**C. Plan Investment Options and Service Providers**

33. As alleged above, Portico selects the investment funds in which participants can invest Plan contributions and has throughout the relevant time period selected only ELCA investment funds. The ELCA investment funds are not registered mutual funds, but rather investment pools managed separately under Portico's supervision. Portico is responsible for establishing the investment objectives and strategies for the ELCA investment funds offered in the Plans. For each fund, Portico hires one or more third-party investment managers to manage the fund's assets, and negotiates on behalf of the Plans the investment management fee paid to those managers from Plan assets. Portico is responsible for supervising the investment managers and determining whether to change investment managers.

34. The Plans offer 20 ELCA investment funds. Six of the funds are referred to as "Select Series" balanced funds. For each of the Select Series funds, Portico decides how to diversify the fund's holdings from various asset classes, such as domestic and international equities, fixed income, real estate, or alternative investments. The remaining 14 options are referred to as "Build-Your-Own Series" funds. These funds invest in a specific asset class, such as domestic equities, international equities, small and mid-cap equities, real estate, or fixed income investments. Participants who select the Build-Your-Own Series funds are responsible for choosing the right mix of funds to diversify their accounts.

35. The fee for each ELCA investment fund has two components: a general and administrative fee portion, and a "direct" investment management fee portion.

36. Because the ELCA investment funds for the ELCA and GSS Plans are held in a single trust, the assets, liabilities, income and expenses of each of the investment funds described above are allocated to the Plans based on each Plan's percentage ownership in the funds.

37. Under the terms of the Plan documents, the Retirement Plan Trustee pays Portico from the Trust a fee for the administrative and recordkeeping services provided to the Plans based on a separate administrative services agreement in effect between Portico and the Agent appointed by the Retirement Plan Trustee. Upon information and belief, Portico serves as the Retirement Plan Trustee, and provides the same administrative services to both the ELCA Plan and the GSS Plan.

38. Based on the competitive market for recordkeeping services, recordkeepers for similarly sized defined-contribution plans provide recordkeeping and administrative services for a fraction of the total fees charged by Portico to the Plans. Recordkeeping is a commodity service, the cost of which has nothing to do with asset size. The market rate for recordkeeping is determined based on the number of participants in the plan for whom the service will be provided, without regard to asset levels. Here, however, Portico collected fees based on a percentage of assets, meaning that Portico's fees and participants' costs for recordkeeping went up based on positive market fluctuations and as participants made additional contributions, even though the services provided to the Plans remained the same.

39. Portico's Annual Report for 2012 and 2013 show that the ELCA Plan paid Portico $16,114,000 and $15,138,000 for general and administrative expenses in 2012 and 2013, respectively. Every year for the past 10 years, the ELCA Plan paid between $13 million and $18

million per year to Portico for general and administrative expenses, which amount to between $340 and $480 per Plan participant annually.[3]

40. By serving in the dual role of both the administrative and recordkeeping service provider to the Plans, and the Retirement Plan Trustee responsible for paying Portico a fee for that service pursuant to Plan §12.02, Portico effectively determined its own fee.

41. The general and administrative expenses are included in the total fees (or expense ratio) assessed against each Plan investment fund, and thus to the retirement account of each participant in that fund. Upon information and belief, Portico applies the same percentage fee for general and administrative expenses to each ELCA investment fund in the ELCA and GSS Plans.

42. Unreasonable fees significantly reduce the value of an employee's retirement savings in a defined-contribution plan. A United States Department of Labor publication advising retirement plan fiduciaries about the impact of fees found that a "1 percent difference in fees and expenses would reduce [a participant's] account balance at retirement by 28 percent." U.S. Dep't of Labor Pension & Welfare Ben. Admin., *A Look at 401(k) Plan Fees* (updated August 2013), http://www.dol.gov/ebsa/pdf/401kFeesEmployee.pdf.

43. In addition to the administrative fees charged for each ELCA investment fund, Portico also charges a direct investment management fee. However, with the exception of a portion of the ELCA Select Series balanced funds and the ELCA Bond Fund, Portico hires a third-party investment manager to manage the funds' assets. The direct management fee is only a fraction of the total fee, the remainder of which Portico pays to itself, despite using outside investment managers who do the actual work of managing the funds' assets.

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[3] The total amount of general and administrative expenses charged to the GSS Plan is not reported in Portico's annual reports for the GSS Plan.

44. As of December 31, 2012, Portico disclosed the following management fees and administrative fees charged to participants in the GSS Plan:

| GSS Plan Investment Options | Assets (Millions) | Total Fees[4] | Inv. Mgmt. Fee[5] | Portico Fee added to Inv. Mgmt.[6] | Portico Fee compared to Inv. Mgmt. |
|---|---|---|---|---|---|
| ELCA 80e Balanced Fund | $2.9 | 118 bps | 33 bps | 85 bps | 257% |
| ELCA Social Purpose 80e Balanced Fund | $0.86 | 119 bps | 34 bps | 85 bps | 250% |
| ELCA 60e Balanced Fund | $99.3 | 118 bps | 33 bps | 85 bps | 257% |
| ELCA Social Purpose 60e Balanced Fund | $6.7 | 119 bps | 34 bps | 85 bps | 250% |
| ELCA 40e Balanced Fund | $5.1 | 113 bps | 28 bps | 85 bps | 304% |
| ELCA Social Purpose 40e Balanced Fund | $1.2 | 114 bps | 29 bps | 85 bps | 293% |
| ELCA Global Stock Fund | $16.9 | 117 bps | 32 bps | 85 bps | 265% |
| ELCA Social Purpose Global Stock Fund | $3.7 | 119 bps | 34 bps | 85 bps | 250% |
| ELCA Non-U.S. Stock Fund | $1.5 | 124 bps | 39 bps | 85 bps | 218% |
| ELCA Social Purpose Non-U.S. Stock Fund | $0.718 | 127 bps | 42 bps | 85 bps | 202% |
| ELCA U.S. Stock Fund | $2.0 | 114 bps | 29 bps | 85 bps | 293% |
| ELCA Social Purpose U.S. Stock Fund | $0.382 | 114 bps | 29 bps | 85 bps | 293% |
| ELCA Social Purpose Stock Index Fund | $0.217 | 90 bps | 5 bps | 85 bps | 1700% |
| ELCA S&P 500 Stock Index Fund | $8.0 | 87 bps | 2 bps | 85 bps | 4250% |

[4] Bps = basis points. One hundred basis points is 1%.

[5] Direct management fees paid to the outside investment managers of the ELCA investment options and to Portico for the portion of the funds it manages.

[6] Administrative fees kept by Portico.

| GSS Plan Investment Options | Assets (Millions) | Total Fees[4] | Inv. Mgmt. Fee[5] | Portico Fee added to Inv. Mgmt.[6] | Portico Fee compared to Inv. Mgmt. |
|---|---|---|---|---|---|
| ELCA Small- and Mid-Cap Stock Index Fund | $3.9 | 93 bps | 8 bps | 85 bps | 1006% |
| ELCA Global Real Estate Securities Fund | $3.4 | 141 bps | 56 bps | 85 bps | 152% |
| ELCA High-Yield Bond Fund | $2.8 | 124 bps | 39 bps | 85 bps | 218% |
| ELCA Bond Fund | $7.9 | 99 bps | 14 bps | 85 bps | 607% |
| ELCA Social Purpose Bond Fund | $3.5 | 99 bps | 14 bps | 85 bps | 607% |
| ELCA Money Market Fund | $12.0 | 95 bps | 10 bps | 85 bps | 850% |

45. Portico does not separately disclose the direct management fees and administrative fees for the ELCA investment options offered in the ELCA Plan. For the ELCA Plan as of December 31, 2012, only the total fees were disclosed to Plan participants:

| ELCA Plan Investment Options | Assets (Millions) | Total Fees |
|---|---|---|
| ELCA 80e Balanced Fund | $87.1 | 81 bps |
| ELCA Social Purpose 80e Balanced Fund | $56.4 | 82 bps |
| ELCA 60e Balanced Fund | $1,400 | 80 bps |
| ELCA Social Purpose 60e Balanced Fund | $505.3 | 81 bps |
| ELCA 40e Balanced Fund | $219.4 | 75 bps |
| ELCA Social Purpose 40e Balanced Fund | $111.6 | 75 bps |
| ELCA Global Stock Fund | $392.8 | 81 bps |
| ELCA Social Purpose Global Stock Fund | $234.5 | 82 bps |
| ELCA Non-U.S. Stock Fund | $27.9 | 87 bps |
| ELCA Social Purpose Non-U.S. Stock Fund | $17.0 | 90 bps |
| ELCA U.S. Stock Fund | $44.3 | 78 bps |
| ELCA Social Purpose U.S. Stock Fund | $18.1 | 77 bps |

| ELCA Plan Investment Options | Assets (Millions) | Total Fees |
|---|---|---|
| ELCA Social Purpose Stock Index Fund | $12.0 | 54 bps |
| ELCA S&P 500 Stock Index Fund | $69.4 | 50 bps |
| ELCA Small- and Mid-Cap Stock Index Fund | $80.2 | 57 bps |
| ELCA Global Real Estate Securities Fund | $65.5 | 104 bps |
| ELCA High-Yield Bond Fund | $69.8 | 88 bps |
| ELCA Bond Fund | $163.5 | 57 bps |
| ELCA Social Purpose Bond Fund | $89.5 | 57 bps |
| ELCA Money Market Fund | $146.7 | 50 bps |

46. The percentage charged to participants in total fees (direct investment management fees and administrative fees) has dramatically increased since 2001, even though, upon information and belief, the services provided to the Plans each year remained relatively constant, and thus did not justify the large increase in the fees charged to each fund:

| ELCA Plan Investment Funds | 2001 | 2012 | % Increase |
|---|---|---|---|
| ELCA 80e Balanced Fund | 50 bps | 81 bps | 62.00% |
| ELCA Social Purpose 80e Balanced Fund | 54 bps | 82 bps | 51.85% |
| ELCA 60e Balanced Fund | 50 bps | 80 bps | 60.00% |
| ELCA Social Purpose 60e Balanced Fund | 54 bps | 81 bps | 50.00% |
| ELCA 40e Balanced Fund | 50 bps | 75 bps | 50.00% |
| ELCA Social Purpose 40e Balanced Fund | 54 bps | 75 bps | 38.89% |
| ELCA Global Stock Fund | 52 bps | 81 bps | 55.77% |
| ELCA Social Purpose Global Stock Fund | 56 bps | 82 bps | 46.43% |
| ELCA Non-U.S. Stock Fund | 70 bps | 87 bps | 24.29% |
| ELCA Social Purpose Non-U.S. Stock Fund | 69 bps | 90 bps | 30.43% |
| ELCA U.S. Stock Fund | 52 bps | 78 bps | 50.00% |

| ELCA Plan Investment Funds | 2001 | 2012 | % Increase |
|---|---|---|---|
| ELCA Social Purpose U.S. Stock Fund | 56 bps | 77 bps | 37.50% |
| ELCA Social Purpose Stock Index Fund | 34 bps | 54 bps | 58.82% |
| ELCA S&P 500 Stock Index Fund | 23 bps | 50 bps | 117.39% |
| ELCA Small- and Mid-Cap Stock Index Fund | 25 bps | 57 bps | 128.00% |
| ELCA Global Real Estate Securities Fund | 76 bps | 104 bps | 36.84% |
| ELCA High-Yield Bond Fund | 39 bps | 88 bps | 125.64% |
| ELCA Bond Fund | 41 bps | 57 bps | 39.02% |
| ELCA Social Purpose Bond Fund | 41 bps | 57 bps | 39.02% |
| ELCA Money Market Fund | 42 bps | 50 bps | 19.05% |

47. The dramatic increase set forth in paragraph 46 was imposed while the Plans' total assets were increasing. A basic principle of investment management is that prudent trustees can easily obtain reduced investment management fees when asset sizes increase; Portico failed to do so.

48. Jumbo retirement plans, such as the Plans, with multiple billions in assets can command far lower fees for investment management than the retail rates typically available to small plans and individual investors. A study by the DOL found that plans with assets of $500 million or more can realize substantial savings by using institutional investment vehicles such as separately-managed accounts, and that using such vehicles can reduce investment management expenses to only one-fourth of the amount incurred through the use of retail-class investments. U.S. Dep't of Labor, *Study of 401(k) Plan Fees & Expenses* §2.4.1.3 (Apr. 13, 1998), http://www.dol.gov/ebsa/pdf/401krept.pdf.

49. The Plans' investment fees are and were significantly higher than the fees available from alternative investment options readily available in the market, including highly

regarded Vanguard institutional mutual funds. Vanguard institutional mutual funds are comparable to the ELCA Plan investment funds because they have similar investment styles and were easily available as Plan investment options throughout the relevant time. The chart below matches the ELCA Plan investment funds as of 2012 to the comparable Vanguard fund that was available to the ELCA Plan at that time. The ELCA investment funds were *at least 4 times* more expensive, and in some cases *over 15 times* more expensive, than the comparable Vanguard fund.

| **ELCA Plan Investment Funds** | **Expense Ratio** | **Vanguard Expense Ratio** | **Ticker** | **ELCA % Exceeds Vanguard Fee** |
|---|---|---|---|---|
| ELCA 80e Balanced Fund | 81 bps | 17 bps | VASGX | 476.47% |
| ELCA Social Purpose 80e Balanced Fund | 82 bps | 17 bps | VASGX | 482.35% |
| ELCA 60e Balanced Fund | 80 bps | 16 bps | VSMGX | 500.00% |
| ELCA Social Purpose 60e Balanced Fund | 81 bps | 16 bps | VSMGX | 506.25% |
| ELCA 40e Balanced Fund | 75 bps | 15 bps | VSCGX | 500.00% |
| ELCA Social Purpose 40e Balanced Fund | 75 bps | 15 bps | VSCGX | 500.00% |
| ELCA Global Stock Fund | 81 bps | 20 bps | VTWIX | 405.00% |
| ELCA Social Purpose Global Stock Fund | 82 bps | 20 bps | VTWIX | 410.00% |
| ELCA Non-U.S. Stock Fund | 87 bps | 13 bps | VTSNX | 669.23% |
| ELCA Social Purpose Non-U.S. Stock Fund | 90 bps | 13 bps | VTSNX | 692.31% |
| ELCA U.S. Stock Fund | 78 bps | 5 bps | VITSX | 1560.00% |
| ELCA Social Purpose U.S. Stock Fund | 77 bps | 5 bps | VITSX | 1540.00% |
| ELCA Social Purpose Stock Index Fund | 54 bps | 5 bps | VFIAX | 1080.00% |
| ELCA S&P 500 Stock Index Fund | 50 bps | 5 bps | VFIAX | 1000.00% |
| ELCA Small- and Mid-Cap Stock Index Fund | 57 bps | 12 bps | VIEIX | 475.00% |
| ELCA Global Real Estate Securities Fund | 104 bps | 8 bps | VGSNX | 1300.00% |

| ELCA Plan Investment Funds | Expense Ratio | Vanguard Expense Ratio | Ticker | ELCA % Exceeds Vanguard Fee |
|---|---|---|---|---|
| ELCA High-Yield Bond Fund | 88 bps | 13 bps | VWEAX | 676.92% |
| ELCA Bond Fund | 57 bps | 7 bps | VBTIX | 814.29% |
| ELCA Social Purpose Bond Fund | 57 bps | 7 bps | VBTIX | 814.29% |
| ELCA Money Market Fund | 50 bps | 9 bps | VMRXX | 555.56% |

50. The ELCA investment funds in the GSS Plan also charged vastly higher fees—*up to 23 times more expensive*—than the comparable Vanguard alternatives.

| GSS Plan Investment Funds | Expense Ratio | Vanguard Expense Ratio | Ticker | GSS % Exceeds Vanguard Fee |
|---|---|---|---|---|
| ELCA 80e Balanced Fund | 118 bps | 17 bps | VASGX | 694.12% |
| ELCA Social Purpose 80e Balanced Fund | 119 bps | 17 bps | VASGX | 700.00% |
| ELCA 60e Balanced Fund | 118 bps | 16 bps | VSMGX | 737.50% |
| ELCA Social Purpose 60e Balanced Fund | 119 bps | 16 bps | VSMGX | 743.75% |
| ELCA 40e Balanced Fund | 113 bps | 15 bps | VSCGX | 753.33% |
| ELCA Social Purpose 40e Balanced Fund | 114 bps | 15 bps | VSCGX | 760.00% |
| ELCA Global Stock Fund | 117 bps | 20 bps | VTWIX | 585.00% |
| ELCA Social Purpose Global Stock Fund | 119 bps | 20 bps | VTWIX | 595.00% |
| ELCA Non-U.S. Stock Fund | 124 bps | 13 bps | VTSNX | 953.85% |
| ELCA Social Purpose Non-U.S. Stock Fund | 127 bps | 13 bps | VTSNX | 976.92% |
| ELCA U.S. Stock Fund | 114 bps | 5 bps | VITSX | 2280.00% |
| ELCA Social Purpose U.S. Stock Fund | 114 bps | 5 bps | VITSX | 2280.00% |
| ELCA Social Purpose Stock Index Fund | 90 bps | 5 bps | VFIAX | 1800.00% |
| ELCA S&P 500 Stock Index Fund | 87 bps | 5 bps | VFIAX | 1740.00% |
| ELCA Small- and Mid-Cap Stock Index Fund | 93 bps | 12 bps | VIEIX | 775.00% |

| GSS Plan Investment Funds | Expense Ratio | Vanguard Expense Ratio | Ticker | GSS % Exceeds Vanguard Fee |
|---|---|---|---|---|
| ELCA Global Real Estate Securities Fund | 141 bps | 8 bps | VGSNX | 1762.50% |
| ELCA High-Yield Bond Fund | 124 bps | 13 bps | VWEAX | 953.85% |
| ELCA Bond Fund | 99 bps | 7 bps | VBTIX | 1414.29% |
| ELCA Social Purpose Bond Fund | 99 bps | 7 bps | VBTIX | 1414.29% |
| ELCA Money Market Fund | 95 bps | 9 bps | VMRXX | 1055.56% |

51. Although the ELCA investment options are investment pools and not mutual funds, Portico structured the investment options to impose fees that approximate those of retail mutual funds, which is imprudent for Plans of this size. Because these options charged retail-level fees, each ELCA investment option charged fees in excess of what the Plans could have obtained by purchasing comparable separately-managed accounts or collective investment trusts offered by independent third-party investment managers, or even the same managers.

52. The fees charged by the ELCA investment funds greatly exceeded the rates for high-quality investment management services that are readily available to multi-billion dollar plans such as the Plans.

53. In addition to the unreasonable fees, the ELCA investment funds consistently underperformed alternative investment options that were available to the Plans during the relevant time period.

54. Rather than acting for the exclusive interest of participants when selecting Plan options as its fiduciary duties required, Portico offered these excessive-cost and poorly-performing ELCA investment funds in order to generate revenue for itself. A prudent trustee exercising the requisite care, skill, and diligence, and acting in the best interests of participants,

would not have sought to benefit itself at the expense of participants in this manner, and would have thoroughly analyzed other available investment options and concluded that the alternatives were superior to the ELCA investment funds.

55. The fees charged to Plan participants were and are far in excess of market rates for similar services. Under the terms of the Plans, Minnesota common law, and the Minnesota Prudent Investor Act, Portico had a fiduciary duty to ensure that fees were no more than reasonable for the services provided.

56. Portico failed to ensure that its fees for administering the Plans were reasonable. A prudent trustee exercising the requisite care, skill, and diligence, and acting in the best interests of participants, would have compared the fees paid by the Plans to market rates for similar services, and would have periodically solicited bids or pricing information from other administrative service providers to ensure that the Plans' fees were competitive. Portico failed to do so.

57. In 2011 and years prior, Portico evaluated the performance of the ELCA investment options in its Annual Report based on customized benchmarks it created. Beginning in 2012, Portico changed its performance benchmarks to Lipper peer groups that reported the median return of *retail* mutual funds that specifically excluded lower-cost and better-performing institutional share class mutual funds. Using a retail mutual fund benchmark is not an appropriate benchmark by which to evaluate performance of the ELCA investment funds because it reflects performance of higher-cost, and therefore poorly-performing, retail mutual fund options in comparison to lower-cost and better-performing institutional alternatives available to jumbo multi-billion dollar retirement plans, such as the Plans.

58. In addition to the general and administrative expenses and investment management expenses earned by Portico, Portico derives other compensation from Plan-related services. For instance, Portico generates millions of dollars of revenue from engaging in securities lending whereby participants' retirement assets are loaned to other institutions. Portico receives a fee for lending these securities, which are participants' retirement assets. According to Portico's Annual Reports, it received $2,125,000 in securities lending income in 2012 and $3,340,000 in 2011. These sums added to the unreasonable compensation Portico received, depleting participants' retirement assets.

## V. FIDUCIARY STANDARDS UNDER MINNESOTA COMMON LAW

59. As trustee for the Plans for the benefit of Plan participants and under the terms of the Plan documents, Portico was a fiduciary and was under a duty to act with the utmost fidelity and for the exclusive benefit of participants, while avoiding self-dealing and fully disclosing to participants all material matters affecting their interests. Portico shall also exercise reasonable care and diligence as a person of ordinary prudence would usually exercise with respect to his own assets.

60. Because Portico is expressly designated as the Plans' Trustee, and the participants placed their trust and confidence in Portico to manage the Plans prudently and for their exclusive benefit, Portico is a fiduciary under Minnesota law, held to the high standards of fiduciary conduct.

## VI. MINNESOTA'S PRUDENT INVESTOR ACT

61. Minnesota's Prudent Investor Act also imposes duties on trustee fiduciaries such as Portico who invest and manage assets held in trust. *See* Minn. Stat. § 501B.151.

62. The Prudent Investor Act defines a "trustee" as "individual trustees and corporations having trust powers under wills, agreements, court orders, and other instruments." Minn. Stat. § 501B.151, subd. 10.

63. The Plans' Summary Plan Descriptions acknowledge that Portico is governed by the Act. The Plan documents also expressly grant Portico "trust powers" or authority with respect to the investment and administration of Plan assets. Therefore, Portico is a trustee within the meaning of the Prudent Investor Act.

64. The Prudent Investor Act provides that "[a] trustee shall invest and manage trust assets as a prudent investor would, by considering the purposes, term, distribution requirements, and other circumstances of the trust. In satisfying this standard, the trustee shall exercise reasonable care, skill, and caution." Minn. Stat. § 501B.151, subd. 2(a).

65. "The prudent investor rule, a default rule, may be expanded, restricted, eliminated, or otherwise altered by the provisions of a trust." Minn. Stat. § 501B.151, subd. (1)(b). Thus, to the extent the fiduciary standards set forth in the Plan and Trust documents are construed as enhancing or supplementing the duties under the prudent investor rule, Portico was bound to adhere to those heightened duties under the Plan and Trust, a violation of which results in liability for breach of trust.

66. Further, because Portico holds itself out as having special skills and expertise, it had "a duty to use those special skills or expertise" when investing and managing the Plans' assets. Minn. Stat. § 501B.151, subd. 2(e).

67. "In investing and managing trust assets, a trustee may only incur costs that are appropriate and reasonable in relation to the assets, the purposes of the trust, and the skills of the trustee." Minn. Stat. § 501B.151, subd. 5.

## VII. CLASS ALLEGATIONS

68. Plaintiffs bring this action as a class action under Minnesota Rule of Civil Procedure 23.01 on behalf of all participants and beneficiaries of the Plans. The Plans are held in a single trust in which each Plaintiff, and each Plan participant or beneficiary, has an interest. Plaintiffs seek to represent the following class:

> All current and former participants and beneficiaries of the Evangelical Lutheran Church in America Retirement Plan and the ELCA Retirement Plan for the Evangelical Lutheran Good Samaritan Society who were injured by the breaches of fiduciary duty and breaches of trust described in the Complaint, excluding those individuals who engaged in the alleged misconduct.

69. The action is certifiable as a class action under Minnesota Rule of Civil Procedure 23.01 for the following reasons:

A. **Numerosity.** The members of the Class are so numerous that joinder of all members is impracticable. As of December 31, 2013, there were 39,145 members participating in the ELCA Pension and Other Benefits Program, which included the ELCA Plan.

B. **Commonality**. There are questions of law or fact that are common to the Class and not unique to individual Class members, and resolution of these common questions affect all or a substantial number of Class members. Portico owed fiduciary duties to the Plans and to all participants and beneficiaries and acted as alleged herein as to the Plans and not as to any individual participant. As a result, questions that are common to all Class members include, but are not limited to: whether Portico breached its fiduciary duties to Plan participants by selecting and retaining ELCA investment funds that charged unreasonable expenses and performed poorly compared to prudent investment alternatives available to the Plans; whether Portico breached its fiduciary duties by charging unreasonable expenses for administering the Plans; whether Portico engaged in self-dealing in its actions regarding the Plans; and what are the losses to the Plans resulting from each breach of fiduciary duty.

C. **Typicality.** Plaintiffs' claims are typical of the claims of the Class in that: each Plaintiff was a participant during the time period at issue in this action; Portico owed the same fiduciary obligations to each Plan participant and beneficiary, and each member of the Class; Portico's breach of those obligations constitutes a breach to each participant and beneficiary, and each member of the Class; and any recovery or other remedy secured in this action will inure to the benefit of the Plans.

D. **Adequacy of Representation.** Plaintiffs will fairly and adequately protect the interests of the Class because they have no interest that is in conflict with the objectives of the Class they represent, they have common interests with the members of the Class, are committed to the vigorous representation of the Class. Plaintiffs have engaged qualified, experienced and capable attorneys to represent the Class. Plaintiffs' attorneys have agreed to advance the costs of this action contingent upon the outcome and are aware that no fee can be awarded without the Court's approval.

70. This action should be certified as a class action because it meets the requirements of Minnesota Rule of Civil Procedure 23.02(a)(1) or (2). 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 with respect to individual members of the Class which would establish incompatible standards of conduct for Portico opposing the Class; and (2) adjudications with respect to individual members of the Class which would as a practical matter be dispositive of the interests of the other members not parties to the adjudications or would substantially impair or impede their ability to protect their interests.

71. Alternatively, this action may be certified as a class action because it meets the requirements of Minnesota Rule of Civil Procedure 23.02(c). A class action is the superior method for the fair and efficient adjudication of this controversy because joinder of all participants and beneficiaries is impracticable and the losses suffered by individual participants and beneficiaries may be small and impracticable for individual members to enforce their rights through individual actions. Because Portico owed fiduciary duties to the Plans and to all participants and beneficiaries and acted as alleged herein as to the Plans and not as to any individual participant, questions of law or fact are common to the Class that predominate over any questions affecting only individual members. These common questions include, but are not limited to: whether Portico breached its fiduciary duties when selecting and retaining ELCA

investment funds that charged unreasonable expenses and underperformed prudent alternatives that were available to the Plans; whether Portico breached its fiduciary duties by charging unreasonable expenses for administering the Plans; whether Portico engaged in self-dealing in its actions regarding the Plans; and what are the losses to the Plans resulting from each breach of fiduciary duty. These common questions of liability that affect the Class and not as to any individual participant. 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. Further, this forum is ideally situated to resolve this dispute because Portico, members of the Class, and relevant evidence and witnesses can be found in this forum.

## COUNT I: BREACH OF FIDUCIARY DUTY
## (Under Minnesota Common Law and Prudent Investor Act)

72. Plaintiffs incorporate the allegations contained in the previous paragraphs of this Complaint as if fully set forth herein.

73. As set forth in the Plan documents, Portico controlled and managed the operation and administration of the Plans and made all decisions and determinations related thereto. Therefore, as alleged above, Portico owes fiduciary duties to the Plans under Minnesota common law, and is a trustee subject to Minnesota's Prudent Investor Act. Portico was thus bound by the duties of loyalty, exclusive purpose, and prudence.

74. Portico is directly responsible for selecting prudent investment options, eliminating imprudent options, evaluating the merits of the Plans' investments on an ongoing basis, and taking all necessary steps to ensure that the Plans' assets were invested prudently.

75. Minnesota's Prudent Investor Act requires that Portico, among other duties, "invest and manage" the assets of the Plans as a "prudent investor would, by considering the

purposes, terms, distribution requirements, and other circumstances of the trust", "exercise reasonable care, skill, and caution", and when "investing and managing" Plan assets, "only incur costs that are appropriate and reasonable in relation to the assets, the purposes of the trust, and the skills of the trustee." Minn. Stat. § 501B.151, subds. 2 and 5.

76. Portico failed to exercise reasonable care, skill, and diligence in managing the assets of the Plans, and failed to act in the exclusive interest of participants in the selection and retention of Plan investment options. Instead, Portico selected and retained excessive cost, poorly-performing ELCA investment funds that generated revenue to itself, while failing to consider or analyze the use of superior low-cost options that were readily available to the Plans. A reasonable investigation would have revealed to a prudent fiduciary that the ELCA investments were imprudent, selected and retained for reasons other than the best interest of Plan participants, and that other alternatives would have better served participants' interests.

77. Portico was also directly responsible for selecting and removing Plan service providers, evaluating and monitoring the fees charged for Plan services, and taking all necessary steps to ensure that the fees charged to Plan participants are reasonable expenses of administering the Plans.

78. Portico received compensation for administrative and recordkeeping services provided to the Plans in the form of administrative expenses that were assessed against each investment option offered in the Plans. The compensation that Portico received from the Plans for administrative and recordkeeping services was and is inappropriate and/or unreasonable for the services provided to the Plans. As a result, Portico violated the Minnesota Prudent Investor Act requirement to ensure that the costs of managing Plan assets are appropriate and reasonable.

79. Portico failed to recover for the Plans those sums that exceeded a reasonable fee for recordkeeping and administrative services, failed to negotiate a specific recordkeeping fee for the Plans that was reasonable for the services provided, failed to determine the prudence of the payment of administrative expenses from Plan investments on an uncapped percentage basis (instead of a fixed fee based on the number of participants), and failed to solicit bids from other qualified recordkeeping and administrative service providers to determine whether the Plans' fee levels were competitive.

80. Because the Plans gave Portico discretionary control to set its own compensation for administrative services, Portico had a clear conflict of interest that compromised its ability to discharge its fiduciary duty to limit Plan expenses to reasonable levels. That conflict also caused Portico to fail to even consider whether another service provider would provide superior service at a lower cost. Portico's conflict of interest and the lack of meaningful competition resulted in excessive compensation to Portico, to the detriment of Plan participants.

81. As a consequence of its breach of fiduciary duties alleged herein, Portico caused the Plans to suffer many millions of dollars in losses as a result of the unreasonable fees and expenses charged to the ELCA investment funds and in the underperformance of the Plans' investment options relative to prudent alternatives that were available to the Plans.

**COUNT II: BREACH OF TRUST**
**(Violation of duties imposed by Plan and Trust documents)**

82. Plaintiffs incorporate the allegations contained in the previous paragraphs of this Complaint as if fully set forth herein.

83. Minnesota's prudent investor rule "may be expanded, restricted, eliminated, or otherwise altered by the provisions of a trust." Minn. Stat. § 501B.151, subd. (1)(b). Likewise, trustees "have a duty to act pursuant to the terms of the trust, and they commit a breach of trust

when they fail to do so." *In re Revocable Trust of Margolis*, 731 N.W.2d 539, 546 (Minn. App. 2007) (citing Restatement (Second) of Trusts §201 (1959)).

84. The provisions of the Plan and Trust documents imposed specific fiduciary standards on Portico. Specifically, the Plan and Trust documents required Portico to act:

A. For the exclusive purpose of providing benefits to Members and defraying reasonable expenses of administering the Retirement Plan,

B. 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 use in the conduct of an enterprise of a like character and with like aims,

C. By diversifying the investments of the Retirement Plan so as to minimize the risk of large losses, unless under the circumstances it is clearly prudent not to do so, and

D. In accordance with the provisions of the Retirement Plan and the Trust.

85. To the extent the express duties under the Plan and Trust expand, replace, or supplement Portico's duties under the Prudent Investor Act, Portico is separately liable for breach of those express duties under the Trust and Plan documents.

86. Portico breached the Trust and Plan by:

A. failing to exercise care, skill, prudence, and diligence in the selection and retention of Plan investment options because it selected and retained excessive cost, poorly-performing ELCA investment funds that generated revenue to itself while failing to consider or analyze the use of superior low-cost options that were readily available to the Plans;

B. offering ELCA investment funds because they benefited Portico instead of choosing funds for the exclusive purpose of providing benefits to participants;

C. failing to defray only reasonable expenses of administering the Plans because the compensation that Portico received from the Plans for administrative and recordkeeping services was and is unreasonable for the services provided to the Plans;

D. failing to exercise care, skill, prudence, and diligence in monitoring and negotiating Plan expenses; and

E. setting its own compensation in a manner that benefited Portico at the expense of participants.

87. As a direct and proximate result of Portico's breach of trust, Plaintiffs and the Class members incurred damages of many millions of dollars.

**COUNT III: FRAUD AND CONCEALMENT**

88. Plaintiffs incorporate the allegations contained in the previous paragraphs of this Complaint as if fully set forth herein.

89. As a fiduciary to the Plans, Portico fraudulently concealed its breach of trust and breaches of fiduciary duty with respect to its unreasonable compensation for general and administrative services provided to the Plans.

90. In its 2012 Annual Report, Portico intentionally concealed the excessive nature of the fees charged to the Plans by falsely portraying them as competitive, and deliberatively using for comparison retail funds that are far more expensive than the institutional rates readily available to large plans:

> Fees at almost half the industry average…ELCA Retirement Plan fund fees average 0.74%, compared to more than 21,000 mutual funds with an average expense ratio of 1.29% (Wilshire Associates Inc. (Wilshire Compass) as of 12/31/12).

91. Similarly, on March 29, 2014, Portico again concealed the unreasonable fees charged to the Plans by falsely telling Plan participants that:

> Our fees are competitive compared to external benchmarks, and our total returns compare favorably with the median Lipper Peer Group returns for other funds with similar investment objectives.
>
> …
>
> For example, our popular ELCA 60e Balanced Fund, which contains over one-third of ELCA Retirement Plan assets, had a fee of 0.76% as of Dec. 31, 2013. The average expense ratio of Lipper peer group mixed-asset target allocation moderate funds was 1.39%.

92. These statements were part of a deliberate attempt to mislead participants about the reasonableness of the Plans' fees, and affirmatively misstated the market by using retail rates rather than the much lower institutional rates that provide the proper comparison for a multi-billion dollar plan. As discussed *supra*, a DOL study found that institutional investors can command fees that are only one-fourth the cost of retail mutual funds. Portico knew that comparisons to these benchmarks were improper and concealed its unreasonable compensation. The average expense ratios of mutual funds reported by Wilshire Associates Inc. and Lipper peer groups fail to take into account the fees actually charged to jumbo institutional investors that can command far lower cost institutional products due to their substantial bargaining power in the retirement plan marketplace. Portico made these representations in reckless disregard of their truth or knowing they were false, in order to fraudulently conceal its unreasonable compensation received from the excessive expenses charged to the Plans through the ELCA investment funds. By making these statements, Portico also deliberately hid: its self-interest; that uncapped asset-based fees for record-keeping are improper; and that it failed to consider superior alternative investment options or service providers.

93. Plaintiffs did not discover Portico's breach of trust and breaches of fiduciary duty until 2014.

94. Plaintiffs could not have discovered these breaches through reasonable diligence because of the affirmative concealment as set forth above and because Portico has not disclosed the general and administrative expenses allocated to each ELCA investment fund in the ELCA Plan. Upon information and belief, Plaintiffs could not have discovered these expenses charged to the GSS Plan until, at the earliest, 2013 when Portico made such disclosures.

95. As a direct and proximate result of Portico's fraud and concealment, Plaintiffs and the Class members incurred damages of many millions of dollars.

## VIII. JURY TRIAL DEMANDED

96. Plaintiffs demand a trial by jury under Minnesota Rule of Civil Procedure 38.01 and Article I, § 4 of the Constitution of the State of Minnesota.

## IX. PRAYER FOR RELIEF

WHEREFORE, Plaintiffs demand judgment for the following relief:

97. Find and declare that Portico breached the Trust and its fiduciary duties as described above;

98. Find and adjudge that Portico is liable to make good to the Plans all losses to the Plans resulting from the breaches of trust and fiduciary duty, to restore the Plans to the position they would have been in but for the breaches;

99. Award the Plans their actual losses and reasonable damages in an amount greater than $50,000;

100. Find and adjudge that Portico must disgorge all revenues or financial gains received from, or in respect of, the Plans from its breaches of fiduciary duty;

101. Impose a constructive trust on any money by which Portico was unjustly enriched as a result of its breaches of trust and fiduciary duty and cause Portico to return such money to the Plans;

102. Order equitable restitution and other appropriate equitable monetary relief against Portico;

103. Order the permanent removal of Portico from any positions of fiduciary responsibility with respect to the Plans;

104. Order Portico to render an accounting of the revenues it received from providing investment management and administrative services to the Plans;

105. Surcharge against Portico and in favor of the Plans all amounts involved in transactions that such accounting reveals were or are improper, excessive or in violation of its fiduciary obligations;

106. Enjoin Portico from any further violations of its fiduciary responsibilities, obligations, and duties;

107. Order the appointment of a fiduciary to administer the Plans;

108. Order a bidding process for the selection of investment options in the Plans and the selection of the provider of administrative and recordkeeping services provided to the Plans;

109. Order that this action be certified as a class action and that the Class be designated to receive any amounts recovered;

110. Award Plaintiffs their attorneys' fees and costs;

111. Order the payment of interest to the extent allowed by law; and

112. Award such other and further relief as the Court deems equitable and just.

Dated: March 4, 2015

Respectfully submitted,

LOCKRIDGE GRINDAL NAUEN P.L.L.P.

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**ACKNOWLEDGMENT**

I hereby acknowledge that, pursuant to Minn. Stat. § 549.211, the Court may assess costs, disbursements, and reasonable attorney and witness fees.

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