

1 ROSMAN & GERMAIN LLP
Daniel L. Germain (Bar No. 143334)
2 16311 Ventura Boulevard
Suite 1200
3 Encino, CA 91436-2152
Telephone: (818) 788-0877
4 Facsimile: (818) 788-0885
E-Mail: Germain@Lalawyer.com

5 Counsel for Plaintiffs and the Putative Class

6 [Additional Counsel Listed on Signature Page]
7

8 **UNITED STATES DISTRICT COURT**
9 **NORTHERN DISTRICT OF CALIFORNIA**
10

11 TIM DAVIS, GREGOR MIGUEL, and
12 AMANDA BREDLOW, individually and
on behalf of all others similarly situated,

13 Plaintiffs,

14 v.

15 SALESFORCE.COM, INC., BOARD OF
16 DIRECTORS OF SALESFORCE.COM,
INC., MARC BENIOFF, THE
17 INVESTMENT ADVISORY
COMMITTEE, JOSEPH ALLANSON,
18 STAN DUNLAP, and JOACHIM
WETTERMARK,

19 Defendants.
20

CIVIL ACTION NO.:

CLASS ACTION COMPLAINT

JURY TRIAL DEMANDED

21
22
23
24
25
26
27
28

1 Plaintiffs Tim Davis, Gregor Miguel, and Amanda Bredlow (“Plaintiffs”), by
2 and through their attorneys, on behalf of the Salesforce 401(k) Plan (the “Plan”),¹
3 themselves and all others similarly situated, state and allege as follows:

4 I. INTRODUCTION

5 1. This is a class action brought pursuant to §§ 409 and 502 of the
6 Employee Retirement Income Security Act of 1974 (“ERISA”), 29 U.S.C. §§ 1109
7 and 1132, against the Plan’s fiduciaries, which include Salesforce.com, Inc.
8 (“Salesforce” or the “Company”), the Board of Directors of Salesforce (“Board”) and
9 its members during the Class Period, and the Investment Advisory Committee
10 (“Committee”) and its members during the Class Period for breaches of their
11 fiduciary duties.

12 2. Defined contribution retirement plans, like the Plan, confer tax benefits
13 on participating employees to incentivize saving for retirement. As of the end of
14 2015, Americans had approximately \$6.7 trillion in assets invested in defined
15 contribution plans. See INVESTMENT COMPANY INSTITUTE, *Retirement Assets Total*
16 *\$24.0 Trillion in Fourth Quarter 2015* (Mar. 24, 2016), available at
17 https://www.ici.org/research/stats/retirement/ret_15_q4; PLAN SPONSOR, *2015*
18 *Recordkeeping Survey* (June 2015), available at [http://www.plansponsor.com/2015-](http://www.plansponsor.com/2015-Recordkeeping-Survey/)
19 *Recordkeeping-Survey/*.

20 3. In a defined contribution plan, participants’ benefits “are limited to the
21 value of their own investment accounts, which is determined by the market
22 performance of employee and employer contributions, less expenses.” *Tibble v.*
23 *Edison Int’l*, 135 S. Ct. 1823, 1826 (2015). Thus, the employer has no incentive to
24 keep costs low or to closely monitor the Plan to ensure every investment remains
25

26
27 ¹ The Plan is a legal entity that can sue and be sued. ERISA § 502(d)(1), 29 U.S.C. § 1132(d)(1).
28 However, in a breach of fiduciary duty action such as this, the Plan is not a party. Rather, pursuant
to ERISA § 409, and the law interpreting it, the relief requested in this action is for the benefit of
the Plan and its participants.

1 prudent, because all risks related to high fees and poorly-performing investments are
2 borne by the participants.

3 4. To safeguard Plan participants and beneficiaries, ERISA imposes strict
4 fiduciary duties of loyalty and prudence upon employers and other plan fiduciaries.
5 29 U.S.C. § 1104(a)(1). These twin fiduciary duties are “the highest known to the
6 law.” *Tibble v. Edison Int’l*, 843 F.3d 1187, 1197 (9th Cir. Dec. 30, 2016) (*en banc*).
7 Fiduciaries must act “solely in the interest of the participants and beneficiaries,” 29
8 U.S.C. § 1104(a)(1)(A), with the “care, skill, prudence, and diligence” that would be
9 expected in managing a plan of similar scope. 29 U.S.C. § 1104(a)(1)(B).

10 5. The Plan had over a billion dollars in assets under management in 2016,
11 \$1.8 billion in assets as of the end of 2017, and over \$2 billion in assets at the end of
12 2018 that were/are entrusted to the care of the Plan’s fiduciaries. The Plan’s assets
13 under management qualifies it as a large plan in the defined contribution plan
14 marketplace, and among the largest plans in the United States. As a large plan, the
15 Plan had substantial bargaining power regarding the fees and expenses that were
16 charged against participants’ investments. Defendants, however, did not try to reduce
17 the Plan’s expenses or exercise appropriate judgment to scrutinize each investment
18 option that was offered in the Plan to ensure it was prudent.

19 6. Plaintiffs allege that during the putative Class Period (March 11, 2014
20 through the date of judgment) Defendants, as “fiduciaries” of the Plan, as that term is
21 defined under ERISA § 3(21)(A), 29 U.S.C. § 1002(21)(A), breached the duties they
22 owed to the Plan, to Plaintiffs, and to the other participants of the Plan by, *inter alia*,
23 (1) failing to objectively and adequately review the Plan’s investment portfolio with
24 due care to ensure that each investment option was prudent, in terms of cost; and (2)
25 maintaining certain funds in the Plan despite the availability of identical or similar
26 investment options with lower costs and/or better performance histories.

27 7. To make matters worse, Defendants failed to utilize the lowest cost share
28 class for many of the mutual funds within the Plan, and failed to consider collective

1 trusts, commingled accounts, or separate accounts as alternatives to the mutual funds
2 in the Plan, despite their lower fees.

3 8. It appears that in 2019, *five years* into the Class Period, wholesale
4 changes were made to the Plan wherein certain Plan investment options, some of
5 which are the subject of this lawsuit, were converted to lower class shares.

6 9. These changes were far too little and too late as the damages suffered by
7 Plan participants to that point had already been baked in. There is no reason to not
8 have implemented these changes by the start of the Class Period when the majority of
9 lower-class shares were available. Moreover, these changes may not have cured the
10 Company's fiduciary breaches because the circumstances under which changes were
11 made have not been disclosed to Plaintiffs.

12 10. Defendants' mismanagement of the Plan, to the detriment of participants
13 and beneficiaries, constitutes a breach of the fiduciary duties of prudence and loyalty,
14 in violation of 29 U.S.C. § 1104. Their actions were contrary to actions of a
15 reasonable fiduciary and cost the Plan and its participants millions of dollars.

16 11. Based on this conduct, Plaintiffs assert claims against Defendants for
17 breach of the fiduciary duties of loyalty and prudence (Count One) and failure to
18 monitor fiduciaries (Count Two).

19 **II. JURISDICTION AND VENUE**

20 12. This Court has subject matter jurisdiction over this action pursuant to 28
21 U.S.C. § 1331 because it is a civil action arising under the laws of the United States,
22 and pursuant to 29 U.S.C. § 1332(e)(1), which provides for federal jurisdiction of
23 actions brought under Title I of ERISA, 29 U.S.C. § 1001, *et seq.*

24 13. This Court has personal jurisdiction over Defendants because they
25 transact business in this District, reside in this District, and/or have significant
26 contacts with this District, and because ERISA provides for nationwide service of
27 process.

28

1 14. Venue is proper in this District pursuant to ERISA § 502(e)(2), 29
2 U.S.C. § 1132(e)(2), because some or all of the violations of ERISA occurred in this
3 District and Defendants reside and may be found in this District. Venue is also
4 proper in this District pursuant to 28 U.S.C. § 1391 because Defendants do business
5 in this District and a substantial part of the events or omissions giving rise to the
6 claims asserted herein occurred within this District.

7 III. PARTIES

8 Plaintiffs

9 15. Plaintiff Tim Davis (“Davis”) resides in Tillamook, Oregon. During his
10 employment, Plaintiff Davis participated in the Plan investing in the options offered
11 by the Plan and which are the subject of this lawsuit.

12 16. Plaintiff Gregor Miguel (“Miguel”) resides in Oakland, California.
13 During his employment, Plaintiff Miguel participated in the Plan investing in the
14 options offered by the Plan and which are the subject of this lawsuit.

15 17. Plaintiff Amanda Bredlow (“Bredlow”) resides in Kirkland, Washington.
16 During her employment, Plaintiff Bredlow participated in the Plan investing in the
17 options offered by the Plan and which are the subject of this lawsuit.

18 18. Each Plaintiff has standing to bring this action on behalf of the Plan
19 because each of them participated in the Plan and were injured by Defendants’
20 unlawful conduct. Plaintiffs are entitled to receive benefits in the amount of the
21 difference between the value of their accounts currently, or as of the time their
22 accounts were distributed, and what their accounts are or would have been worth, but
23 for Defendants’ breaches of fiduciary duty as described herein.

24 19. Plaintiffs did not have knowledge of all material facts (including, among
25 other things, the investment alternatives that are comparable to the investments
26 offered within the Plan, comparisons of the costs and investment performance of Plan
27 investments versus available alternatives within similarly-sized plans, total cost
28 comparisons to similarly-sized plans, information regarding other available share

Explore Litigation Insights

Docket Alarm provides insights to develop a more informed litigation strategy and the peace of mind of knowing you're on top of things.

Real-Time Litigation Alerts



Keep your litigation team up-to-date with **real-time alerts** and advanced team management tools built for the enterprise, all while greatly reducing PACER spend.

Our comprehensive service means we can handle Federal, State, and Administrative courts across the country.

Advanced Docket Research



With over 230 million records, Docket Alarm's cloud-native docket research platform finds what other services can't. Coverage includes Federal, State, plus PTAB, TTAB, ITC and NLRB decisions, all in one place.

Identify arguments that have been successful in the past with full text, pinpoint searching. Link to case law cited within any court document via Fastcase.

Analytics At Your Fingertips



Learn what happened the last time a particular judge, opposing counsel or company faced cases similar to yours.

Advanced out-of-the-box PTAB and TTAB analytics are always at your fingertips.

API

Docket Alarm offers a powerful API (application programming interface) to developers that want to integrate case filings into their apps.

LAW FIRMS

Build custom dashboards for your attorneys and clients with live data direct from the court.

Automate many repetitive legal tasks like conflict checks, document management, and marketing.

FINANCIAL INSTITUTIONS

Litigation and bankruptcy checks for companies and debtors.

E-DISCOVERY AND LEGAL VENDORS

Sync your system to PACER to automate legal marketing.