

**UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF VIRGINIA  
ROANOKE DIVISION**

**SAFI M. RIAZ, BESSIE M. McADAMS,  
KEITH O. EDWARDS and PETER H.  
DARGEL, individually and on behalf of all  
other similarly situated,**

**Plaintiffs,**

**v.**

**Case No. 7:21-cv-00549-MFU**

**ADVANCE STORES COMPANY, INC.,  
THE BOARD OF DIRECTORS OF  
ADVANCE STORES COMPANY, INC.,  
THE RETIREMENT COMMITTEE OF  
ADVANCE AUTO PARTS, INC. 401(k)  
PLAN and JOHN DOES 1-30,**

**Defendants.**

**DEFENDANTS' ANSWER AND AFFIRMATIVE DEFENSES  
TO CLASS ACTION AMENDED COMPLAINT**

Defendants Advance Stores Company, Incorporated (“Advance”), the Board of Directors (“Board”) of Advance Stores Company, Inc., and The Retirement Committee (“Committee”) of the Advance Auto Parts, Inc. 401(k) Plan (collectively, “Defendants”), by and through their undersigned counsel, hereby submit this Answer and Affirmative Defenses to Plaintiffs Amended Complaint (the “Complaint”). Defendants deny liability, respond to the individually numbered paragraphs of the Complaint, and interpose defenses as follows:

**I. INTRODUCTION**

1. In response to Paragraph 1 of the Complaint, Defendants admit that Plaintiffs purport to bring a class action under Sections 409 and 502(a)(2) of the ERISA, 29 U.S.C. §§ 1109 and 1132 against Defendants but deny that class certification is proper, and as such deny the allegations in footnotes 1 and 2. The remaining allegations assert legal conclusions for which no

response is required. To the extent a response is required, Defendants deny the remaining allegations contained in Paragraph 1.

2. The allegations contained in Paragraph 2 of the Complaint set forth legal conclusions and assertions and assumptions neither related nor directed to the Defendants herein and therefore do not require a response. To the extent a response is required, Defendants deny the allegations.

3. Paragraph 3 of the Complaint sets forth legal conclusions and assertions and assumptions neither related nor directed to the Defendants herein and therefore do not require a response. To the extent a response is required, Defendants deny the allegations.

4. Paragraph 4 of the Complaint sets forth legal conclusions and assertions and assumptions neither related nor directed to the Defendants herein and therefore do not require a response. To the extent a response is required, Defendants deny the allegations.

5. Paragraph 5 and footnote 3 of the Complaint set forth legal conclusions and assertions and assumptions neither related nor directed to the Defendants herein and therefore do not require a response. To the extent a response is required, Defendants deny the allegations.

6. The allegations in Paragraph 6 of the Complaint set forth legal conclusions and assertions and assumptions neither related nor directed to the Defendants herein and therefore do not require a response. To the extent a response is required, Defendants deny the allegations.

7. The allegations in Paragraph 7 of the Complaint set forth legal conclusions and assertions and assumptions neither related nor directed to the Defendants herein and therefore do not require a response. To the extent a response is required, Defendants deny the allegations.

8. The allegations in Paragraph 8 of the Complaint set forth legal conclusions and assertions and assumptions neither related nor directed to the Defendants herein and therefore do

not require a response. To the extent a response is required, Defendants deny the allegations.

9. The allegations in Paragraph 9 of the Complaint set forth assertions and assumptions neither related nor directed to the Defendants herein and therefore do not require a response. To the extent a response is required, Defendants deny the allegations.

10. Defendants admit the allegations contained in Paragraph 10 of the Complaint.

11. The allegations contained in Paragraph 11 of the Complaint regarding the size of the Plan are admitted. The remaining allegations are denied.

12. The allegations contained in Paragraph 12 of the Complaint are denied.

13. Defendants state that the allegations contained in Paragraph 13 of the Complaint are unanswerable because “lowest cost” is undefined and subject to multiple equally plausible interpretations. To the extent a response is required, Defendants deny the allegations.

14. The allegations in Paragraph 14 of the Complaint set forth assertions and assumptions neither related nor directed to the Defendants herein and therefore do not require a response. To the extent a response is required, Defendants deny the allegations.

15. The allegations in Paragraph 15 of the Complaint are denied.

16. In response to Paragraph 16 of the Complaint, Defendants admit that Plaintiffs purport to assert claims against Defendants for breach of the fiduciary duty of prudence (Count One) and failure to monitor fiduciaries (Count Two), but deny that they breached any duties and deny that any relief is warranted.

## **II. JURISDICTION AND VENUE**

17. In response to Paragraph 17 of the Complaint, Defendants admit this Court has jurisdiction over this matter.

18. Paragraph 18 of the Complaint asserts legal conclusions for which no response is required. To the extent a response is required, Defendants deny the allegations.

19. In response to Paragraph 19 of the Complaint, Defendants admit venue in this Court is proper.

### **III. PARTIES**

#### **A. Plaintiffs**

20. In response to Paragraph 20 of the Complaint, Defendants admit that Safi M. Riaz participated in the Plan during his employment. Defendants deny the allegations regarding Plaintiff's residence for lack of information sufficient to justify a belief therein. Defendants deny the remaining allegations contained in this paragraph.

21. In response to Paragraph 21 of the Complaint, Defendants admit that Bessie M. McAdams participated in the Plan during her employment. Defendants deny the allegations regarding Plaintiff's residence for lack of information sufficient to justify a belief therein. Defendants deny the remaining allegations contained in this paragraph.

22. In response to Paragraph 22 of the Complaint, Defendants admit that Keith O. Edwards participated in the Plan during his employment. Defendants deny the allegations regarding Plaintiff's residence for lack of information sufficient to justify a belief therein. Defendants deny the remaining allegations contained in this paragraph.

23. In response to Paragraph 23 of the Complaint, Defendants admit that Peter H. Dargel participated in the Plan during his employment. Defendants deny the allegations regarding Plaintiff's residence for lack of information sufficient to justify a belief therein. Defendants deny the remaining allegations contained in this paragraph.

24. In response to Paragraph 24 of the Complaint, Defendants admit that Deniece Pagans participated in the Plan during her employment. Defendants deny the allegations regarding Plaintiff's residence for lack of information sufficient to justify a belief therein. Defendants deny the remaining allegations contained in this paragraph.

25. In response to Paragraph 25 of the Complaint, Defendants admit that Janet Sweet participated in the Plan during her employment. Defendants deny the allegations regarding Plaintiff's residence for lack of information sufficient to justify a belief therein. Defendants deny the remaining allegations contained in this paragraph.

26. Defendants deny the allegations contained in Paragraph 26 of the Complaint.

27. Defendants deny the allegations in Paragraph 27 of the Complaint for lack of information sufficient to justify a belief therein and deny that Defendants breached any fiduciary duties or engaged in other unlawful conduct.

**B. Defendants**

**1. Company Defendant**

28. In response to Paragraph 28 and footnote 4 of the Complaint, Defendants admit that Advance sponsors the Plan. The allegations regarding Advance's principal place of business call for a legal conclusion to which no response is required and Defendants deny the same on that basis. Defendants further submit that the 2018 Form 5500 cited in Paragraph 28 of the Complaint is the best evidence of its contents and deny any characterization contrary to the terms of that written material.

29. In response to Paragraph 29 of the Complaint, Defendants state that the allegations regarding duties under ERISA state a legal conclusion for which no response is required, and Defendants deny the same on that basis. Defendants deny the remaining allegations contained in this paragraph.

30. Paragraph 30 of the Complaint asserts legal conclusions for which no response is required. To the extent a response is required, Defendants deny the allegations.

31. Paragraph 31 of the Complaint asserts legal conclusions for which no response is required. To the extent a response is required, Defendants deny the allegations.

**2. Board Defendants**

32. In response to Paragraph 32 of the Complaint, Defendants state that the allegations regarding duties under ERISA state a legal conclusion for which no response is required, and Defendants deny the same on that basis. Defendants deny the remaining allegations contained in this paragraph.

33. Paragraph 33 of the Complaint asserts legal conclusions for which no response is required. To the extent a response is required, Defendants deny the allegations.

34. The allegations contained in Paragraph 34 of the Complaint require no response. To the extent a response is required, Defendants deny the allegations.

**3. Committee Defendants**

35. Defendant denies the allegations contained in Paragraph 35 of the Complaint.

36. Paragraph 36 of the Complaint asserts legal conclusions for which no response is required. To the extent a response is required, Defendants deny the allegations.

37. The allegations contained in Paragraph 37 of the Complaint require no response. To the extent a response is required, Defendants deny the allegations.

**4. Additional John Doe Defendants**

38. The allegations contained in Paragraph 38 of the Complaint require no response. To the extent a response is required, Defendants deny the allegations.

**IV. CLASS ACTION ALLEGATIONS**

39. In response to Paragraph 39 of the Complaint, Defendants admit that Plaintiffs purport to bring this action on behalf of themselves and the putative class defined in Paragraph 39 of the Complaint, but deny that class certification is proper. Defendants deny the remaining allegations contained in Paragraph 39 and footnote 5 of the Complaint.

40. The allegations of Paragraph 40 of the Complaint are denied except to admit Named

Plaintiffs were participants in the Plan.

41. Paragraph 41 of the Complaint asserts legal conclusions for which no response is required. To the extent a response is required, Defendants deny the allegations.

42. Paragraph 42 of the Complaint asserts legal conclusions for which no response is required. To the extent a response is required, Defendants deny the allegations.

43. The allegations contained in the first sentence of Paragraph 43 of the Complaint assert legal conclusions for which no response is required. To the extent a response is required, Defendants deny the allegations. Defendants deny the remaining allegations contained in Paragraph 43 of the Complaint for lack of sufficient information to justify a belief therein.

44. Paragraph 44 of the Complaint asserts legal conclusions for which no response is required. To the extent a response is required, Defendants deny the allegations.

45. Paragraph 45 of the Complaint assert legal conclusions for which no response is required. To the extent a response is required, Defendants deny the allegations.

## **V. THE PLAN**

46. Paragraph 46 of the Complaint asserts legal conclusions for which no response is required. To the extent a response is required, Defendants deny the allegations.

47. Defendants submit that the written material cited in Paragraph 47 of the Complaint is the best evidence of its contents and deny any characterization contrary to the terms of the written material.

### **A. Contributions**

48. Defendants submit that the written material cited in Paragraph 48 of the Complaint is the best evidence of its contents and deny any characterization contrary to the terms of the written material.

49. Defendants submit that the written material cited in Paragraph 49 of the Complaint

is the best evidence of its contents and deny any characterization contrary to the terms of the written material.

50. Defendants submit that the written material cited in Paragraph 50 of the Complaint is the best evidence of its contents and deny any characterization contrary to the terms of the written material.

51. Defendants submit that the written material cited in Paragraph 51 of the Complaint is the best evidence of its contents and deny any characterization contrary to the terms of the written material. Defendants deny the remaining allegations contained in Paragraph 53 of the Complaint.

52. Paragraph 52 of the Complaint asserts legal conclusions for which no response is required. To the extent a response is required, Defendants deny the allegations.

**B. Vesting**

53. Defendants submit that the written material cited in Paragraph 53 of the Complaint is the best evidence of its contents and deny any characterization contrary to the terms of the written material.

**C. The Plan's Investments**

54. Paragraph 54 of the Complaint asserts legal conclusions for which no response is required. To the extent a response is required, Defendants deny the allegations.

55. Defendants admit the allegations contained in Paragraph 55 of the Complaint.

56. Defendants submit that the written material cited in Paragraph 56 of the Complaint is the best evidence of its contents and deny any characterization contrary to the terms of the written material.

**D. Payment of Plan Expenses**

57. Defendants submit that the written material cited in Paragraph 57 of the Complaint



is the best evidence of its contents and deny any characterization contrary to the terms of the written material.

**VI. THE PLAN'S FEES DURING THE CLASS PERIOD WERE UNREASONABLE**

**A. The Totality of Circumstances Demonstrate that the Plan Fiduciaries Failed to Administer the Plan in a Prudent Manner**

58. Paragraph 58 of the Complaint asserts legal conclusions for which no response is required. To the extent a response is required, Defendants deny the allegations.

59. Paragraph 59 of the Complaint asserts legal conclusions for which no response is required. To the extent a response is required, Defendants deny the allegations.

60. To the extent the allegations contained in Paragraph 60 of the Complaint assert legal conclusions, no response is required. Defendants deny the remaining allegations contained in Paragraph 60 of the Complaint for lack of information sufficient to justify a belief therein.

61. Defendants submit that the written material cited in Paragraph 61 of the Complaint is the best evidence of its contents and deny any characterization contrary to the terms of the written therein.

62. Paragraph 62 of the Complaint asserts legal conclusions for which no response is required. To the extent a response is required, Defendants deny the allegations.

63. Defendants deny the allegations contained in Paragraph 63 of the Complaint for lack of information sufficient to justify a belief therein.

64. Defendants deny the allegations contained in Paragraph 64 of the Complaint.

**1. The Plan's Total Plan Costs are Much Higher than Those of Its Peers**

65. The allegations in Paragraph 65 and footnote 6 of the Complaint set forth assertions and assumptions neither related nor directed to the Defendants herein and therefore do not require a response. To the extent a response is required, Defendants submit that the written material cited

in Paragraph 65 of the Complaint is the best evidence of its contents and deny any characterization contrary to the terms of that written material.

66. The allegations in Paragraph 66 and footnote 7 of the Complaint set forth assertions and assumptions neither related nor directed to the Defendants herein and therefore do not require a response. To the extent a response is required, Defendants submit that the written material cited in Paragraph 66 of the Complaint is the best evidence of its contents and deny any characterization contrary to the terms of that written material.

67. The allegations in Paragraph 67 of the Complaint set forth assertions and assumptions neither related nor directed to the Defendants herein and therefore do not require a response. To the extent a response is required, Defendants submit that the written material cited in Paragraph 67 of the Complaint is the best evidence of its contents and deny any characterization contrary to the terms of that written material.

68. The allegations in Paragraph 68 of the Complaint are denied.

**2. The Plan's Recordkeeping and Administrative Costs Were Excessive During the Class Period.**

69. Defendants deny the allegations contained in Paragraph 69 of the Complaint.

70. The allegations in Paragraph 70 of the Complaint set forth assertions and assumptions neither related nor directed to the Defendants herein and therefore do not require a response. To the extent a response is required, Defendants deny the allegations.

71. The allegations in Paragraph 71 and footnote 8 of the Complaint set forth assertions and assumptions neither related nor directed to the Defendants herein and therefore do not require a response. To the extent a response is required, Defendants deny the allegations.

72. The allegations in Paragraph 72 of the Complaint set forth assertions and assumptions neither related nor directed to the Defendants herein and therefore do not require a

response. To the extent a response is required, Defendants deny the allegations.

73. The allegations in Paragraph 73 of the Complaint set forth assertions and assumptions neither related nor directed to the Defendants herein and therefore do not require a response. To the extent a response is required, Defendants deny the allegations.

74. The allegations in Paragraph 74 of the Complaint set forth assertions and assumptions neither related nor directed to the Defendants herein and therefore do not require a response. To the extent a response is required, Defendants deny the allegations.

75. Defendants submit that the written material cited in Paragraph 75 of the Complaint is the best evidence of its contents and deny any characterization contrary to the terms of the written material.

76. Defendants submit that the written material cited in Paragraph 76 of the Complaint is the best evidence of its contents and deny any characterization contrary to the terms of the written material.

77. The allegations in Paragraph 77 of the Complaint set forth assertions and assumptions neither related nor directed to the Defendants herein and therefore do not require a response. To the extent a response is required, Defendants deny the allegations.

78. The allegations in Paragraph 78 of the Complaint set forth assertions and assumptions neither related nor directed to the Defendants herein and therefore do not require a response. To the extent a response is required, Defendants deny the allegations.

79. Defendants submit that the written material cited in Paragraph 79 of the Complaint is the best evidence of its contents and deny any characterization contrary to the terms of the written material.

80. The allegations in Paragraph 80 of the Complaint set forth assertions and

assumptions neither related nor directed to the Defendants herein and therefore do not require a response. To the extent a response is required, Defendants deny the allegations.

81. The allegations in Paragraph 81 of the Complaint set forth assertions and assumptions neither related nor directed to the Defendants herein and therefore do not require a response. To the extent a response is required, Defendants deny the allegations.

82. Defendants deny the allegations contained in Paragraph 82 of the Complaint.

83. Paragraph 83 of the Complaint asserts legal conclusions for which no response is required. To the extent a response is required, Defendants deny the allegations.

84. Defendants deny the allegations contained in Paragraph 84 of the Complaint.

85. Defendants deny the allegations contained in Paragraph 85 and footnote 9 of Plaintiff's Complaint.

86. Defendants submit that the written material cited in Paragraph 86 of the Complaint is the best evidence of its contents and deny any characterization contrary to the terms of the written material.

87. Defendants submit that Paragraph 87 of Complaint is unanswerable because the phrase "some of the lowest" is undefined, vague, ambiguous, and subject to multiple equally plausible interpretations. To the extent a response is required, Defendants deny the allegations.

88. Defendants deny the allegations contained in Paragraph 88 of the Complaint.

89. Defendants deny the allegations contained in Paragraph 89 of the Complaint. Defendants state that footnote 10 of the Complaint asserts legal conclusions for which no response is required. To the extent a response is required, Defendants deny the allegations.

90. The allegations in Paragraph 90 and footnote 11 of the Complaint set forth assertions and assumptions neither related nor directed to the Defendants herein and therefore do

not require a response. To the extent a response is required, Defendants deny the allegations.

91. Defendants deny the allegations contained in Paragraph 91 of the Complaint.

92. Defendants deny the allegations contained in Paragraph 92 of the Complaint.

**3. Many of the Plan's Funds had Investment Management Fees in Excess of Fees for Funds in Similarly-Sized Plans**

93. Defendants deny the allegations contained in Paragraph 93 of the Complaint.

94. The allegations in Paragraph 94 and footnote 12 of the Complaint set forth legal conclusions and therefore do not require a response. To the extent a response is required, Defendants submit that the written material cited in Paragraph 94 of the Complaint is the best evidence of its contents and deny any characterization contrary to the terms of that written material.

95. The allegations in Paragraph 95 of the Complaint set forth legal conclusions and therefore do not require a response. To the extent a response is required, Defendants deny the allegations therein.

96. The allegations in Paragraph 96 of the Complaint set forth legal conclusions and therefore do not require a response. To the extent a response is required, Defendants deny the allegations therein.

97. Defendants admit the allegations contained in the first, second, and third sentences of Paragraph 97 of the Complaint. The remaining allegations contained in Paragraph 97 of the Complaint contain legal conclusions for which no response is required. To the extent a response is required, Defendants deny the allegations.

98. Paragraph 98 and footnote 13 of the Complaint assert legal conclusions for which no response is required. To the extent a response is required, Defendants submit that the written material cited in Paragraph 98 of the Complaint is the best evidence of its contents and deny any characterization contrary to the terms of that written material.

99. The allegations in Paragraph 99 of the Complaint set forth assertions and assumptions neither related nor directed to the Defendants herein and therefore do not require a response. To the extent a response is required, Defendants deny the allegations.

100. The allegations in Paragraph 100 of the Complaint set forth assertions and assumptions neither related nor directed to the Defendants herein and therefore do not require a response. To the extent a response is required, Defendants submit that the written material cited in Paragraph 100 of the Complaint is the best evidence of its contents and deny any characterization contrary to the terms of that written material.

101. The allegations in Paragraph 101 of the Complaint set forth assertions and assumptions neither related nor directed to the Defendants herein and therefore do not require a response. To the extent a response is required, Defendants submit that the written material cited in Paragraph 101 of the Complaint is the best evidence of its contents and deny any characterization contrary to the terms of that written material.

102. Defendants deny the allegations contained in Paragraph 102 of the Complaint.

103. Defendants deny the allegations contained in Paragraph 103 of the Complaint.

104. Defendants deny the allegations contained in Paragraph 104 of the Complaint.

105. Defendants deny the allegations contained in Paragraph 105 of the Complaint.

**4. Several of the Plan's Funds With Substantial Assets Were Not in the Lowest Fee Share Class Available to the Plan**

106. Defendants deny the allegations contained in Paragraph 106 of the Complaint.

107. The allegations in Paragraph 107 of the Complaint set forth legal conclusions, assertions and assumptions neither related nor directed to the Defendants herein and therefore do not require a response. To the extent a response is required, Defendants deny the allegations.

108. The allegations in Paragraph 108 of the Complaint set forth legal conclusions,

assertions and assumptions neither related nor directed to the Defendants herein and therefore do not require a response. To the extent a response is required, Defendants deny the allegations.

109. Defendants deny the allegations contained in Paragraph 109 of the Complaint.

110. Defendants deny the allegations contained in Paragraph 110 of the Complaint.

111. Defendants deny the allegations contained in Paragraph 111 of the Complaint.

112. Defendants deny the allegations contained in Paragraph 112 of the Complaint.

113. The allegations in Paragraph 113 of the Complaint set forth assertions and assumptions neither related nor directed to the Defendants herein and therefore do not require a response. To the extent a response is required, Defendants deny the allegations.

114. Defendants deny the allegations contained in Paragraph 114 of the Complaint.

**5. Several of the Funds in the Plan had Lower Cost Better Performing Alternatives in the Same Investment Style**

115. Defendants deny the first two sentences in Paragraph 115 of the Complaint. The remaining allegations in Paragraph 115 and footnote 14 set forth legal conclusions, assertions and assumptions neither related nor directed to the Defendants herein and therefore do not require a response. To the extent a response is required, Defendants deny the allegations.

116. Defendants deny the allegations contained in Paragraph 116 of the Complaint.

117. Defendants deny the allegations contained in Paragraph 117 of the Complaint.

118. Defendants deny the allegations contained in Paragraph 118 of the Complaint.

119. Defendants deny the allegations contained in Paragraph 119 and footnote 15 of the Complaint.

120. The allegations in Paragraph 120 of the Complaint set forth legal conclusions, assertions and assumptions neither related nor directed to the Defendants herein and therefore do not require a response. To the extent a response is required, Defendants deny the allegations.

121. The allegations in Paragraph 121 of the Complaint set forth legal conclusions, assertions and assumptions neither related nor directed to the Defendants herein and therefore do not require a response. To the extent a response is required, Defendants deny the allegations.

122. Paragraph 122 of the Complaint asserts legal conclusions for which no response is required. To the extent a response is required, Defendants deny the allegations.

123. Defendants deny the allegations contained in Paragraph 123 of the Complaint.

**6. The Defendants Failed to Diversify the Plan**

124. Defendants deny the allegations contained in Paragraph 124 of the Complaint.

125. The allegations in Paragraph 125 of the Complaint set forth assertions and assumptions neither related nor directed to the Defendants herein and therefore do not require a response. To the extent a response is required, Defendants submit that the written material cited in Paragraph 125 of the Complaint is the best evidence of its contents and deny any characterization contrary to the terms of that written material

126. Paragraph 126 of the Complaint asserts legal conclusions for which no response is required. To the extent a response is required, Defendants deny the allegations.

127. Defendants deny the allegations contained in Paragraph 127 of the Complaint.

128. Defendants submit that the written material cited in Paragraph 128 of the Complaint is the best evidence of its contents and deny any characterization contrary to the terms of the written material.

129. Defendants deny the allegations contained in Paragraph 129 of the Complaint for lack of sufficient information to justify a belief therein.

130. Paragraph 130 of the Complaint asserts legal conclusions for which no response is required. To the extent a response is required, Defendants deny the allegations.

131. Defendants submit that the written material cited in Paragraph 131 of the Complaint



is the best evidence of its contents and deny any characterization contrary to the terms of the written material.

132. Defendants submit that the written material cited in Paragraph 132 of the Complaint is the best evidence of its contents and deny any characterization contrary to the terms of the written material.

133. Defendants submit that the written material cited in Paragraph 133 of the Complaint is the best evidence of its contents and deny any characterization contrary to the terms of the written material.

134. Defendants deny the allegations contained in Paragraph 134 of the Complaint.

**FIRST CLAIM FOR RELIEF**  
**Breaches of Fiduciary Duties of Prudence**  
**(Asserted against the Committee)**

135. In response to Paragraph 135 of the Complaint, Defendants incorporate herein by reference all prior paragraphs of this Answer as if fully set forth herein.

136. Paragraph 136 of the Complaint asserts legal conclusions for which no response is required. To the extent a response is required, Defendants deny the allegations.

137. Paragraph 137 of the Complaint asserts legal conclusions for which no response is required. To the extent a response is required, Defendants deny the allegations.

138. Defendants deny the allegations contained in Paragraph 138 of the Complaint.

139. Defendants deny the allegations contained in Paragraph 139 of the Complaint.

140. Defendants deny the allegations contained in Paragraph 140 of the Complaint.

141. Defendants deny the allegations contained in Paragraph 141 of the Complaint.

**SECOND CLAIM FOR RELIEF**  
**Failure to Adequately Monitor Other Fiduciaries**  
**(Asserted against Advance and the Board Defendants)**

142. In response to Paragraph 142 of the Complaint, Defendants incorporate herein by

reference all prior paragraphs of this Answer as if fully set forth herein.

143. Paragraph 143 of the Complaint asserts legal conclusions for which no response is required. To the extent a response is required, Defendants deny the allegations.

144. Paragraph 144 of the Complaint asserts legal conclusions for which no response is required. To the extent a response is required, Defendants deny the allegations.

145. Paragraph 155 of the Complaint asserts legal conclusions for which no response is required. To the extent a response is required, Defendants deny the allegations.

146. Defendants deny the allegations contained in Paragraph 156 of the Complaint.

147. Defendants deny the allegations contained in Paragraph 157 of the Complaint.

148. Defendants deny the allegations contained in Paragraph 158 of the Complaint.

#### **PRAYER FOR RELIEF**

Defendants deny the allegations set forth in the “Prayer for Relief,” including each and every subpart, and deny that Plaintiffs, the Plan, or the putative class are entitled to any of the relief sought in the “Prayer for Relief.”

#### **AFFIRMATIVE DEFENSES**

Defendants advance the following defenses to the Complaint. The defenses asserted below will apply, or will not apply, in varying degrees to members of the putative class including Plaintiffs, depending upon the particular factual circumstances of each individual member of the putative class. By setting forth these defenses, Defendants do not assume the burden of proving any fact, issue, or element of a cause of action where such burden properly belongs to Plaintiff. Nothing stated herein is intended or shall be construed as an admission that any particular issue or subject matter is relevant to Plaintiffs’ allegations.

**First Defense**

The Complaint fails to state a claim upon which relief can be granted.

**Second Defense**

Plaintiffs lack standing to bring claims regarding funds in which the Plaintiffs did not invest.

**Third Defense**

Plaintiffs' claims are barred in whole or in part by the applicable statute of limitations and repose, including but not limited to ERISA § 413, 29 U.S.C. § 1113.

**Fourth Defense**

Any loss, damage, or injury sustained by Plaintiffs was not directly or proximately caused by the alleged breach of fiduciary duty as set forth in the Complaint.

**Fifth Defense**

The claims of members of the putative class who have executed a waiver or release of claims against any or all Defendants may be barred by that waiver or release of claims.

**Sixth Defense**

The Defendants acted at all times and in all respects in good faith and with due care and did not engage in any conduct which would constitute a breach of fiduciary duty or a failure to monitor fiduciaries.

**Seventh Defense**

One or more of the Defendants are not, or were not acting as, fiduciaries within the meaning of ERISA § 3(21)(A), 29 U.S.C. § 1102(21)(A), with respect to certain conduct alleged by Plaintiffs.

**Eighth Defense**

Plaintiffs' claims are barred, in whole or in part, because the Complaint seeks relief that cannot be obtained under ERISA §§ 409 and 502(a)(2), 29 U.S.C. §§ 1109 and 1132(a)(2).

**Ninth Defense**

Plaintiffs' claims are barred in whole or in part by ERISA § 404(c), 29 U.S.C. § 1104(c), because Plaintiffs exercised control over their Plan accounts.

**Tenth Defense**

Plaintiffs have proximately caused, contributed to, and/or failed to mitigate, any and all harm and/or loss claimed.

**Eleventh Defense**

Plaintiffs' claims are barred by the doctrine of laches, waiver, and/or estoppel.

**Twelfth Defense**

To the extent that this action seeks exemplary or punitive damages, any such relief would violate Defendants' rights to procedural and substantive due process.

**Thirteenth Defense**

The Plans' investments and fees were substantively/objectively prudent.

**Fourteenth Defense**

Plaintiffs are not entitled to certification of this action as a class action because they cannot satisfy the requirements of Federal Rule of Civil Procedure 23(a) or (b) in this case.

**RESERVATION OF RIGHTS**

Defendants hereby give notice that they intend to rely upon such other and further defenses as may become available or apparent during pre-trial proceedings in this case and hereby reserve all rights to amend their answer to assert such defenses.

**RELIEF REQUESTED**

**WHEREFORE**, Defendants pray for judgment as follows:

1. That Plaintiffs take nothing by the Complaint;
2. That the Complaint, and each cause of action therein, be dismissed with prejudice;
3. That Defendants be awarded their costs of suit, including attorneys' fees; and
4. That the Court award such other relief as it deems just and appropriate.

Date: June 7, 2022

Respectfully submitted,

**JACKSON LEWIS P.C.**

/s/ René E. Thorne  
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