

**UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF NEW YORK**

Cynthia Richards-Donald and Michelle DePrima, individually and on behalf of a class of all other persons similarly situated, and on behalf of the Teachers Insurance and Annuity Association of America Code Section 401(k) Plan and the Teachers Insurance and Annuity Association of America Retirement Plan,

Plaintiffs,

v.

Teachers Insurance and Annuity Association of America; TIAA Plan Investment Review Committee; Otha “Skip” Spriggs; Dermot O’Brien; Pamela Atkins; Susan Collins; William Riegel; Josh Shamansky; Robert Weinman; Jayesh Bhansali; David Dunne; Phil Goff; Edward Moslander; Phillip Rollock; Elizabeth Gibson; Harry Klaristenfeld; Angela Kyle; and Martin Snow,

Defendants.

**Civ. A. No. 15-cv-08040-PKC**

**DEFENDANTS’ ANSWER AND AFFIRMATIVE DEFENSES  
TO PLAINTIFFS’ FIRST AMENDED COMPLAINT**

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Defendants Teachers Insurance and Annuity Association of America (“TIAA”), TIAA Plan Investment Review Committee (the “Committee”), Otha “Skip” Spriggs, Dermot O’Brien, Pamela Atkins, Susan Collins, William Riegel, Josh Shamansky, Robert Weinman, Jayesh Bhansali, David Dunne, Phil Goff, Edward Moslander, Phillip Rollock, Elizabeth Gibson, Harry Klaristenfeld, Angela Kyle and Martin Snow (collectively, “Defendants”), by their attorneys, hereby answer Plaintiffs’ First Amended Complaint, dated April 6, 2016. Defendants deny all allegations in the First Amended Complaint to the extent the allegations suggest that Defendants breached their fiduciary duties to Plaintiffs or any other participant in the Teachers Insurance and Annuity Association of America Code Section 401(k) Plan (“401(k) Plan”) or the Teachers Insurance and Annuity Association of America Retirement Plan (“Retirement Plan”) (together, the “Plans”), or engaged in any prohibited transactions. Defendants further respond to the specific allegations in the First Amended Complaint as follows:

1. Defendants admit that Plaintiffs purport to bring this action against Defendants individually and on behalf of a putative class of participants in the Plans.
2. Defendants lack knowledge or information sufficient to form a belief as to the truth or falsity of the allegations contained in Paragraph 2, except deny the allegation that discovery will uncover support for the allegations in the First Amended Complaint.
3. To the extent Paragraph 3 states a legal conclusion, no responsive pleading is required. To the extent that a response is required, Defendants deny the allegations, except respectfully refer the Court to the documents cited for their contents.
4. To the extent Paragraph 4 states a legal conclusion, no responsive pleading is required. To the extent that a response is required, Defendants deny the allegations, except respectfully refer the Court to the text of the statute cited for its contents.

5. To the extent Paragraph 5 states a legal conclusion, no responsive pleading is required. To the extent that a response is required, Defendants deny the allegations, except respectfully refer the Court to the text of the statute cited for its contents.

6. Defendants deny the allegations contained in Paragraph 6, except admit that TIAA was the named fiduciary of the Plans during the putative Class Period; that the Committee was a fiduciary to the Plans during the putative Class Period with respect to certain responsibilities, duties and acts; that Ms. Atkins, Ms. Collins, Mr. Riegel, Mr. Shamansky, Mr. Weinman, Mr. Bhansali, Mr. Dunne, Mr. Goff, Mr. Moslander, Mr. Rollock, Ms. Gibson, Mr. Klaristenfeld and Mr. Snow were fiduciaries to the Plans during a portion of the putative Class Period with respect to certain responsibilities, duties and acts based solely upon their service on the Committee during a portion of the putative Class Period; and that Mr. Spriggs and Mr. O'Brien were fiduciaries to the Plans for a portion of the putative Class Period with respect to certain responsibilities, duties and acts based solely upon their service as Vice Presidents in charge of Human Resources.

7. Defendants deny the allegations contained in Paragraph 7, except admit that Plaintiffs purport to bring the claim stated for the relief sought. Defendants further admit that each of the individual defendants is or was an officer or employee of TIAA. Defendants further admit that in 2013 all of the Plans' investment options were managed by TIAA or an affiliate.

8. Defendants deny the allegations contained in Paragraph 8, except admit that Plaintiffs purport to bring the claim stated for the relief sought.

9. Defendants deny the allegations contained in Paragraph 9, except admit that Plaintiffs purport to bring the claim stated for the relief sought. Defendants further admit that Mr. Spriggs is an officer of TIAA, and that Mr. O'Brien was previously an officer of TIAA,

including during a portion of the putative Class Period. Defendants further admit that during the putative Class Period TIAA served as Recordkeeper of the Plans.

10. Defendants deny the allegations contained in Paragraph 10, except admit that Plaintiffs purport to bring the claim stated for the relief sought.

11. Defendants deny the allegations contained in Paragraph 11, except admit that Plaintiffs purport to bring this action pursuant to the statutes cited therein.

12. Defendants deny the allegations contained in Paragraph 12, except admit that Plaintiffs purport to bring this action pursuant to ERISA.

13. Defendants deny the allegations contained in Paragraph 13, except admit that Plaintiffs purport to bring this action on behalf of a class and covering the putative Class Period.

14. To the extent Paragraph 14 states a legal conclusion, no responsive pleading is required. To the extent that a response is required, Defendants deny the allegations, except admit that Plaintiffs purport to base jurisdiction over the subject matter of this action on the statutes cited therein.

15. To the extent Paragraph 15 states a legal conclusion, no responsive pleading is required. To the extent that a response is required, Defendants deny the allegations, except admit that Plaintiffs purport to base personal jurisdiction of this action on the statutes cited therein.

16. To the extent Paragraph 16 states a legal conclusion, no responsive pleading is required. To the extent that a response is required, Defendants deny the allegations, except admit that Plaintiffs purport to base venue on the statutes cited therein.

17. Defendants lack knowledge or information sufficient to form a belief as to the truth or falsity of the allegations contained in Paragraph 17, except admit that Plaintiff Richards-Donald participated in the Plans during the putative Class Period.

18. Defendants lack knowledge or information sufficient to form a belief as to the truth or falsity of the allegations contained in Paragraph 18, except admit that Plaintiff DePrima participated in the 401(k) Plan during the putative Class Period and participated in the Retirement Plan for a portion of the putative Class Period.

19. Defendants lack knowledge or information sufficient to form a belief as to the truth or falsity of the allegations contained in Paragraph 19, except admit that during the putative Class Period Plaintiffs held individual accounts in at least one of the respective Plans, and that those accounts were invested in various investment options offered under the Plans.

20. Defendants admit the allegations contained in Paragraph 20.

21. Defendants admit the allegations contained in Paragraph 21.

22. Defendants admit the allegations contained in Paragraph 22, except state that TIAA-CREF is now known as TIAA.

23. Defendants admit the allegations contained in Paragraph 23.

24. Defendants admit the allegations contained in Paragraph 24.

25. Defendants admit the allegations contained in Paragraph 25.

26. Defendants deny the allegations contained in Paragraph 26, except admit that Mr. O'Brien served as Executive Vice President of Human Resources at TIAA for nine years, including a portion of the proposed Class Period.

27. Defendants admit the allegations contained in Paragraph 27, except state that Ms. Atkins currently serves as Senior Managing Director, Chief Risk Officer – Framework, Governance and Corporate Center Risk.

28. Defendants admit the allegations contained in Paragraph 28, except state that defendant's name is "Sue" Collins and that Ms. Collins currently serves as Senior Vice President, Chief Actuary.

29. Defendants admit the allegations contained in Paragraph 29, except state that Mr. Riegel currently serves as Senior Managing Director, Chief Investment Officer.

30. Defendants admit the allegations contained in Paragraph 30, except state that Mr. Shamansky currently serves as Senior Vice President, Head of Total Rewards.

31. Defendants admit the allegations contained in Paragraph 31, except state that Mr. Weinman currently serves as Vice President, Benefits and Human Resources Operations.

32. Defendants admit the allegations contained in Paragraph 32, except state that Mr. Bhansali served on the Committee for a portion of the proposed Class Period and that his name is spelled "Bhansali."

33. Defendants admit the allegations contained in Paragraph 33, except state that Mr. Dunne served on the Committee for a portion of the proposed Class Period and that he currently serves as Senior Managing Director, Individual Business Transformation.

34. Defendants admit the allegations contained in Paragraph 34, except state that Mr. Goff served on the Committee for a portion of the proposed Class Period and that he currently serves as Senior Vice President, Corporate Comptroller.

35. Defendants admit the allegations contained in Paragraph 35, except state that Mr. Moslander served on the Committee for a portion of the proposed Class Period and that he currently serves as Senior Managing Director, Institutional Relationship Management.

36. Defendants admit the allegations contained in Paragraph 36, except state that Mr. Rollock served on the Committee for a portion of the proposed Class Period and that he currently serves as Senior Managing Director and Corporate Secretary.

37. Defendants admit the allegations contained in Paragraph 37, except state that Ms. Gibson served on the Committee for a portion of the proposed Class Period.

38. Defendants deny the allegations contained in Paragraph 38, except admit that Mr. Klaristenfeld served on the Committee for a portion of the proposed Class Period and previously served as Senior Vice President and Chief Actuary of TIAA.

39. Defendants deny the allegations contained in Paragraph 39, except state that Ms. Kyle served on the Committee during a period outside the proposed Class Period, is no longer employed by TIAA, and previously served as Managing Director, Product Development.

40. Defendants admit the allegations contained in Paragraph 40, except state that Mr. Snow served on the Committee for a portion of the proposed Class Period and previously served as Vice President, Senior Actuary.

41. To the extent Paragraph 41 states a legal conclusion, no responsive pleading is required. To the extent that a response is required, Defendants deny the allegations, except admit that TIAA was the named fiduciary of the Plans during the putative Class Period; that the Committee was a fiduciary to the Plans during the putative Class Period with respect to certain responsibilities, duties and acts; that Ms. Atkins, Ms. Collins, Mr. Riegel, Mr. Shamansky, Mr. Weinman, Mr. Bhansali, Mr. Dunne, Mr. Goff, Mr. Moslander, Mr. Rollock, Ms. Gibson, Mr. Klaristenfeld and Mr. Snow were fiduciaries to the Plans during a portion of the putative Class Period with respect to certain responsibilities, duties and acts based solely upon their service on the Committee during a portion of the putative Class Period; and that Mr. Spriggs and Mr. O'Brien

were fiduciaries to the Plans for a portion of the putative Class Period with respect to certain responsibilities, duties and acts based solely upon their service as Vice Presidents in charge of Human Resources. Defendants respectfully refer the Court to the text of the statutes cited for their contents.

42. To the extent Paragraph 42 states a legal conclusion, no responsive pleading is required. To the extent that a response is required, Defendants deny the allegations, except admit that TIAA managed one or more of the investment options offered by the Plans during the putative Class Period, including the TIAA Real Estate Account, and respectfully refer the Court to the text of the statute cited for its contents.

43. Defendants admit the allegations contained in Paragraph 43.

44. Defendants admit the allegations contained in Paragraph 44.

45. Defendants admit the allegations contained in Paragraph 45.

46. Defendants admit the allegations contained in Paragraph 46.

47. Defendants admit the allegations contained in Paragraph 47.

48. Defendants deny the allegations contained in Paragraph 48, except state that as of the end of the 2013 plan year the Retirement Plan had 16,978 combined participants and deceased participants with beneficiaries entitled to benefits.

49. Defendants admit the allegations contained in Paragraph 49.

50. Defendants admit the allegations contained in Paragraph 50.

51. Defendants admit the allegations contained in Paragraph 51.

52. Defendants deny the allegations contained in Paragraph 52, except admit that TIAA, as Plan Administrator, is responsible for selecting, monitoring, and removing the service providers to the Plans, including the Recordkeeper; that TIAA, as Plan Administrator, has the



authority to designate other persons to carry out certain of its fiduciary responsibilities; and that any person serving as Executive Vice President in charge of Human Resources during the period October 14, 2009 to the present is an officer or employee of TIAA, and is not independent of TIAA.

53. Defendants deny the allegations contained in Paragraph 53, except admit that TIAA serves as Recordkeeper for the Plans, provides various administrative and other services to the Plans in that role, and receives reasonable compensation for providing those services.

54. Defendants deny the allegations contained in Paragraph 54, except admit that as of the end of 2013 the Plans in aggregate held more than \$3 billion in net assets available for benefits, which were invested in the investment options offered under the Plans (Mutual Funds and General, Separate & CREF Accounts Available Under Annuity Contracts & Certificates); that the investment options offered under the Plans are established and managed by TIAA or its affiliate CREF; and that TIAA or its affiliate CREF receive compensation for providing investment management and other services to those investment options. Defendants admit the definitions contained in Footnote 1 to Paragraph 54.

55. Defendants admit the allegations contained in Paragraph 55.

56. Defendants admit the allegations contained in Paragraph 56.

57. Defendants admit the allegations contained in Paragraph 57.

58. Defendants admit the allegations contained in Paragraph 58.

59. Defendants admit the allegations contained in Paragraph 59.

60. Defendants admit the allegations contained in Paragraph 60, except state that the Plans' Forms 5500 refer to the referenced investments as "mutual funds" during the period 2011

through 2014, and that CREF Inflation-Linked Bond is listed in Schedule H, Line 4i of the Forms 5500 as CREF “Inflation Bond.”

61. Defendants admit the allegations contained in Paragraph 61.

62. To the extent Paragraph 62 states a legal conclusion, no responsive pleading is required. To the extent that a response is required, Defendants deny the allegations, except respectfully refer the Court to the statute cited for its contents, and admit that as of the end of 2013 the Plans in aggregate held more than \$3 billion in net assets available for benefits.

63. Defendants deny the allegations contained in Paragraph 63.

64. Defendants deny the allegations contained in Paragraph 64.

65. Defendants deny the allegations contained in Paragraph 65.

66. Defendants lack knowledge or information sufficient to form a belief as to the truth or falsity of the allegations contained in Paragraph 66, except respectfully refer the Court to the document cited for its contents. Defendants state that the cited document reports “total plan costs” based upon three different metrics, but that the allegations in Paragraph 66 refer only to one of those three metrics.

67. Defendants deny the allegations contained in Paragraph 67.

68. Defendants deny the allegations contained in Paragraph 68.

69. Defendants deny the allegations contained in Paragraph 69, except admit that during certain periods in the putative Class Period certain CREF accounts charged 24 basis points for the full range of recordkeeping and administrative services that TIAA provides, and that during certain periods in the putative Class Period certain mutual funds charged 15 basis points for the full range of recordkeeping and administrative services that TIAA provides.

70. Defendants deny the allegations contained in Paragraph 70.

71. Defendants deny the allegations contained in Paragraph 71.

72. Defendants deny the allegations contained in Paragraph 72.

73. Defendants lack knowledge or information sufficient to form a belief as to the truth or falsity of the allegations contained in Paragraph 73, except respectfully refer the Court to the document cited for its contents.

74. Defendants deny the allegations contained in Paragraph 74.

75. Defendants deny the allegations contained in Paragraph 75.

76. Defendants deny the allegations contained in Paragraph 76.

77. To the extent Paragraph 77 states a legal conclusion, no responsive pleading is required. To the extent that a response is required, Defendants deny the allegations, except respectfully refer the Court to the statute cited for its contents.

78. To the extent Paragraph 78 states a legal conclusion, no responsive pleading is required. To the extent that a response is required, Defendants deny the allegations, except respectfully refer the Court to the statute cited for its contents.

79. To the extent Paragraph 79 states a legal conclusion, no responsive pleading is required. To the extent that a response is required, Defendants deny the allegations, except respectfully refer the Court to the documents cited for their contents.

80. To the extent Paragraph 80 states a legal conclusion, no responsive pleading is required. To the extent that a response is required, Defendants deny the allegations, except respectfully refer the Court to the documents cited for their contents.

81. To the extent Paragraph 81 states a legal conclusion, no responsive pleading is required. To the extent that a response is required, Defendants deny the allegations, except respectfully refer the Court to the documents cited for their contents.

82. To the extent Paragraph 82 states a legal conclusion, no responsive pleading is required. To the extent that a response is required, Defendants deny the allegations, except respectfully refer the Court to the document cited for its contents.

83. To the extent Paragraph 83 states a legal conclusion, no responsive pleading is required. To the extent that a response is required, Defendants deny the allegations, except respectfully refer the Court to the document cited for its contents.

84. To the extent Paragraph 84 states a legal conclusion, no responsive pleading is required. To the extent that a response is required, Defendants deny the allegations, except respectfully refer the Court to the statute cited for its contents.

85. To the extent Paragraph 85 states a legal conclusion, no responsive pleading is required. To the extent that a response is required, Defendants deny the allegations, except respectfully refer the Court to the statute cited for its contents.

86. To the extent Paragraph 86 states a legal conclusion, no responsive pleading is required. To the extent that a response is required, Defendants deny the allegations, except respectfully refer the Court to the statutes cited for their contents.

87. To the extent Paragraph 87 states a legal conclusion, no responsive pleading is required. To the extent that a response is required, Defendants deny the allegations, except admit that Plaintiffs purport to bring this action as a class action pursuant to Rule 23 of the Federal Rules of Civil Procedure, and further purport to bring the action on behalf of the putative class defined in Paragraph 87.

88. To the extent Paragraph 88 states a legal conclusion, no responsive pleading is required. To the extent that a response is required, Defendants deny the allegations.

89. To the extent Paragraph 89 states a legal conclusion, no responsive pleading is required. To the extent that a response is required, Defendants deny the allegations, except admit that as of the years ended 2009-2014, the Plans in aggregate had more than 20,000 participants and beneficiaries.

90. To the extent Paragraph 90 states a legal conclusion, no responsive pleading is required. To the extent that a response is required, Defendants deny the allegations.

91. To the extent Paragraph 91 states a legal conclusion, no responsive pleading is required. To the extent that a response is required, Defendants deny the allegations.

92. To the extent Paragraph 92 states a legal conclusion, no responsive pleading is required. To the extent that a response is required, Defendants deny the allegations.

93. To the extent Paragraph 93 states a legal conclusion, no responsive pleading is required. To the extent that a response is required, Defendants deny the allegations.

94. To the extent Paragraph 94 states a legal conclusion, no responsive pleading is required. To the extent that a response is required, Defendants deny the allegations.

95. To the extent Paragraph 95 states a legal conclusion, no responsive pleading is required. To the extent that a response is required, Defendants deny the allegations.

96. Defendants repeat and reassert each and every response set forth in the foregoing Paragraphs as if fully set forth below.

97. To the extent Paragraph 97 states a legal conclusion, no responsive pleading is required. To the extent that a response is required, Defendants deny the allegations, except admit that Plaintiffs purport to allege a breach of fiduciary duty.

98. Defendants deny the allegations contained in Paragraph 98, except state that TIAA delegated to the Committee responsibility for selecting, monitoring and removing investment options in the Plans.

99. Defendants deny the allegations contained in Paragraph 99.

100. Defendants deny the allegations contained in Paragraph 100.

101. To the extent Paragraph 101 states a legal conclusion, no responsive pleading is required. To the extent that a response is required, Defendants deny the allegations.

102. To the extent Paragraph 102 states a legal conclusion, no responsive pleading is required. To the extent that a response is required, Defendants deny the allegations.

103. To the extent Paragraph 103 states a legal conclusion, no responsive pleading is required. To the extent that a response is required, Defendants deny the allegations.

104. Defendants repeat and reassert each and every response set forth in the foregoing Paragraphs as if fully set forth below.

105. To the extent Paragraph 105 states a legal conclusion, no responsive pleading is required. To the extent that a response is required, Defendants deny the allegations, except admit that Plaintiffs purport to allege prohibited transactions.

106. To the extent Paragraph 106 states a legal conclusion, no responsive pleading is required. To the extent that a response is required, Defendants deny the allegations, except admit that TIAA is the named fiduciary of the Plans; that the Committee is a fiduciary to the Plans with respect to certain responsibilities, duties and acts; and that Ms. Atkins, Ms. Collins, Mr. Riegel, Mr. Shamansky, Mr. Weinman, Mr. Bhansali, Mr. Dunne, Mr. Goff, Mr. Moslander, Mr. Rollock, Ms. Gibson, Mr. Klaristenfeld and Mr. Snow were fiduciaries to the Plans during a portion of the

putative Class Period with respect to certain responsibilities, duties and acts based solely upon their service on the Committee during a portion of the putative Class Period.

107. To the extent Paragraph 107 states a legal conclusion, no responsive pleading is required. To the extent that a response is required, Defendants deny the allegations.

108. To the extent Paragraph 108 states a legal conclusion, no responsive pleading is required. To the extent that a response is required, Defendants deny the allegations.

109. To the extent Paragraph 109 states a legal conclusion, no responsive pleading is required. To the extent that a response is required, Defendants deny the allegations.

110. Defendants repeat and reassert each and every response set forth in the foregoing Paragraphs as if fully set forth below.

111. To the extent Paragraph 111 states a legal conclusion, no responsive pleading is required. To the extent that a response is required, Defendants deny the allegations, except admit that Plaintiffs purport to allege breach of fiduciary duty.

112. Defendants deny the allegations, except admit that TIAA, as Plan Administrator, is responsible for selecting, monitoring, and removing the service providers to the Plans, including the Recordkeeper.

113. Defendants deny the allegations, except admit that TIAA, as Plan Administrator, is responsible for selecting, monitoring, and removing the service providers to the Plans, including the Recordkeeper. Defendants further admit that TIAA serves as Recordkeeper for the Plans, provides various administrative and other services to the Plans in that role, and receives reasonable compensation for providing those services.

114. To the extent Paragraph 114 states a legal conclusion, no responsive pleading is required. To the extent that a response is required, Defendants deny the allegations.

115. To the extent Paragraph 115 states a legal conclusion, no responsive pleading is required. To the extent that a response is required, Defendants deny the allegations.

116. To the extent Paragraph 116 states a legal conclusion, no responsive pleading is required. To the extent that a response is required, Defendants deny the allegations.

117. Defendants repeat and reassert each and every response set forth in the foregoing Paragraphs as if fully set forth below.

118. To the extent Paragraph 118 states a legal conclusion, no responsive pleading is required. To the extent that a response is required, Defendants deny the allegations, except admit that Plaintiffs purport to allege prohibited transactions.

119. To the extent Paragraph 119 states a legal conclusion, no responsive pleading is required. To the extent that a response is required, Defendants deny the allegations, except admit that TIAA is the named fiduciary of the Plans, and that Mr. O'Brien and Mr. Spriggs served as fiduciaries to the Plans for a portion of the putative Class Period with respect to certain responsibilities, duties and acts based solely upon their service as Vice Presidents in charge of Human Resources.

120. To the extent Paragraph 120 states a legal conclusion, no responsive pleading is required. To the extent that a response is required, Defendants deny the allegations.

121. To the extent Paragraph 121 states a legal conclusion, no responsive pleading is required. To the extent that a response is required, Defendants deny the allegations.

122. To the extent Paragraph 122 states a legal conclusion, no responsive pleading is required. To the extent that a response is required, Defendants deny the allegations.

**PRAYER FOR RELIEF**

Defendants deny that Plaintiffs are entitled to relief.



**AFFIRMATIVE DEFENSES**

**FIRST AFFIRMATIVE DEFENSE**

1. The First Amended Complaint fails to state a claim upon which relief may be granted.

**SECOND AFFIRMATIVE DEFENSE**

2. Plaintiffs have failed to plead their claims against Defendants with particularity.

**THIRD AFFIRMATIVE DEFENSE**

3. Defendants are not liable to Plaintiffs because they did not breach any fiduciary duties to Plaintiffs or any participants in the Plans, did not engage in conduct that would constitute a breach of fiduciary duty, and loyally and prudently managed the assets of the Plans. Defendants acted at all times in good faith, in accordance with applicable law, and without knowledge of any wrongful acts or intent. Any and all acts taken by Defendants were lawful, proper and consistent with their duties and obligations to the Plaintiffs and the Plans.

**FOURTH AFFIRMATIVE DEFENSE**

4. Defendants are not liable to Plaintiffs because they discharged their duties solely in the interest of the Plans and their participants and beneficiaries, and 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.

**FIFTH AFFIRMATIVE DEFENSE**

5. Defendants are not liable to Plaintiffs because the fees paid by Plaintiffs were reasonable for the services provided to the Plans and their participants, including but not limited to the expense ratios of the investment options offered under the Plans and the fees charged for

recordkeeping and other administrative services provided to the Plans and their participants.

**SIXTH AFFIRMATIVE DEFENSE**

6. Defendants are not liable to Plaintiffs because the Plans' total plan costs were not excessive for the services provided.

**SEVENTH AFFIRMATIVE DEFENSE**

7. Defendants are not liable to Plaintiffs because the Plans' Recordkeeper did not charge excessive fees for the services provided.

**EIGHTH AFFIRMATIVE DEFENSE**

8. Defendants are not liable to Plaintiffs because they did not engage in self-dealing or prohibited transactions and/or because the transactions at issue are exempted by individual, class, or statutory exemptions. The applicable exemptions include, but are not limited to: (i) ERISA statutory exemptions pursuant to §§ 408(b)(2) and 408(b)(5), 29 U.S.C. §§ 1108(b)(2) and 1108(b)(5); (ii) Department of Labor Prohibited Transaction Exemption (PTE) 77-3, 42 Fed. Reg. 18734 (Mar. 31, 1977); and (iii) all applicable individual TIAA exemptions.

**NINTH AFFIRMATIVE DEFENSE**

9. Defendants are not liable to Plaintiffs because Defendants' processes for selecting, reviewing and monitoring the Plans' investment options, service providers and fees were robust and informed, and therefore entitled to judicial deference.

**TENTH AFFIRMATIVE DEFENSE**

10. Defendants are not liable to Plaintiffs because the Plans offered participants a reasonable selection of investment options reflecting different strategies, risks and costs.

**ELEVENTH AFFIRMATIVE DEFENSE**

11. Defendants are not liable to Plaintiffs because the Plans offered participants investment options charging fees below or in line with market expense ratios.

**TWELFTH AFFIRMATIVE DEFENSE**

12. Defendants are not liable to Plaintiffs because “nothing in ERISA requires every fiduciary to scour the market to find and offer the cheapest possible fund (which might, of course, be plagued by other problems).” *Hecker v. Deere & Co.*, 556 F.3d 575, 586 (7th Cir. 2009).

**THIRTEENTH AFFIRMATIVE DEFENSE**

13. Defendants are not liable to Plaintiffs because the Plans provided participants with reasonable investment options and charged reasonable fees and expenses.

**FOURTEENTH AFFIRMATIVE DEFENSE**

14. Defendants are not fiduciaries for all of the conduct alleged in the First Amended Complaint.

**FIFTEENTH AFFIRMATIVE DEFENSE**

15. Plaintiffs and others alleged to be members of the putative class lack standing to maintain some or all of their claims.

**SIXTEENTH AFFIRMATIVE DEFENSE**

16. Claims brought by Plaintiffs and others alleged to be members of the putative class against Defendants are barred in whole or in part by applicable statutes of limitation.

**SEVENTEENTH AFFIRMATIVE DEFENSE**

17. Plaintiffs’ claims against Defendants are barred in whole or in part by Plaintiffs’ knowledge of all material facts concerning their participation in the Plans, including but not

limited to the expense ratios of the investment options in the Plans and all other fees charged to participants in the Plans.

**EIGHTEENTH AFFIRMATIVE DEFENSE**

18. Plaintiffs' claims against Defendants are barred in whole or in part by Plaintiffs' own actions, omissions, and/or negligence.

**NINETEENTH AFFIRMATIVE DEFENSE**

19. Plaintiffs have not suffered any injury or harm as a result of the actions or omissions of Defendants. Plaintiffs have not suffered any losses and have sustained no damages proximately caused by their participation in the Plans or by any breach of fiduciary duty or prohibited transaction alleged in the First Amended Complaint.

**TWENTIETH AFFIRMATIVE DEFENSE**

20. Plaintiffs' claims against Defendant are barred in whole or in part by laches, equitable estoppel, waiver, unclean hands, ratification, disclosure, consent, or other related equitable doctrines.

**RESERVATION OF RIGHTS**

Defendants reserve the right to assert such other additional defenses as may be appropriate at a later time.

WHEREFORE, Defendants respectfully request that this Court dismiss the First Amended Complaint and Plaintiffs' claims, enter judgment in favor of the Defendants and against Plaintiffs, award Defendants the reasonable attorneys' fees, costs, and expenses they have incurred in the defense of this action, and grant Defendants any additional relief that is fair and appropriate.

Dated: May 2, 2016  
New York, New York

/s/ Lori A. Martin  
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