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7  
8 IN THE UNITED STATES DISTRICT COURT  
9 FOR THE DISTRICT OF ALASKA

10 MONTE MABRY,  
11 Plaintiff,

12 vs.

13 CONOCOPHILLIPS COMPANY,  
14 BENEFITS COMMITTEE OF THE  
15 CONOCOPHILLIPS RETIREMENT  
PLAN, and ALIGHT SOLUTIONS LLC,  
16 Defendants.

) Case No. 3:20-cv-00039-SLG

) **AMENDED COMPLAINT FOR**  
) **VIOLATIONS OF ERISA AND**  
) **STATE LAW**

) (ERISA § 502, 29 U.S.C. § 1132)

) **JURY TRIAL DEMANDED AS**  
) **TO STATE-LAW CLAIMS**

17  
18 **JURISDICTION**

19 1. This Court has subject matter jurisdiction over Plaintiff's federal  
20 claims pursuant to 28 U.S.C. § 1331 and the specific jurisdictional statute for  
21 claims brought pursuant to the Employee Retirement Income Security Act of  
22 1974 ("ERISA"), ERISA § 502(e) and (f), 29 U.S.C. § 1132(e) and (f). As to the  
23 state-law claims, this Court has supplemental subject matter jurisdiction pursuant  
24 to 28 U.S.C. § 1367(a) because the state-law claims form part of the same case or  
25 controversy. In addition, as to the state-law claims, this Court has subject matter  
26 jurisdiction pursuant to 28 U.S.C. § 1332 because the matter in controversy  
27 exceeds the sum or value of \$75,000, exclusive of interest and costs, and is  
28 between citizens of different states.

1 **VENUE**

2 2. Venue lies in the District of Alaska pursuant to ERISA § 502(e)(2),  
3 29 U.S.C. § 1132(e)(2), because the ConocoPhillips Retirement Plan  
4 (“ConocoPhillips Plan” or “Plan”) is administered in part in this District and  
5 Defendants ConocoPhillips Company (“ConocoPhillips”), Benefits Committee  
6 of the ConocoPhillips Retirement Plan (“Benefits Committee”), and Alight  
7 Solutions LLC (“Alight”) may be found in this District.

8 **NATURE OF THE DISPUTE**

9 3. Mr. Mabry brings this suit to remedy harm that he suffered when,  
10 for at least six years, Defendants provided him inaccurate and misleading  
11 statements of his pension benefit, on which he relied in planning for his  
12 retirement.

13 4. For several years when Mr. Mabry was in his 50s, Defendants  
14 issued him pension benefit statements showing that if he commenced his benefit  
15 at age 60, his ConocoPhillips Plan benefit would be \$3,916.07 per month for life,  
16 or a lump sum of about \$750,000, depending on the interest rate in effect at his  
17 retirement. Mr. Mabry relied on these statements in planning for his retirement,  
18 including in making employment choices and savings and spending decisions.  
19 But when Mr. Mabry reached age 60 and elected to commence his benefit, the  
20 ConocoPhillips Plan abruptly reduced his monthly benefit by more than 50  
21 percent, to \$1,734.39, resulting in a lump sum benefit at age 60 of only  
22 \$344,693.01.

23 **The Parties and the Plan**

24 5. At all relevant times, Plaintiff Monte Mabry has been a participant,  
25 as defined by ERISA § 3(7), 29 U.S.C. § 1002(7), in the ConocoPhillips Plan.  
26 Mr. Mabry resides in Anchorage, Alaska.

27 6. The ConocoPhillips Plan is an employee pension benefit plan as  
28 defined by ERISA § 3(2), 29 U.S.C. § 1002(2), sponsored by Defendant

1 ConocoPhillips. As of the end of 2018, the ConocoPhillips Plan had more than  
2 14,000 participants and about \$2.65 billion in assets.

3 7. Defendant ConocoPhillips is a Delaware corporation with its  
4 principal place of business in Houston, Texas. ConocoPhillips is a fiduciary of  
5 the ConocoPhillips Plan within the meaning of ERISA § 3(21), 29 U.S.C. §  
6 1002(21), in that it exercises authority or control respecting management or  
7 disposition of the ConocoPhillips Plan's assets, it exercises discretionary  
8 authority or discretionary control respecting management of the ConocoPhillips  
9 Plan, and/or it has discretionary authority or discretionary responsibility in the  
10 administration of the ConocoPhillips Plan. Among other authority,  
11 ConocoPhillips has the authority to appoint the Benefits Committee and  
12 exercises discretion in selecting and monitoring the Benefits Committee and/or  
13 other fiduciaries. As of March 2019, ConocoPhillips described itself as Alaska's  
14 largest crude oil producer and the largest owner of exploration leases in Alaska.

15 8. Under the terms of the ConocoPhillips Plan, Defendant Benefits  
16 Committee is the Plan Administrator of the ConocoPhillips Plan within the  
17 meaning of ERISA § 3(16)(a)(i), 29 U.S.C. § 1002(16)(a)(i). The Benefits  
18 Committee is a named fiduciary of the ConocoPhillips Plan by reason of being  
19 the Plan Administrator, and is a fiduciary of the ConocoPhillips Plan within the  
20 meaning of ERISA § 3(21), 29 U.S.C. § 1002(21), in that it exercises authority  
21 or control respecting management or disposition of the ConocoPhillips Plan's  
22 assets, it exercises discretionary authority or discretionary control respecting  
23 management of the ConocoPhillips Plan, and/or it has discretionary authority or  
24 discretionary responsibility in the administration of the ConocoPhillips Plan.

25 9. As the named Plan Administrator, the Benefits Committee is the  
26 entity responsible for providing pension benefit statements to ConocoPhillips  
27 Plan participants as required by ERISA § 105(a), 29 U.S.C. § 1025(a).

28 10. The ConocoPhillips Plan gives the Benefits Committee the

1 responsibility to “[s]elect, monitor, and replace third-party advisors to the Plan  
2 and the Trust, such as consultants, actuaries, record keepers, and other service  
3 providers”; “[a]rrange for compliance with participant disclosure requirements  
4 for employees, participants, and beneficiaries”; and “[o]versee maintenance of  
5 participant records and administration of the Plan.” The ConocoPhillips Plan  
6 gives the Benefits Committee “absolute discretion in carrying out its  
7 responsibilities.”

8 11. Defendant Alight is an Illinois limited liability company with its  
9 principal place of business in Illinois. Beginning in January 2008 or earlier,  
10 Hewitt Associates LLC (“Hewitt”) provided record-keeping and third-party  
11 administration services to the ConocoPhillips Plan. In June 2017, Hewitt was  
12 renamed Alight. Until January 1, 2020, Alight continued to provide record-  
13 keeping and third-party administration services to the ConocoPhillips Plan.  
14 Alight is registered to do business in Alaska. Hewitt and Alight are referred to  
15 herein as “Alight.”

16 12. Effective in January 2008, ConocoPhillips and the Benefits  
17 Committee contracted with Alight to carry out certain of the Benefits  
18 Committee’s responsibilities for the ConocoPhillips Plan, including its pension  
19 benefit statement responsibilities under ERISA § 105(a) and its responsibility for  
20 processing pension applications and for deciding first-level benefit appeals. The  
21 contract between ConocoPhillips, the Benefits Committee, and Alight made  
22 Alight responsible for administering the Plan in accordance with its terms. Under  
23 the contract, Alight retained the right to exercise full control of an supervision  
24 over the performance of its obligations under the contract.

25 13. While providing services to the ConocoPhillips Plan, Alight held  
26 itself out as providing “a total retirement approach to help drive better solutions  
27 and outcomes,” based on “40+ years of knowledge, expertise, and innovation  
28 managing retirement plans for large organizations, helping people save, plan and

1 retire confidently.” Alight publicly asserted that its defined benefit plan  
2 administration enabled employees “to retire confidently with industry-leading  
3 expertise, technology and support,” with “a customer experience designed to  
4 help [employees] fully understand their options” and “tools and rigorous  
5 processes that assure quality in all aspects of the services we deliver,” making  
6 “essential plan information easy to access and navigate.”

## 7 **FACTS**

### 8 **Mr. Mabry’s Employment and Pension Service**

9 14. In 1980, after receiving his B.S. in geophysics, Mr. Mabry began  
10 employment with Atlantic Richfield Company (“ARCO”) at age 22. In 1985, he  
11 transferred to ARCO Alaska.

12 15. As an ARCO and ARCO Alaska employee, Mr. Mabry accrued  
13 pension benefits under the Atlantic Richfield Retirement Plan (“ARRP”).

14 16. In 2000 and 2001, a series of transactions resulted in Phillips  
15 Petroleum Company (“Phillips”) acquiring ARCO Alaska. Mr. Mabry became a  
16 Phillips employee and a participant in the Phillips Retirement Income Plan.

17 17. In 2003, Phillips merged with Conoco, Inc., becoming  
18 ConocoPhillips. The Phillips Retirement Income Plan and the Conoco  
19 Retirement Plan merged to form the ConocoPhillips Plan.

20 18. Mr. Mabry was laid off from ConocoPhillips effective April 9,  
21 2009, at age 50.

22 19. After Mr. Mabry separated, ConocoPhillips amended and restated  
23 the ConocoPhillips Plan effective January 1, 2016, and again effective January 1,  
24 2019. The 2019 Plan provides that “except as otherwise expressly set forth  
25 herein, the rights and benefits, if any, of a Participant (and his beneficiaries) who  
26 terminated his service prior to the Effective Date shall be determined under the  
27 provisions of the Plan as in effect on the date his service terminated.”

28 //

1 **Pertinent Plan Terms**

2 20. The ConocoPhillips Plan is a defined benefit pension plan, meaning  
3 that each participating employee is entitled to a fixed periodic payment during  
4 retirement based on a pension calculation formula set forth in the Plan.

5 21. ERISA defines “accrued benefit” to mean a participant’s benefit  
6 payable as an annual benefit commencing at normal retirement age (“normal  
7 retirement benefit”). The annual benefit is an annuity for the life of the  
8 participant, or “single-life annuity.”

9 22. Under ERISA, any alternative form of benefit – such as a lump-sum  
10 payment – must be at least the actuarial equivalent of the single-life annuity  
11 commencing at normal retirement age.

12 23. Normal retirement age under the ConocoPhillips Plan is age 65.

13 24. The ConocoPhillips Plan uses a final average pay formula to  
14 calculate benefits. Under this formula, a participant’s pension is calculated based  
15 on factors including his years of credited service and his average annual earnings  
16 during his highest three years of earnings out of his final eleven years of  
17 employment.

18 25. For “ARCO Acquired Employees,” including Mr. Mabry, credited  
19 service under the ConocoPhillips Plan is equal to service under the ARRP plus  
20 service under the ConocoPhillips Plan. Thus, Mr. Mabry’s credited service under  
21 the ConocoPhillips Plan commences October 1, 1980.

22 26. Mr. Mabry’s dates of service under the Plan are October 1, 1980,  
23 through April 9, 2009.

24 27. Defendants calculated Mr. Mabry’s final average earnings as  
25 \$15,411.40 per month.

26 28. Under the ConocoPhillips Plan provisions applicable to Mr. Mabry,  
27 a participant is entitled to a normal retirement benefit commencing at age 65, or  
28 a reduced early retirement benefit commencing before age 65. However, a

1 participant who has attained at least age 55 at the time of early retirement or  
2 whose employment terminates due to layoff can receive an unreduced early  
3 retirement benefit at age 60.

4 29. Under these provisions, Mr. Mabry was entitled to receive his  
5 normal retirement benefit commencing May 1, 2018 – the first of the month after  
6 his 60th birthday.

7 30. Mr. Mabry’s pension benefit is the greatest amount of those  
8 produced by multiple alternative calculations set forth in the ConocoPhillips  
9 Plan. Each of these alternative calculations requires either (1) subtracting the  
10 participant’s normal retirement benefit under the ARRP, as reported to the  
11 Benefits Committee by ARCO; or (2) disregarding the participant’s ARCO  
12 credited service.

13 31. The Plan also provides for a Social Security make-up benefit, which  
14 is an additional monthly benefit for participants who commence their benefits  
15 before age 62, and is payable from the participant’s benefit commencement date  
16 until he reaches age 62.

17 32. The Plan also requires that if the Committee, or any other fiduciary  
18 or their representatives, commits an error with respect to the benefits of a  
19 participant, the amount of the affected participant’s benefit shall be adjusted in  
20 an equitable manner to conform to the facts.

21 **Alight’s Plan Administration, Record-Keeping,**  
22 **and Participant Support Functions**

23 33. Pursuant to the Benefits Committee’s delegation of authority,  
24 Alight’s responsibilities with respect to the ConocoPhillips Plan included  
25 providing and auditing automated and manual pension calculations, maintaining  
26 historical data that affect pension benefit calculations, complying with qualified  
27 domestic relations orders (“QDROs”) of state courts for the division of pension  
28 benefits, and providing retirement counseling to ConocoPhillips Plan

1 participants.

2 34. Upon information and belief, Alight prepared a “requirements  
3 document” to use as a guide in programming automated pension calculations for  
4 the ConocoPhillips Plan and in performing manual pension calculations for the  
5 ConocoPhillips Plan. Upon information and belief, the “requirements document”  
6 sets forth the steps to calculate participants’ pension benefits.

7 35. Upon information and belief, in performing its functions, Alight  
8 used a proprietary recordkeeping system known as “TBA,” for Total Benefits  
9 Administration.

10 36. Upon information and belief, Alight uses TBA to house the data  
11 necessary to calculate participants’ pension benefits according to the relevant  
12 plan’s provisions – in this case, the provisions of the ConocoPhillips Plan – and  
13 Alight uses TBA to perform those calculations when they can be performed  
14 programmatically.

15 37. Pursuant to Alight’s contract with ConocoPhillips, ConocoPhillips  
16 had online access to Alight’s TBA system. Therefore, the Benefits Committee  
17 had online access to the TBA system.

18 38. Upon information and belief, pursuant to the Benefits Committee’s  
19 delegation of authority, Alight operated the ConocoPhillips Benefits Center and  
20 a website at <http://digital/alight.com/conocophillips>, and issued pension benefit  
21 statements and other communications on ConocoPhillips letterhead.

22 39. Alight provided ConocoPhillips Plan participants access to pension  
23 benefit information through the Alight website, which allowed participants to  
24 “model” their ConocoPhillips Plan benefits by entering a planned benefit  
25 commencement date to generate an accrued benefit statement.

26 40. Upon information and belief, Alight programmed the Total Benefits  
27 Administration system to perform benefit calculations in accordance with the  
28 requirements documents that it prepared for the ConocoPhillips Plan.



1           41. Upon information and belief, under some circumstances, the Total  
2 Benefits Administration system is not equipped to calculate a participant's  
3 accrued benefit or generate an accrued benefit statement, due to the combination  
4 of data points necessary to calculate the participant's accrued benefit.

5           42. Upon information and belief, when the Total Benefits  
6 Administration system is not equipped to perform a pension calculation, Alight  
7 staff perform the calculation manually using the manual calculation procedures  
8 and requirements document prepared by Alight for the specific pension plan.

9           43. Alight did not program the Total Benefits Administration system to  
10 calculate ConocoPhillips Plan pensions that were subject to qualified domestic  
11 relations orders ("QDROs"). Therefore, Alight staff were tasked with performing  
12 manual calculations for any ConocoPhillips Plan pension involving a QDRO.

13           44. Upon information and belief, Alight's administration of the  
14 ConocoPhillips Plan included establishing manual calculation procedures and  
15 performing quarterly audits of those procedures.

16                           **Mr. Mabry's QDRO and Pension Calculation**

17           45. In October 2008, the Alaska Superior Court issued a QDRO  
18 awarding a portion of Mr. Mabry's ConocoPhillips Plan benefit to his former  
19 spouse as alternate payee. Specifically, the QDRO awarded the alternate payee  
20 72.5 percent of Mr. Mabry's accrued normal retirement benefit as of March 31,  
21 2008. The QDRO directed that the amount awarded to the alternate payee "shall  
22 be segregated as a separate defined benefit solely under the name of the  
23 Alternate Payee for the Alternate Payee's benefit and as the Alternate Payee's  
24 sole and separate property."

25           46. The QDRO was submitted to ConocoPhillips and/or Alight to  
26 calculate and segregate the alternate payee's share.

27           47. On December 8, 2008, ConocoPhillips wrote to Mr. Mabry and the  
28 alternate payee, stating that pursuant to the QDRO, the alternate payee's "benefit

1 will be segregated as a separate defined benefit solely under her name, for her  
2 benefit and as her sole and separate property.”

3 48. On December 16, 2008, ConocoPhillips again wrote to Mr. Mabry  
4 and the alternate payee, enclosing a calculation of the alternate payee’s benefit  
5 and reiterating that her “benefit will be segregated as a separate defined benefit  
6 solely under her name, for her benefit and as her sole and separate property.”

7 49. Alight calculated the amount awarded to the alternate payee as  
8 \$2,181.68.

9 50. Under the terms of the QDRO, this amount was fixed as of March  
10 31, 2008. Thus, all subsequent calculations of Mr. Mabry’s normal retirement  
11 benefit should have included a reduction of \$2,181.68 representing the alternate  
12 payee’s segregated share.

13 51. In October 2009, Alight noted in the Total Benefits Administration  
14 system that it had “added QDRO offset amount of \$2,181.68 from template  
15 provided by [ConocoPhillips].”

16 52. In July 2010, Alight updated the TBA system to note with respect to  
17 Mr. Mabry, “Retirement calc should be manual.” The note states that the TBA  
18 system could not calculate Mr. Mabry’s pension with both the reduction for his  
19 ARCO benefit and the reduction for the alternate payee’s share.

20 53. Specifically, the note states, “If the qdro was included, calc engine  
21 would not recognize the qdro in the arco compare calcs and would give the  
22 [participant] the [Retirement Income Plan] service only benefit without the  
23 QDRO.”

24 54. Thus, by July 2010, the TBA system reflected that an automated  
25 calculation of Mr. Mabry’s pension would be overstated by \$2,181.68 per month  
26 because the TBA system’s calculation would not reflect the reduction for the  
27 alternate payee’s segregated benefit.

28 55. By July 2010, Defendants were aware that Mr. Mabry’s benefit

1 required a manual calculation and that automated calculations would overstate  
2 Mr. Mabry's benefit by \$2,181.68 per month, and a warning to this effect was  
3 present on the TBA system.

4 56. Nonetheless, Defendants did not ensure that Mr. Mabry received  
5 pension benefit statements based on manual calculations. After calculating the  
6 alternate payee's segregated benefit, Defendants did not perform a manual  
7 calculation of Mr. Mabry's benefit until 2018.

8 57. Instead, for more than six years, Defendants provided Mr. Mabry  
9 with pension benefit statements based on the TBA system's calculation, which  
10 Defendants knew were incomplete and inaccurate.

11 58. Mr. Mabry did not know, and had no way of knowing, that Alight's  
12 automated calculations were inaccurate, or that a manual calculation was  
13 necessary to accurately compute his benefit amount.

#### 14 **Mr. Mabry's Pension Statements**

15 59. After Mr. Mabry separated from ConocoPhillips in April 2009, he  
16 regularly checked the ConocoPhillips benefit website to calculate his  
17 ConocoPhillips Plan benefit as of various potential commencement dates. The  
18 website consistently showed him benefit amounts based on an age-65 single-life  
19 annuity of \$3,916.07, which was available to him as an unreduced benefit at age  
20 60. The statements showed this benefit converting to a lump sum of more than  
21 \$600,000, depending on the benefit commencement date that Mr. Mabry selected  
22 and the interest rate anticipated to be in effect at the benefit commencement date.

23 60. Specifically, Mr. Mabry received all of the following statements:

24 <b>Statement Date</b>	25 <b>Benefit Commencement Date (BCD)</b>	26 <b>Single-Life Annuity at Normal Retirement Date</b>	27 <b>Single-Life Annuity at BCD</b>	28 <b>Lump Sum at BCD</b>
Jan. 6, 2011	May 1, 2018	\$3,916.07	\$3,916.07	\$644,552.62
Jan. 6, 2011	May 1, 2020	\$3,916.07	\$3,916.07	\$620,661.07

Aug. 11, 2014	Sept. 1, 2014	not stated	\$3,198.00	\$607,625.00
Aug. 11, 2014	April 1, 2018	not stated	\$3,900.00	\$694,246.00
Sept. 23, 2015	May 1, 2018	\$3,916.07	\$3,916.07	\$744,755.22
Feb. 4, 2016	May 1, 2018	\$3,916.07	\$3,916.07	\$774,306.02
June 27, 2016	May 1, 2020	\$3,916.07	\$3,916.07	\$744,779.74
June 24, 2017	Sept. 1, 2017	\$3,916.07	\$3,785.54	\$708,297.44
June 24, 2017	May 1, 2018	\$3,916.07	\$3,916.07	\$724,269.96
Apr. 30, 2018	June 1, 2018	not stated	not stated	\$782,869.80
July 11, 2018	Mar. 1, 2018	\$3,916.07	\$3,883.44	\$758,726.54
July 11, 2018	April 1, 2018	\$3,916.07	\$3,899.75	\$765,273.13
July 11, 2018	May 1, 2018	\$3,916.07	\$3,916.07	\$767,035.27
unknown	Nov. 1, 2017	\$3,916.07	\$3,818.16	\$735,993.18
unknown	Feb. 1, 2018	\$3,916.07	\$3,867.13	\$756,923.63

61. Examples of these statements are attached hereto as Exhibit A.

62. Unbeknownst to Mr. Mabry, every one of these statements included in Mr. Mabry's normal retirement benefit the \$2,181.68 that should have been segregated for the alternate payee. That is, all of the statements overstated Mr. Mabry's normal retirement benefit by \$2,181.68, with resulting inflation of his single-life annuity and lump-sum benefits at every potential benefit commencement date.

63. As of Mr. Mabry's separation from service in April 2009, each data point in the calculation of his normal retirement benefit was a fixed number. None of the data points – including birth date, final average pay, years of service, and ARRP benefit – was subject to any change after his separation from service. There was no estimation involved in calculating Mr. Mabry's normal retirement benefit after his separation from service.

64. The only variable factor reflected in Mr. Mabry's pension statements was the interest rate used to convert the normal retirement benefit to a lump sum, because the interest rate used in that conversion is the one in effect at

1 benefit commencement.

2 **Mr. Mabry's Benefit Commencement**

3 65. In early 2018, as he approached his 60th birthday – the first age at  
4 which he could receive an unreduced pension benefit – Mr. Mabry requested a  
5 pension application packet from the ConocoPhillips benefit center. Mr. Mabry  
6 informed the benefit center that he wished to commence his benefit as of May 1,  
7 2018 – the first date as of which he was eligible for an unreduced benefit.

8 66. The benefit center sent Mr. Mabry an election packet showing that  
9 for the May 1, 2018, commencement date, he could choose a single-life annuity  
10 of \$1,734.39 per month or a lump sum of \$344,693.01. These amounts were less  
11 than 50 percent of the amounts shown on all of Mr. Mabry's pension benefit  
12 statements since 2011.

13 67. Mr. Mabry was shocked at the drastic reduction in his pension  
14 benefit as shown in the election packet. He called the benefit center several times  
15 seeking an explanation for the drastic reduction. Various benefit center  
16 representatives – Alight employees – told him that his pension required a manual  
17 calculation due to the QDRO, that he should not have been able to obtain online  
18 pension statements, and that the benefit center would get back to him to explain  
19 further. Some benefit center representatives suggested that either the QDRO was  
20 being processed by ConocoPhillips for the first time or a second QDRO had been  
21 submitted. Mr. Mabry repeatedly expressed that the QDRO had been in place  
22 since 2008 and questioned whether it was being applied twice. He explained that  
23 he had been told that a separate account had been set up in 2008.

24 68. While awaiting an explanation for the reduction, Mr. Mabry did not  
25 complete the election paperwork to start his benefit as of May 1, 2018.

26 69. After sending Mr. Mabry the pension election packet and speaking  
27 with him by phone, Defendants generated and mailed to Mr. Mabry a document  
28 entitled "Participant Statement Prepared Especially for: Monte Mabry." (Ex. B.)

1 This statement said, “Based on a payment effective date of June 1, 2018, your  
2 single lump sum amount is estimated\* to be \$782,869.80.” (The asterisk did not  
3 refer to anything.) This amount was wildly inaccurate and contradicted the  
4 figures in the pension election packet.

5 70. Mr. Mabry called the benefit center several more times, requesting  
6 an explanation for why his election paperwork showed a lump-sum amount as of  
7 May 1, 2018, that was less than 50 percent of the amount the statement promised  
8 he could receive as of June 1, 2018.

9 71. In one call, a benefit center representative told Mr. Mabry that  
10 rather than \$782,869.80, as shown on the April 30 statement, or \$344,693.01, as  
11 shown in the pension election paperwork, his lump-sum benefit was \$431,971.  
12 This amount was also incorrect.

13 72. In response to his inquiries, Defendants sent Mr. Mabry a “Phillips  
14 Retirement Income Plan Informational Notice” dated July 11, 2018. The  
15 Informational Notice stated that Mr. Mabry’s ConocoPhillips Plan benefit would  
16 be calculated as follows: “1.6% of Final Average Earnings (FAE) *times* Credited  
17 Service (1/75 to Current) (up to 576 months) [¶] *Minus* 1.5% of Primary Social  
18 Security (PSS) *times* Credited Service (up to 400 months[]) [¶] *Equals* Your  
19 **annual** final average earnings benefit divided by 12, equals your **monthly** final  
20 average earnings benefit.” (Ex. C.) The Informational Notice did not mention  
21 either the reduction for Mr. Mabry’s ARRP benefit or the QDRO.

22 73. The Informational Notice reiterated that Mr. Mabry’s single-life  
23 annuity benefit was \$3,916.07 and his lump-sum as of May 1, 2018, would have  
24 been \$767,035.27. These amounts were incorrect, and contradicted the figures in  
25 the pension election packet.

26 74. During calls with the benefit center, Mr. Mabry repeatedly told  
27 benefit center representatives that he wished to dispute his pension amount.

28 75. Upon information and belief, no benefit center representative

1 informed Mr. Mabry that he could submit a claim for additional pension benefits  
2 pursuant to the ConocoPhillips Plan's claim procedure or that he could appeal  
3 the reduction of his pension benefit pursuant to the ConocoPhillips Plan's appeal  
4 procedure.

5 76. Defendants never sent Mr. Mabry a notice of adverse benefit  
6 determination pursuant to the Department of Labor's claims procedure  
7 regulation, 29 C.F.R. § 2560.503-1(g).

8 77. During 2018, while Defendants repeatedly provided Mr. Mabry with  
9 inconsistent information and Mr. Mabry attempted to obtain a satisfactory  
10 explanation for the vastly disparate pension amounts being quoted to him,  
11 interest rates were increasing, further reducing the lump-sum amount.

12 78. Also during this time, the number of months during which Mr.  
13 Mabry was eligible to receive the Social Security make-up benefit declined as he  
14 approached age 62, reducing the value of that benefit.

15 79. Recognizing that he was losing pension benefits while trying in vain  
16 to obtain a satisfactory explanation for the reduction in his normal retirement  
17 benefit, Mr. Mabry again requested a pension election packet. Ultimately, Mr.  
18 Mabry received his pension in the form of a lump-sum payment by a check  
19 issued to his individual retirement account custodian on February 16, 2019. At  
20 that point, the lump-sum amount was \$323,015.25 for Mr. Mabry's pension plus  
21 \$12,033.52 for his Social Security make-up benefit.

22 80. Mr. Mabry filed this suit on January 29, 2020.

### 23 **Mr. Mabry's Reliance**

24 81. In planning for his retirement, Mr. Mabry relied on the information  
25 that he had received from Defendants beginning in at least 2011 that showed that  
26 he would be eligible for a lump-sum benefit at age 60 of at least \$700,000. Mr.  
27 Mabry relied on this information in making employment choices and savings and  
28 spending decisions, including decisions about funding his children's college

1 educations.

2 82. Until Defendants announced the drastically reduced benefit amount  
3 that Mr. Mabry ultimately received, he did not know, and had no reason to know,  
4 that Defendants were miscalculating his ConocoPhillips Plan benefit.

5 **FIRST CLAIM FOR RELIEF**

6 **Claim for Violation of ERISA § 404(a), 29 U.S.C. § 1104(a),**  
7 **Against Defendants ConocoPhillips and Benefits Committee**

8 83. Mr. Mabry incorporates Paragraphs 1 through 82 as though fully set  
9 forth herein.

10 84. ERISA § 404(a), 29 U.S.C. § 1104(a), requires that a fiduciary  
11 discharge its duties with respect to a plan solely in the interest of the participants  
12 and beneficiaries and for the exclusive purpose of providing benefits to  
13 participants and their beneficiaries and defraying reasonable expenses of  
14 administering the plan. These duties include the duty to provide complete and  
15 accurate information regarding participants' benefits.

16 85. ConocoPhillips and the Benefits Committee breached their fiduciary  
17 duties to Mr. Mabry by acts and omissions including failing to ensure that they  
18 or their delegees provided Mr. Mabry with complete and accurate information  
19 regarding the amount of his ConocoPhillips Plan benefit.

20 86. Mr. Mabry reasonably relied on the pension information he received  
21 in planning for his retirement.

22 87. Mr. Mabry has been harmed by ConocoPhillips' and the Benefits  
23 Committee's breaches in that his retirement income and savings are hundreds of  
24 thousands of dollars less than they would have been had Mr. Mabry received  
25 accurate information about the ConocoPhillips Plan benefit.

26 88. Mr. Mabry has also been harmed by ConocoPhillips' and the  
27 Benefits Committee's breaches in that from May 1, 2018, to February 1, 2019,  
28 while ConocoPhillips and the Benefits Committee were providing him with



1 wildly inconsistent statements of his pension benefits, the lump-sum value of his  
2 pension declined by more than \$20,000 and the lump-sum value of his Social  
3 Security make-up benefit declined by more than \$6,000.

4 **SECOND CLAIM FOR RELIEF**

5 **Claim for Violation of ERISA § 404(a), 29 U.S.C. § 1104(a),**  
6 **Against Defendant Alight**

7 89. Mr. Mabry incorporates Paragraphs 1 through 82 as though fully set  
8 forth herein.

9 90. ERISA § 404(a), 29 U.S.C. § 1104(a), requires that a fiduciary  
10 discharge its duties with respect to a plan solely in the interest of the participants  
11 and beneficiaries and for the exclusive purpose of providing benefits to  
12 participants and their beneficiaries and defraying reasonable expenses of  
13 administering the plan. These duties include the duty to provide complete and  
14 accurate information regarding participants' benefits.

15 91. At all relevant times, Alight was a fiduciary of the ConocoPhillips  
16 Plan within the meaning of ERISA § 3(21), 29 U.S.C. § 1002(21), in that it  
17 exercised discretionary authority or discretionary control respecting management  
18 of the ConocoPhillips Plan, and/or it had discretionary authority or discretionary  
19 responsibility in the administration of the ConocoPhillips Plan. In particular,  
20 Alight performed calculations of ConocoPhillips Plan benefits according to its  
21 own interpretation of the ConocoPhillips Plan terms, and communicated those  
22 calculations to ConocoPhillips Plan participants, including Mr. Mabry.

23 92. Alight breached its fiduciary duty to Mr. Mabry by acts and  
24 omissions including repeatedly providing Mr. Mabry with inaccurate information  
25 regarding the amount of his pension.

26 93. Mr. Mabry reasonably relied on the pension information he received  
27 in planning for his retirement.

28 94. Mr. Mabry has been harmed by Alight's breaches in that his

1 retirement income and savings are hundreds of thousands of dollars less than  
2 they would have been had Mr. Mabry received accurate information about the  
3 ConocoPhillips Plan benefit.

4 95. Mr. Mabry has also been harmed by Alight's breaches in that from  
5 May 1, 2018, to February 1, 2019, while ConocoPhillips and the Benefits  
6 Committee were providing him with wildly inconsistent statements of his  
7 pension benefits, the lump-sum value of his pension declined by more than  
8 \$20,000 and the lump-sum value of his Social Security make-up benefit declined  
9 by more than \$6,000.

### 10 **THIRD CLAIM FOR RELIEF**

#### 11 **Claim for Violation of ERISA § 105, 29 U.S.C. § 1025,** 12 **Against Defendant Benefits Committee**

13 96. Mr. Mabry incorporates Paragraphs 1 through 82 as though fully set  
14 forth herein.

15 97. ERISA § 105(a)(1)(B), 29 U.S.C. § 1025(a)(1)(B), requires that a  
16 plan administrator furnish pension benefit statements to a defined benefit plan  
17 participant upon written request.

18 98. ERISA § 502(a)(3), 29 U.S.C. § 1132(a)(3), authorizes a plan  
19 participant to file suit to obtain injunctive and other appropriate equitable relief  
20 from a violation of ERISA.

21 99. ERISA § 502(a)(1)(A), 29 U.S.C. § 1132(a)(1)(A), authorizes a plan  
22 participant to bring a civil action for the relief provided for in ERISA § 502(c),  
23 29 U.S.C. § 1132(c).

24 100. ERISA § 502(c)(1)(A), 29 U.S.C. § 1132(c)(1)(A), provides that  
25 any administrator who fails to meet the requirements of ERISA § 105(a), 29  
26 U.S.C. § 1025(a), with respect to a participant may in the court's discretion be  
27 personally liable to such participant in the amount of up to \$100 a day from the  
28 date of such failure, and the court may in its discretion order such other relief as

1 it deems proper. For this purpose, each violation with respect to any single  
2 participant shall be treated as a separate violation. 29 C.F.R. § 2575.502c-1  
3 increases the penalty under ERISA § 502(c) to \$110 per day.

4 101. The Benefits Committee violated Section 105(a) by failing to  
5 provide Mr. Mabry with accurate statements of his ConocoPhillips Plan benefit  
6 in response to his requests and/or by failing to monitor the performance of its  
7 delegate that provided pension statements to Mr. Mabry. For more than six years,  
8 Mr. Mabry never received an accurate statement of his ConocoPhillips Plan  
9 benefit.

10 102. Mr. Mabry was harmed by the Benefits Committee's violations in  
11 that he relied on the erroneous statements in making retirement and financial  
12 planning decisions.

13 **FOURTH CLAIM FOR RELIEF**  
14 ***In the Alternative to the Second Claim for Relief***  
15 **Claim for Professional Negligence Against Defendant Alight**

16 103. Mr. Mabry incorporates Paragraphs 1 through 82 as though fully set  
17 forth herein.

18 104. A service provider performing professional services owes a duty of  
19 care to the intended beneficiaries of the professional services rendered,  
20 including, without limitation, the duty of the professional to use such skill,  
21 prudence, and diligence as other members of the profession commonly possess  
22 and exercise. A failure to perform these duties constitutes negligence.

23 105. A service provider that holds itself out as a specialist in a particular  
24 field, such as the calculation of benefits under a pension plan, has the duty (1) to  
25 have the knowledge and skill ordinarily possessed, and (2) to perform the  
26 services that it was engaged to do, diligently and faithfully, and with the skill and  
27 prudence ordinarily possessed and observed by others in the same profession. A  
28 failure to fulfill either duty constitutes negligence.

106. Thus, a service provider providing services to an employee benefit

1 plan has a duty to exercise such care, skill, prudence, and diligence as other  
2 members of the profession commonly possess and exercise in the course of the  
3 provision of services to or for an employee pension benefit plan. A service  
4 provider's failure to perform its professional services in such a manner  
5 constitutes negligence.

6 107. Alight breached its professional duties by providing grossly  
7 inaccurate information to Mr. Mabry regarding the amount of his benefit under  
8 the ConocoPhillips Plan on numerous occasions over at least a six-year period,  
9 and by related acts and omissions.

10 108. As a consequence of Alight's professional negligence, Mr. Mabry  
11 has been injured in that he relied on the inaccurate information in planning for  
12 his retirement, and he has suffered losses as a result.

13 **FIFTH CLAIM FOR RELIEF**  
14 ***In the Alternative to the Second Claim for Relief***  
15 **Claim for Negligent Misrepresentation Against Defendant Alight**

16 109. Mr. Mabry incorporates Paragraphs 1 through 82 as though fully set  
17 forth herein.

18 110. Alight, in the course of its business or profession, misrepresented to  
19 Mr. Mabry the amount of his benefit under the ConocoPhillips Plan.

20 111. Alight had no reasonable ground for believing that its statements  
21 regarding the amount of Mr. Mabry's benefit were true.

22 112. Alight had a duty to Mr. Mabry to exercise reasonable care and  
23 competence in providing him with statements of his pension benefit.

24 113. Alight intended that Mr. Mabry act in reliance on its statements of  
25 his pension benefit for purposes of financial planning, including because there is  
26 no purpose for a pension benefit statement other than to assess the value of the  
27 pension benefit.

28 114. Mr. Mabry justifiably relied on Alights's pension statements in  
planning for his retirement.



1 and

2 D. Provide such other equitable relief as the Court deems appropriate.

3 As to the Third Claim for Relief:

4 A. Declare that Defendant Benefits Committee violated ERISA § 105,  
5 29 U.S.C. § 1025;

6 B. Pursuant to ERISA § 502(a)(3), 29 U.S.C. § 1132(a)(3), order that  
7 Defendant Benefits Committee is estopped to deny that Mr. Mabry  
8 is entitled to benefits under the ConocoPhillips Plan consistent with  
9 the statements provided to him prior to 2018;

10 C. Pursuant to ERISA § 502(a)(3), 29 U.S.C. § 1132(a)(3), award such  
11 other equitable relief as the Court deems appropriate;

12 D. Pursuant to ERISA § 502(c), 29 U.S.C. § 502(c), find the Benefits  
13 Committee personally liable to Mr. Mabry in the amount of \$110 a  
14 day from the date of each separate failure to meet the requirements  
15 of ERISA § 105(a), 29 U.S.C. § 1025(a);

16 E. Pursuant to ERISA § 502(c), 29 U.S.C. § 502(c), order such other  
17 relief as the Court deems proper;

18 F. Award Plaintiff reasonable attorneys' fees and costs of suit incurred  
19 herein pursuant to ERISA § 502(g), 29 U.S.C. § 1132(g); and

20 G. Provide such other relief as the Court deems equitable and just.

21 As to the Fourth Claim for Relief:

22 A. Order that Alight pay Mr. Mabry damages for the harm he has  
23 suffered as a consequence of Alight's professional negligence; and

24 B. Provide such other relief as the Court deems equitable and just.

25 As to the Fifth Claim for Relief:

26 A. Order that Alight pay Mr. Mabry damages for the harm he has  
27 suffered as a consequence of Alight's negligent misrepresentations;

28 and

1 B. Provide such other relief as the Court deems equitable and just.

2 **DEMAND FOR JURY TRIAL**

3 Mr. Mabry demands a jury trial as to his claims brought under state law.

4 Respectfully submitted,

5 Dated: June 5, 2020

RENAKER HASSELMAN SCOTT LLP

6 By: /s/ Teresa S. Renaker

7 Teresa S. Renaker  
8 Attorneys for Plaintiff