

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF VIRGINIA  
NORFOLK DIVISION**

ROGER A. HERNDON, on behalf of  
himself and all others similarly situated,

Plaintiff,

v.

HUNTINGTON INGALLS INDUSTRIES,  
INC., THE HII ADMINISTRATIVE  
COMMITTEE, and JOHN/JANE  
DOES 1-5,

Defendants.

Case No. 4:19-CV-00052-RBS-DEM

CLASS ACTION

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**ANSWER & AFFIRMATIVE DEFENSES**

Defendants Huntington Ingalls Industries, Inc. (“Huntington”) and the HII Administrative Committee (the “Committee”) (collectively “Defendants”), by and through their attorneys, respectfully submit their answer to the Complaint filed by Plaintiff Roger A. Herndon (“Plaintiff”) as follows:

Plaintiff’s inclusion of footnotes throughout the Complaint does not comply with Federal Rule of Civil Procedure 10(b), requiring that allegations be stated “in numbered paragraphs, each limited as far as practicable to a single set of circumstances.” As such, no response is required. To the extent a response is required, each footnote is discussed in the relevant numbered paragraph below.

## **INTRODUCTION**

1. Defendants admit only that Plaintiff has brought a class action against them. Defendants deny the remaining allegations in Paragraph 1.

2. Defendants admit that Huntington sponsors the Plan<sup>1</sup> for certain of its employees. Defendants admit that the Plan offers SLA's, joint and survivor annuities, and a level income annuity. The remaining allegations in Paragraph 2 purport to summarize or paraphrase terms of written plan documents. Defendants deny that Plaintiff has accurately or completely summarized their terms.

3. The allegations in Paragraph 3 purport to summarize or paraphrase terms of written plan documents. Defendants deny that Plaintiff has accurately or completely summarized their terms. Therefore, to the extent a response is required, Defendants deny the allegations in Paragraph 3. The last sentence of Paragraph 3 purports to summarize 29 U.S.C. §§ 1055(d)(1)(B) and (2)(A)(ii). Defendants deny that Plaintiff has accurately, completely summarized either statute in context. Further, the allegations contain legal conclusions. Therefore, to the extent a response is required, Defendants deny the allegations in Paragraph 3 as to what is required under 29 U.S.C. § 1055(d)(1)(B) and (2)(A)(ii).

4. Defendants deny the allegations in Paragraph 4.

5. Defendants deny that they calculate the present value of Non-SLA annuities as described in Paragraph 5. Defendants admit that the conversion factors for some (but not all) annuity forms are calculated with reference to a 6% interest rate and two versions of the 1971 GAM table, for retirees with rates blended to reflect a 90% male population, and for contingent annuitants (also known as beneficiaries) with rates blended to reflect a 90% female population.

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<sup>1</sup> All defined terms are as defined in the Complaint.

6. Defendants deny the allegations in Paragraph 6.

7. Defendants deny the allegations in Paragraph 7.

8. Defendants deny the allegations in Paragraph 8.

9. Defendants admit only that Plaintiff seeks an Order from the Court. Defendants deny that Plaintiff is entitled to any relief under ERISA, any other law, or equity.

### **JURISDICTION AND VENUE**

10. Defendants admit the allegations in Paragraph 10.

11. Defendants admit the allegations in Paragraph 11.

12. Defendants admit the allegations in Paragraph 12.

### **PARTIES**

13. Defendants lack knowledge and information sufficient to form a belief about Plaintiff's place of residence and, therefore deny that allegation. Defendants admit that Plaintiff retired in 2013 and is currently receiving a 50% joint and survivor annuity from the Legacy Part of the Plan with his wife as the beneficiary.

14. Defendants admit the allegations in Paragraph 14.

15. Defendants admit only that the Committee is a named fiduciary in the Plan. However, the allegations in Paragraph 15 contain legal conclusions regarding fiduciary status. To the extent a response is required, Defendants deny the allegations in Paragraph 15.

16. Defendants admit only that the Committee is comprised of individual members. Defendants admit that Plaintiff did not know the names and identities of the individual members of the Committee at the time he filed his Complaint. Except as expressly admitted herein, Defendants deny all remaining allegations in Paragraph 16.

**APPLICABLE ERISA REQUIREMENTS**

17. Paragraph 17 purports to summarize or paraphrase ERISA § 205(a) and (b). Because Plaintiff does not quote directly from ERISA § 205(a) and (b), Defendants deny that Plaintiff has accurately, completely summarized the same in context. Therefore, to the extent a response is required, Defendants deny the allegations in Paragraph 17.

18. Paragraph 18 purports to summarize or paraphrase ERISA § 205(d)(1). Because Plaintiff does not quote directly from ERISA § 205(d)(1), Defendants deny that Plaintiff has accurately, completely summarized the same in context. Therefore, to the extent a response is required, Defendants deny the allegations in Paragraph 18. Defendants admit that Plaintiff receives a 50% joint and survivor annuity. Defendants deny the remaining allegations in Paragraph 18 containing a hypothetical.

19. Defendants deny that “certain and life” annuities are qualified optional survivor annuities. Defendants admit that a “certain and life” annuity pays for ten years or the participant’s life, if longer. Defendants deny that Paragraph 19 accurately describes or cites 26 C.F.R. § 1.401(a)-30, Q&A 25, ERISA § 205(d)(2), and 26 U.S.C. § 417(g). Defendants deny any remaining allegations in Paragraph 19.

20. Paragraph 20 purports to summarize or paraphrase ERISA § 205(a)(2) and (e). Because Plaintiff does not quote directly from ERISA § 205(a)(2) or (e), Defendants deny that Plaintiff has accurately, completely summarized the same in context. Therefore, to the extent a response is required, Defendants deny the allegations in Paragraph 20.

21. Defendants deny the allegations in Paragraph 21.

22. Paragraph 22 and Footnote 1 partially quote 26 C.F.R. § 1.401(a)-20 Q&A 16, 26 C.F.R. § 1.401(a)-11(b)(ii)(2) and 11(b)(1)(i). Defendants admit only that Plaintiff has quoted

portions of 26 C.F.R. § 1.401(a)-20 Q&A 16, 26 C.F.R. § 1.401(a)-11(b)(ii)(2) and 11(b)(1)(i). However, Defendants aver that Plaintiff has omitted significant context. Therefore, to the extent a response is required, Defendants deny Plaintiff's characterization of 26 C.F.R. § 1.401(a)-20 Q&A 16, 26 C.F.R. § 1.401(a)-11(b)(ii)(2) and 11(b)(1)(i) in Paragraph 22.

23. Defendants deny the allegations in Paragraph 23.

24. Defendants deny the allegations in Paragraph 24.

25. Defendants admit that ERISA does not require that plans offer lump sums. Defendants deny that Paragraph 25 accurately states the requirements of ERISA § 205(g)(3) or the Internal Revenue Code. Defendants deny any remaining allegations in Paragraph 25.

26. Defendants deny the allegations in Paragraph 26.

27. Paragraph 27 quotes 26 C.F.R. § 1.411(a)-4(a). Defendants admit only that Plaintiff has quoted a portion of 26 C.F.R. § 1.411(a)-4(a). However, Defendants aver that Plaintiff has omitted significant context. Therefore, to the extent a response is required, Defendants deny Plaintiff's characterization of 26 C.F.R. § 1.411(a)-4(a) in Paragraph 27.

28. Defendants deny the allegations in Paragraph 28.

29. Paragraph 29 and Footnote 4 quotes *Stephens v. US Airways Group, Inc.*, 644 F.3d 437, 440 (D.C. Cir. 2011) and Merriam-Webster dictionary. Defendants admit only that Plaintiff has quoted a portion of *Stephens v. US Airways Group* and the Merriam-Webster dictionary. However, Defendants aver that Plaintiff has omitted significant context. Therefore, to the extent a response is required, Defendants deny Plaintiff's characterization of *Stephens v. US Airways Group* and the Merriam-Webster dictionary in Paragraph 29.

30. Paragraph 30 quotes ERISA § 3(27), 26 C.F.R. § 401(a)-11(b)(2), 26 C.F.R. § 1.417(a)(3)-1(c)(2)(iv), and 26 C.F.R. § 1.411(a)913)-1(b)(3). Defendants admit only that Plaintiff

has quoted portions of ERISA § 3(27), 26 C.F.R. § 401(a)-11(b)(2), 26 C.F.R. § 1.417(a)(3)-1(c)(2)(iv), and 26 C.F.R. § 1.411(a)(13)-1(b)(3). However, Defendants aver that Plaintiff has omitted significant context. Therefore, to the extent a response is required, Defendants deny Plaintiff's characterizations of ERISA § 3(27), 26 C.F.R. § 401(a)-11(b)(2), 26 C.F.R. § 1.417(a)(3)-1(c)(2)(iv), and 26 C.F.R. § 1.411(a)(13)-1(b)(3) in Paragraph 30.

### **SUBSTANTIVE ALLEGATIONS**

31. Defendants deny that Huntington Ingalls established the Plan. Defendants admit that Defendant Huntington Ingalls Industries, Inc. is the Plan sponsor.

32. Defendants admit the allegations in Paragraph 32.

33. The allegations in Paragraph 33 purport to summarize or paraphrase terms of written plan documents, which speak for themselves. Defendants deny that Plaintiff has accurately or completely summarized the terms of those documents. To the extent a response is required, the allegations in Paragraph 33 are denied.

34. The allegations in Paragraph 34 purport to summarize or paraphrase terms of written plan documents, which speak for themselves. Defendants deny that Plaintiff has accurately or completely summarized the terms of those documents. To the extent a response is required, the allegations in Paragraph 34 are denied.

35. The allegations in Paragraph 35 purport to summarize or paraphrase terms of written plan documents, which speak for themselves. Defendants deny that Plaintiff has accurately or completely summarized the terms of those documents. To the extent a response is required, the allegations in Paragraph 35 are denied.

36. Defendants admit that the conversion factors for some (but not all) annuity forms are calculated with reference to a 6% interest rate and two versions of the 1971 GAM table, for

retirees with rates blended to reflect a 90% male population, and for contingent annuitants (also known as beneficiaries) with rates blended to reflect a 90% female population. Defendants deny that Plaintiff has accurately or completely summarized the manner in which Non-SLA Annuities are determined under the Plan. The allegations in Paragraph 36 purport to summarize or paraphrase terms of the written plan documents, which speak for themselves. To the extent a response is required, the allegations in Paragraph 36 are denied.

37. Defendants deny the allegations in Paragraph 37.

38. Defendants deny the allegations in Paragraph 38 and Footnote 5.

39. Defendants admit that an interest rate is used in the calculation of a conversion factor, but deny that Paragraph 39 accurately describes the way the interest rate is determined or used in the calculation of a conversion factor. Defendants admit that the term “discount rate” has, on occasion, been used colloquially in place of the term “interest rate” but deny any implications drawn therefrom.

40. Defendants deny the first sentence of Paragraph 40. Defendants admit that it is possible to define an interest rate in segments. Defendants deny the remaining allegations in Paragraph 40.

41. Defendants deny that mortality tables make predictions, but admit that a mortality table reflects an assumption as to the percentage of people fitting into a particular classification who will die before reaching the next annual age. Defendants deny the remaining allegations in Paragraph 41.

42. Defendants admit that the SOA published mortality tables in or around 1971, 1983, 1976, 1994, 2000, and 2014, but deny the characterization that it was to account for changes to a population’s mortality experience. Defendants admit that some mortality tables are two

dimensional but deny the inference that such tables are widely used for the purpose of calculating conversion factors. Defendants deny the remaining allegations in Paragraph 42.

43. The allegations in Paragraph 43 purport to summarize a chart from a publication. Defendants aver that the publication speaks for itself and no response is required. To the extent a response is necessary, Defendants deny the characterizations and any remaining allegations in Paragraph 43.

44. Defendants deny the allegations in Paragraph 44 and Footnotes 6-7. Defendants admit that Actuarial Standard of Practice (“ASOP”) No. 35 can be found at the cite in Footnote 7, but deny that Paragraph 44 accurately describes ASOP No. 35.

45. Defendants deny that Paragraph 45 accurately describes the construction of the Treasury Mortality Table. Defendants deny the characterizations and any remaining allegations in Paragraph 45.

46. Defendants deny the allegations in Paragraph 46.

47. Defendants deny the allegations in Paragraph 47.

48. Defendants deny the allegations in Paragraph 48.

49. The allegations in Paragraph 49 consist of a legal conclusion. Defendants deny that Plaintiff has accurately or completely summarized the law. To the extent a response is required, the allegations in Paragraph 49 are denied.

50. The allegations in Paragraph 50 purport to summarize or paraphrase terms of written plan documents, which speak for themselves. Defendants deny that Plaintiff has accurately or completely summarized the terms of those documents. To the extent a response is required, the allegations in Paragraph 50 are denied.

51. Defendants deny the allegations in Paragraph 51.



52. Defendants admit that the 1971 GAM table was originally published more than 40 years ago. Defendants deny the remaining allegations in Paragraph 52. Footnote 10 consists of a citation to which no response is required; the document speaks for itself.

53. Defendants deny the allegations in Paragraph 53.

54. Defendants deny the allegations in Paragraph 54.

55. The allegations in Paragraph 55 purport to summarize or paraphrase terms of written plan documents, and Form 5500s which speak for themselves. Defendants deny that Plaintiff has accurately or completely summarized the terms of those documents and filings. To the extent a response is required, the allegations in Paragraph 55 are denied.

56. Paragraph 56 quotes *Laurent v. Price WaterhouseCoopers LLP*, 794 F.3d 272 (2d Cir. 2015). Defendants admit only that Plaintiff has quoted a portion of *Laurent v. Price WaterhouseCoopers*. However, Defendants aver that Plaintiff omitted significant context. Therefore, to the extent a response is required, Defendants deny Plaintiff's characterization of *Laurent v. Price WaterhouseCoopers* in Paragraph 56.

57. Paragraph 57 and Footnotes 11 and 12 quote General Accepted Accounting Principles, Huntington's 10-K, and a Deloitte Financial Reporting Alert. Defendants admit only that Plaintiff has quoted portions of GAAP, Huntington's 10-K, and a Deloitte Financial Reporting Alert. However, Defendants aver that Plaintiff has omitted significant context. Therefore, to the extent a response is required, Defendants deny Plaintiff's characterization of GAAP, Huntington's 10-K, and Deloitte's Financial Reporting Alert in Paragraph 57.

58. Defendants deny the allegations in Paragraph 58.

59. Defendants deny the allegations in Paragraph 59.

60. Defendants deny the allegations in Paragraph 60.

61. Defendants deny that there is a single set of Treasury Assumptions applicable to the 2018 calendar year or that Paragraph 61 accurately states the 50% JSA annuity calculated according to Treasury Assumptions. Defendants deny that the chart in Paragraph 61 accurately depicts the 50% JSA annuity for the hypothetical participant described in Paragraph 61. Defendants deny any remaining allegations in Paragraph 61.

62. Defendants deny the allegations in Paragraph 62.

63. Defendants admit that Plaintiff retired at age 67 and 2 months, and is receiving a 50% joint and survivor annuity which pays \$100.14 a month. Defendants deny that Plaintiff accrued an SLA of \$125.51 per month. Defendants deny the remaining allegations in Paragraph 63.

64. Defendants deny the allegations in Paragraph 64.

65. Defendants deny the allegations in Paragraph 65.

### **CLASS ACTION ALLEGATIONS**

66. Defendants admit only that Plaintiff brought a class action but deny that Plaintiff is entitled to any relief.

67. Defendants admit the allegations in Paragraph 67.

68. Defendants deny the allegations of Paragraph 68.

69. Defendants admit that there are questions of law and fact common to the class but deny that Paragraph 69 accurately states those questions of law and fact. Defendants deny any remaining allegations of Paragraph 69.

70. Defendants admit the allegations contained in Paragraph 70.

71. Defendants admit only that the action may be properly certified under Rule 23(b)(1). Defendants deny any remaining allegations in Paragraph 71. The allegations in

Paragraph 71 also consist of legal conclusions which require no response and, therefore, are denied on that basis as well.

72. Defendants deny the allegations of Paragraph 72.

73. Defendants deny the allegations contained in Paragraph 73. The allegations in Paragraph 73 also consist of legal conclusions which require no response and, therefore, are denied on that basis as well.

**FIRST CLAIM FOR RELIEF**  
**Declaratory and Equitable Relief**  
**(ERISA § 502(a)(3), 29 U.S.C. § 1132(a)(3))**

74. Defendants hereby incorporates its answers to Paragraphs 1 through 73 of the Complaint as if fully stated herein.

75. Defendants deny the allegations in Paragraph 75.

76. Paragraph 76 quotes ERISA § 502(a)(3). Defendants admit only that Plaintiff has accurately quoted a portion of ERISA § 502(a)(3). However, Defendants aver that Plaintiff omitted significant context. Therefore, to the extent a response is required, Defendants deny Plaintiff's characterization of ERISA § 502(a)(3) in Paragraph 76.

77. Defendants admit only that Plaintiff seeks declaratory relief. Defendants deny all remaining allegations in Paragraph 77.

78. Defendants admit only that Plaintiff seeks relief from the Court. Defendants deny that Plaintiff is entitled to any such relief and deny all remaining allegations in Paragraph 78 and its subparts.

**SECOND CLAIM FOR RELIEF**  
**For Reformation of the Plan and Recovery of Benefits Under the Reformed Plan**  
**(ERISA § 502(a)(1) and (3), 29 U.S.C. § 1132(a)(1) and (3))**

79. Defendants hereby incorporates its answers to Paragraphs 1 through 78 of the Complaint as if fully stated herein.

80. Paragraph 80 quotes from a portion of ERISA § 502(a)(3). Defendants admit only that Plaintiff has quoted a part of ERISA § 502(a)(3). However, Defendants aver that Plaintiff omitted significant context. Therefore, to the extent a response is required, Defendants deny Plaintiff's characterization of ERISA § 502(a)(3) in Paragraph 80.

81. Defendants deny all allegations in Paragraph 81.

82. Defendants deny all allegations in Paragraph 82.

83. Paragraph 83 quotes a portion of ERISA § 502(a)(1)(B). Defendants admit only that Plaintiff has quoted a part of ERISA § 502(a)(1)(B). However, Defendants aver that Plaintiff omitted significant context. Therefore, to the extent a response is required, Defendants deny Plaintiff's characterization of ERISA § 502(a)(1)(B) in Paragraph 83.

84. Defendants deny all allegations in Paragraph 84.

**THIRD CLAIM FOR RELIEF**  
**Breach of Fiduciary Duty**  
**(ERISA §§ 1104 and 502(a)(3), 29 U.S.C. §§ 1104 and 1132(a)(3))**

85. Defendants hereby incorporate its answers to Paragraphs 1 through 84 of the Complaint as if fully stated herein.

86. Defendants admit the allegations in Paragraph 86.

87. The allegations in Paragraph 87 consist of legal conclusions which require no response and, therefore, are denied.

88. Defendants admit only the allegations in the first sentence of Paragraph 88. Defendants deny the remaining allegations in Paragraph 88.

89. Paragraph 89 purports to summarize or paraphrase ERISA § 404(a)(1). Because Plaintiff does not quote directly from ERISA § 404(a)(1), Defendants deny that Plaintiff has accurately, completely summarized the same in context. To the extent a response is required, Defendants deny the allegations in Paragraph 89.

90. Defendants deny the allegations in Paragraph 90.

91. Defendants deny that Huntington breached its fiduciary duties in any fashion. The remaining allegations in Paragraph 91 consist of legal conclusions which require no response and, therefore, are denied.

92. Defendants deny that Huntington breached its fiduciary duties in any fashion. The remaining allegations in Paragraph 92 consist of legal conclusions which require no response and, therefore, are denied.

93. Paragraph 93 purports to summarize or paraphrase ERISA § 502(a)(3). Because Plaintiff does not quote directly from ERISA § 502(a)(3), Defendants deny that Plaintiff has accurately, completely summarized the same in context. To the extent a response is required, Defendants deny the allegations in Paragraph 93.

94. Defendants admit only that Plaintiff seeks declaratory relief. The remaining allegations in Paragraph 94 consist of legal conclusions which require no response and, therefore, are denied.

95. Defendants admit only that Plaintiff seeks orders from the Court. Defendants deny that such orders would be “equitable” relief available under ERISA. Defendants deny that Plaintiff is entitled to any such relief and deny all remaining allegations in Paragraph 95 and its subparts.

#### **PRAYER FOR RELIEF**

Defendants deny that Plaintiff is entitled to any relief sought in the Prayer for Relief.

#### **AFFIRMATIVE DEFENSES**

##### **FIRST AFFIRMATIVE DEFENSE**

Plaintiff’s claims, in whole or in part, fail to state a claim upon which relief can be granted.

**SECOND AFFIRMATIVE DEFENSE**

Plaintiff's claims are barred, in whole or in part, by the applicable statute of limitations and/or the doctrine of laches.

**THIRD AFFIRMATIVE DEFENSE**

Some or all of Plaintiff's claims may be barred, in whole or in part, by the doctrine of waiver.

**FOURTH AFFIRMATIVE DEFENSE**

Some or all of Plaintiff's claims may be barred, in whole or in part, by the doctrine of estoppel.

**FIFTH AFFIRMATIVE DEFENSE**

Some or all of Plaintiff's claims may be barred, in whole or in part, by release or payment.

**SIXTH AFFIRMATIVE DEFENSE**

Plaintiff's claims are barred, in whole or in part, because the Complaint seeks relief that cannot be obtained under ERISA § 502(a)(1)(B), 29 U.S.C. § 1132(a)(1)(B) and seeks relief that is not appropriate equitable relief under ERISA § 502(a)(3), 29 U.S.C. § 1132(a)(3).

**SEVENTH AFFIRMATIVE DEFENSE**

Plaintiff's claims for reformation under ERISA § 502(a)(3), 29 U.S.C. § 1132(a)(3) are barred because there has been no fraud or mutual mistake.

**EIGHTH AFFIRMATIVE DEFENSE**

Plaintiff's claims in Count III are barred, in whole or in part, because the acts upon which the Complaint is based are not fiduciary in nature.

**NINTH AFFIRMATIVE DEFENSE**

Plaintiff's claims and those of the putative class are barred because they have not sustained any cognizable injury attributable to Defendants' conduct.

**TENTH AFFIRMATIVE DEFENSE**

Plaintiff's claims are barred, in whole or in part, due to his failure to exhaust administrative remedies.

Defendants reserve the right to assert, and hereby give notice they intend to rely upon, any other defense that may become available or appear during discovery proceedings or otherwise in this case, and hereby reserve the right to amend their Answer to assert any such defense.

**WHEREFORE**, having fully answered the Complaint, Defendants request that the Court dismiss the same and enter judgment in their favor on all counts and claims in the Complaint, and Defendants further request an order awarding their costs and attorney fees pursuant to 29 U.S.C. § 1132(g), and such other relief as the Court deems proper.

March 4, 2020

Respectfully submitted,

/s/ Robert W. McFarland

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Inc. and the HII Administrative Committee*



**CERTIFICATE OF SERVICE**

I certify that on this 4th day of March, 2020, a true and correct copy of the foregoing was served on all counsel of record via Notice of Electronic Filing by filing with the Court's CM/ECF system, and on the following counsel via email:

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March 4, 2020

Respectfully submitted,

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