No. 25-826

IN THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

PAUL HUTCHINS,

Plaintiff-Appellant,

v.

HP INC.,

Defendant-Appellee.

On Appeal from the U.S. District Court for the Northern District of California
Case No. 5:23-cv-05875-BLF

BRIEF FOR THE U.S. SECRETARY OF LABOR AS AMICUS CURIAE SUPPORTING DEFENDANT-APPELLEE

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STATEMENT OF IDENTITY, INTEREST, AND AUTHORITY TO FILE

The Secretary of Labor ("Secretary") has the primary authority to interpret and enforce Title I of ERISA and is responsible for "assur[ing] the . . . uniformity of enforcement of the law under the ERISA statutes." *See Sec'y of Lab. v. Fitzsimmons,* 805 F.2d 682, 691–93 (7th Cir. 1986) (en banc). To that end, the Secretary has an interest in effectuating ERISA's express purpose of "establishing standards of conduct, responsibility, and obligation for fiduciaries of employee benefit plans." *See* 29 U.S.C. § 1001(b).

Here, Plaintiff-Appellant Paul Hutchins ("Plaintiff") alleges that the HP Plan Committee's decision to allocate forfeitures to fund matching contributions for the remaining participants, rather than using those funds to defray administrative expenses, breached its fiduciary duties of loyalty and prudence. The established understanding for several decades has been that defined contribution plans, such as the Plan (as defined below), may allocate forfeited employer contributions to pay benefits for remaining participants rather than using those funds to defray administrative expenses. The Secretary has not previously spoken directly to this issue. The Secretary has a substantial interest in fostering established standards of conduct for fiduciaries by clarifying the Secretary's view that a fiduciary's use of forfeited employer contributions in the manner alleged in this case, without more, would not violate ERISA.

The Secretary thus files this brief as amicus curiae pursuant to Federal Rule of Appellate Procedure 29(a)(2).

STATEMENT OF THE CASE

A. Factual Background

Plaintiff Paul Hutchins is a participant in the HP Inc. 401(k) Plan ("Plan"), a defined contribution, individual account plan sponsored by HP Inc. ("HP"). First Amended Complaint at ¶¶ 3, 6, 8, *Hutchins v. HP Inc.*, 767 F. Supp. 3d 912 (N.D. Cal. 2025) (No. 23-cv-05875), ECF No. 56 [hereinafter "FAC"]; HP Inc. 401(k) Plan at §§ 16(a), 21(k), *Hutchins v. HP Inc.*, 767 F. Supp. 3d 912 (N.D. Cal. 2025) (No. 23-cv-05875), ECF No. 59-1 [hereinafter "Plan"]. The HP Plan Committee is the named fiduciary that administers the Plan. Plan §§ 16(a), 21(pp); FAC ¶ 8. The reasonable expenses of administering the Plan are "charged to and paid out of the Trust pursuant to directions of the Company" unless HP, as the Plan's settlor, determines in its "complete and unfettered discretion" that it will pay an expense. Plan § 17(b); FAC ¶ 20.

The Plan is funded by deferred contributions from Plan participants as well as matching contributions from HP, both of which are deposited into the Plan's trust fund. Plan §§ 3–5; FAC ¶ 14. The Plan provides for a matching contribution for the first 4 percent of eligible compensation that a participant contributes each pay period, and HP is generally required to deposit matching contributions that have accrued through a given calendar year as soon as reasonably practicable after the end of that calendar year. Plan §§ 5(c) & (d); FAC ¶ 15.

HP's matching contributions are subject to a three-year cliff vesting schedule, meaning participants only become 100 percent vested in HP's contributions if they remain employed by HP for three years. Plan § 11(c); FAC ¶ 18. If a participant experiences a "five-year Period of Severance" prior to the full vesting of HP's matching contributions, the participant forfeits the balance of HP's unvested matching contributions in the participant's individual Plan account. Plan § 11(f); FAC ¶ 19. The HP Plan Committee, as administrator, then has control over how those forfeited matching contributions are allocated, with the Plan providing that forfeited amounts "may be used to reduce employer contributions, to restore benefits previously forfeited, to pay Plan expenses, or for any other permitted use." Plan § 11(h), FAC ¶¶ 22–23.

B. Proceedings Below

Plaintiff filed suit in 2023 in the United States District Court for the Northern District of California seeking to represent a class of participants and beneficiaries of the Plan. Complaint at ¶¶ 1, 9, 31–35, *Hutchins v. HP Inc.*, 737 F. Supp. 3d 851 (N.D. Cal. 2024) (No. 23-cv-05875), ECF No. 1 [hereinafter "Compl."]. Plaintiff alleged that in January of each year from 2019 until 2023, the HP Plan Committee violated ERISA by deciding to use forfeited funds to pay HP's "outstanding and unpaid matching contributions" for the prior year, rather than reducing the participants' administrative expenses. Compl. ¶¶ 25–29; FAC ¶¶ 33–37, 60. The initial complaint alleged six causes of action: (1) breach of the fiduciary duty of loyalty in violation of 29 U.S.C. § 1104(a)(1)(A); (2) breach of the fiduciary duty of prudence in violation of 29 U.S.C. § 1104(a)(1)(B); (3) inurement in violation of 29 U.S.C. § 1103(c)(1); (4) prohibited transactions in violation of 29 U.S.C. § 1106(a)(1); (5) self-dealing in violation of 29 U.S.C. § 1106(b)(1); and (6) failure to monitor fiduciaries. Compl. ¶¶ 36–71.

Defendants HP and the HP Plan Committee moved to dismiss all claims, and the district court granted the motion. *See Hutchins v. HP Inc.*, 737 F. Supp. 3d 851 (N.D. Cal. 2024). The district court held that the HP Plan Committee was acting as a fiduciary when it decided how to allocate forfeitures under section 11(h) of the Plan. The court distinguished between the decision to include section 11(h) as a Plan term—a settlor decision regarding Plan design—and the implementation of that decision—a fiduciary decision regarding Plan administration and thus subject to fiduciary duties. *See Hughes Aircraft Co. v. Jacobson*, 525 U.S. 432, 444 (1999); *Waller v. Blue Cross of Cal.*, 32 F.3d 1337, 1342 (9th Cir. 1994) (decisions implementing plan design choices were made in fiduciary capacity).

Even though it agreed that the HP Plan Committee acted as a fiduciary in implementing section 11(h), the district court concluded that Plaintiff's theory of the HP Plan Committee's liability for breach of its fiduciary duties was implausible. The court reasoned that Plaintiff's allegations, if sufficient to state a claim for fiduciary breach, would almost always require the fiduciary in similar circumstances to choose to reduce participants' administrative expenses rather than fund matching contributions. The district court also determined that such a conclusion would conflict with circuit precedent holding that fiduciary duties "do[] not create an exclusive duty to maximize pecuniary benefits." *Wright v. Or. Metallurgical Corp.*, 360 F.3d 1090, 1100 (9th Cir. 2004) (quoting *Collins v. Pension & Ins. Comm. of So. Cal. Rock Prods. & Ready Mixed Concrete Ass'ns*, 144 F.3d 1279, 1282 (9th Cir. 1998)). Finally, the district court determined that the theory of liability was contrary to the established understanding that paying administrative expenses and reducing employer contributions are both acceptable uses of forfeitures in defined contribution plans, as demonstrated by a proposed Treasury Department regulation. *See* Use of Forfeitures in Qualified Retirement Plans, 88 Fed. Reg. 12282 (proposed Feb. 27, 2023).

The district court's dismissal included leave for Plaintiff to amend. Plaintiff filed an amended complaint that dropped the HP Plan Committee as a separate defendant and alleged three causes of action: (1) breach of the fiduciary duty of loyalty in violation of 29 U.S.C. § 1104(a)(1)(A); (2) breach of the fiduciary duty of prudence in violation of 29 U.S.C. § 1104(a)(1)(B); and (3) the prohibited transaction of self-dealing in violation of 29 U.S.C. § 1106(b)(1). FAC ¶¶ 44–62. The amended complaint reframed the claim for breach of the fiduciary duty of loyalty to highlight Defendant's alleged "conflict of interest" in administering the Plan's forfeiture provision, as HP has a financial incentive to use forfeitures to fund its matching contribution obligation and decrease its own contribution costs. FAC ¶¶ 24–26, 46–47. Defendant, Plaintiff alleged, breached its fiduciary duty of loyalty by favoring its own interests over those of the participants and beneficiaries in allocating the forfeited funds. FAC ¶ 2; Plaintiff's Opposition to Defendant's Motion to Dismiss the First Amended Complaint at 11–12, *Hutchins v. HP Inc.*, 767 F. Supp. 3d 912 (N.D. Cal. 2025) (No. 23-cv-05875), ECF No. 61.

In light of this alleged conflict of interest, the amended complaint alleged that Defendant also breached its fiduciary duty of prudence because it "utilized an imprudent and flawed process," and "failed to undertake any investigation into which option was in the best interests of the Plan's participants and beneficiaries" before allocating the forfeited funds each year. FAC ¶¶ 27–29, 54. This reframing attempted to address the district court's finding, in its dismissal of the original complaint, that Plaintiff's theory of liability was implausibly broad: In the amended complaint, Plaintiff suggested a prudent fiduciary might still allocate the forfeitures toward the employer's contribution if, for example, there was a risk the employer otherwise "would default on its matching contribution obligation." FAC ¶ 28.

Plaintiff alleged that these breaches of the fiduciary duties of loyalty and prudence harmed Plan participants and beneficiaries by reducing the total Plan assets. Plaintiff claimed that if the fiduciary had used Plan forfeitures to pay Plan expenses, participants and beneficiaries would have received the benefit of those reduced expenses in addition to HP's full matching contribution. *See* FAC ¶¶ 38, 47, 55 (asserting that the fiduciary's forfeiture allocation "reduc[ed] the amount of assets the Plan otherwise would have received," "decreased Company contributions," and "caused the Plan to receive fewer contributions that would otherwise have increased Plan assets").

Defendant again moved to dismiss, and the district court granted Defendant's motion as to all three claims, this time without leave to amend.[1] *See Hutchins v. HP Inc.*, 767 F. Supp. 3d 912 (N.D. Cal. 2025). First, while the district court restated its earlier holding that implementing plan design choices was subject to fiduciary duties, it noted that the Plan language here places constraints on the

[1] The Secretary of Labor believes the district court correctly dismissed Plaintiff's self-dealing prohibited transaction claim under Ninth Circuit precedent. *See Wright*, 360 F.3d at 1101 (9th Cir. 2004) ("Plaintiffs fail to identify *any transaction* that falls within § 1106(a)(1) *or (b)*") (emphasis added). The Secretary omits further discussion of this claim because the district court's analysis and Defendant's arguments adequately address this claim.

fiduciary's exercise of its discretion that it is bound to obey. For instance, the court concluded that Plaintiff's theory that fiduciary duty required the HP Plan Committee to use Plan forfeitures to reduce participants' administrative expenses was at odds with section 17(b) of the Plan, which reserves to HP discretion to pay any administrative expenses using Plan funds. The court interpreted section 17(b) as providing that "HP (as fiduciary) will only use those forfeitures to pay Plan expenses if HP (as settlor) decided that year that the Plan administrator should use at least some forfeitures to pay Plan expenses." *Id.* at 922. Plaintiff's theory, in the court's view, would have required the court to conclude that section 11(h) of the Plan—giving the HP Plan Committee the power to choose how to allocate forfeitures—in combination with ERISA's general fiduciary duty provisions, overrode section 17(b) of the Plan. The court rejected this conclusion. *Id.*

The district court also held that Plaintiff's theory of liability was still implausibly broad. The district court was not persuaded by Plaintiff's assertion in the amended complaint that there were circumstances in which Plaintiff's theory would allow a fiduciary to make a choice other than paying administrative costs. And the district court rejected Plaintiff's theory of harm, holding that Plaintiff instead sought to "create benefits beyond what was promised in the Plan itself." *Id.* at 923.

Next, the court found that allegations of a *possible* conflict of interest are not sufficient, without more, to state a claim for a breach of the duty of loyalty. *Id.* at 924–25 (citing *Wehner v. Genentech, Inc.*, No. 20-cv-06894, 2021 WL 2417098, at *11 (N.D. Cal. June 14, 2021) (noting that showing "at most the potential for a conflict of interest . . . without more, is not synonymous with a plausible claim of fiduciary disloyalty" under ERISA)). A plaintiff alleging a breach of the fiduciary duty of loyalty must therefore plead specific facts that take the claim from "speculative" to "plausible." *Id.* at 925. Here, the participants received all the benefits they were due under the Plan, so the court found Plaintiff had not alleged more than a mere potential conflict of interest. *Id.* at 924–25.

The district court also held that Plaintiff's claim for breach of the duty of prudence was still implausibly broad. The district court determined that Plaintiff's attempt to reframe the question as whether the HP Plan Committee "used a 'reasoned and impartial decision-making process'" in deciding how to use forfeited funds was not sufficient to avoid creating an implicit categorical rule that such funds must always be used to pay Plan participants' administrative expenses before they can be allocated to reducing a company's matching contributions, except in the narrow circumstance where "a company is at risk of defaulting on its matching contribution obligations." *Id.* at 926–27 (quoting FAC ¶ 54). Supreme Court precedent, the district court noted, rejects such categorical rules. *See id.* at 926 (citing *Hughes v. Nw. Univ.*, 595 U.S. 170, 173 (2022)).

Finally, the court held that Plaintiff's allegations were conclusory and insufficient because they failed to offer specific facts about HP's purportedly flawed process. The court acknowledged that "facts detailing the investigative process are likely within the sole control of the trustee and other ERISA defendants and, consequently, 'an ERISA plaintiff alleging breach of fiduciary duty does not need to plead details to which she has no access.'" *Id.* at 927 (quoting *Gamino v. KPC Healthcare Holdings, Inc.*, No. 20-CV-01126, 2021 WL 162643, at *3 (C.D. Cal. Jan. 15, 2021)). But the court held that Plaintiff still needed to plead details "support[ing] an inference that the defendant failed to conduct an adequate inquiry." *Id.* (quoting *Gamino*, 2021 WL 162643, at *3). Here, the court reasoned not only that Plaintiff failed to allege such specific facts, but that there were no such specific facts Plaintiff could allege because the participants received all benefits they were entitled to under the Plan. In sum, the court concluded, Plaintiff "fails to plausibly allege that a 'proper' investigation would have led to a different outcome." *Id.*

SUMMARY OF THE ARGUMENT

Plaintiff's allegations are insufficient to state a claim for breach of the fiduciary duties of loyalty or prudence. As the district court correctly held, deciding how to allocate Plan forfeitures in accordance with the Plan terms was a fiduciary function. However, as explained below, based on the facts plead, that fiduciary allocation decision was tightly constrained by settlor decisions regarding (1) Plan funding and design, and (2) the risks of a dispute with the Plan sponsor. The fiduciary was required to consider these factors, which may weigh in favor of allocating forfeitures to fund matching contributions in order to ensure that all participants timely receive matching contributions due. Accordingly, Plaintiff's bare allegations do not support an inference that the fiduciary acted improperly.

ARGUMENT

A. Funding a Plan is a Settlor Decision

"To state a claim for breach of fiduciary duty under ERISA, a plaintiff must allege that (1) the defendant was a fiduciary; and (2) the defendant breached a fiduciary duty; and (3) the plaintiff suffered damages." *Bafford v. Northrop Grumman Corp.*, 994 F.3d 1020, 1026 (9th Cir. 2021) (citing 29 U.S.C. § 1109(a)). Whether the defendant was acting as a fiduciary is an important threshold question because an ERISA fiduciary "may wear different hats," acting as a plan fiduciary in some contexts and as the plan sponsor in others. *Pegram v. Herdrich*, 530 U.S. 211, 225 (2000). "Where, as here, a plaintiff challenges the decision of a fiduciary wearing two hats, as threshold matter a court must determine when the fiduciary has taken off [its] 'settlor/sponsor hat' and put on [its] 'fiduciary hat'" for the conduct at issue. *Dimou v. Thermo Fisher Sci. Inc.*, No. 23-CV-1732, 2024 WL 4508450, at *7 (S.D. Cal. Sept. 19, 2024) (quoting *Acosta v. Brain*, 910 F.3d 502, 518 (9th Cir. 2018) (noting the importance of the "threshold 'two-hats' inquiry")).

Section 3 of ERISA provides that "a person is a fiduciary with respect to a plan to the extent . . . he exercises any discretionary authority or discretionary control respecting management of such plan or exercises any authority or control respecting management or disposition of its assets." 29 U.S.C. § 1002(21)(A)(i). Fiduciary duties thus "consist of such actions as the administration of the plan's assets." *Hughes Aircraft*, 525 U.S. at 444. In contrast, settlor duties include decisions "regarding the form or structure of the Plan such as who is entitled to receive Plan benefits and in what amounts, or how such benefits are calculated." *Id*. This makes sense because "[n]othing in ERISA requires employers to establish employee benefits plans," so plan sponsors are free to establish the level of benefits they will provide. *Lockheed Corp. v. Spink*, 517 U.S. 882, 887 (1996) ("Nor does ERISA mandate what kind of benefits employers must provide if they choose to have such a plan.").

Under these principles, "[f]unding a plan is a settlor function," reserved for the plan sponsor. *Petroff v. Ret. Benefit Plan of Am. Airlines, Inc.*, No. 14-CV-02866, 2015 WL 13917970, at *14 (C.D. Cal. July 28, 2015); *see also Coulter v. Morgan Stanley & Co. Inc.*, 753 F.3d 361, 367 (2d Cir. 2014) ("'Settlor' functions .

. . include conduct such as establishing, funding, amending, or terminating a plan."). This includes plan sponsor "decisions relating to the timing and amount of contributions." *Coulter*, 753 F.3d at 367 (quoting Lee T. Polk, ERISA Practice & Litig. § 3:32 (2013)) (holding that making required contributions using company stock instead of cash "did not trigger fiduciary liability under ERISA").

Caselaw is clear that plan funding decisions are settlor decisions, not fiduciary ones. *See, e.g., Glazing Health & Welfare Fund v. Lamek*, 896 F.3d 908, 910 (9th Cir. 2018) (holding that plan sponsors are not fiduciaries when underfunding a plan because delinquent contributions are not yet "plan assets"); *Thondukolam v. Corteva, Inc.*, No. 19-CV-03857, 2020 WL 1984303, at *2 (N.D. Cal. Apr. 27, 2020) (dismissing fiduciary breach claims predicated on "defendants' failure to fund the Plan, which under *Glazing Health*, does not trigger fiduciary obligations"); *Trs. of Graphic Commc'ns Int'l Union Upper Midwest Local 1M Health & Welfare Plan v. Bjorkedal*, 516 F.3d 719, 732 (8th Cir. 2008) (holding that a corporate officer "who chooses to pay corporate obligations in lieu of employer contributions to an ERISA plan does not breach a fiduciary duty when he makes those decisions wearing his corporate officer hat rather than his fiduciary duty hat"); *Navarre v. Luna (In re Luna)*, 406 F.3d 1192, 1207 (10th Cir. 2005) (holding that an employer's "decision to use their limited funds to pay other business expenses rather than to make contributions to the Funds was a business decision, not a breach of fiduciary duty").

Moreover, the Plan's particular terms here reaffirm that funding is a settlor decision. Plan section 16(a) provides that "[t]he Company is the 'sponsor' of the Plan," while the "Plan Committee" is the "plan administrator" and the "named fiduciary with respect to operation and administration of the Plan." Under Plan section 17(a), "[t]he Company shall cause the Participating Companies to make . . . Matching Contributions required pursuant to Section[] . . . 5." Additionally, Plan section 17(b) states that "[t]he reasonable expenses of administering the Plan and Trust shall be charged to and paid out of the Trust pursuant to directions of the Company" and that the "Company shall have complete and unfettered discretion to determine whether an expense of the Plan or Trust shall be paid by the Participating Companies or out of the Trust Fund." These Plan provisions make clear that the Plan sponsor, as settlor, is solely responsible for funding matching contributions and determining whether Plan expenses are paid by the sponsor or out of the Plan trust.

B. Fiduciary Duties Include Broad Considerations Beyond Plaintiff's Allegations

Applying these settlor and fiduciary principles, the district court correctly held that the HP Plan Committee's allocation of Plan forfeitures was a fiduciary decision because it "exercised discretion and control over Plan assets and thus w[as] making decisions of Plan administration rather than Plan design." *Hutchins*, 737 F. Supp. 3d at 861; *see also Hutchins*, 767 F. Supp. 3d at 921 (the court "does not revisit" ruling that Plaintiff adequately alleged Defendant acted in fiduciary capacity in making allocation). This is a quintessential fiduciary decision that is subject to the fiduciary duties of loyalty and prudence. *See* 29 U.S.C. § 1002(21)(A)(i); *Hughes Aircraft*, 525 U.S. at 444; *Waller*, 32 F.3d at 1342 (holding that the implementation of a plan design decision that involves discretionary control is a fiduciary act). However, with the added context that funding the Plan remains a settlor decision, the mere fact that the HP Plan Committee decided to use Plan forfeitures to fund matching contribution benefits—an option explicitly granted by the Plan document and the proposed Treasury regulation—does not state a plausible claim for breach.

Under ERISA, the duty of loyalty provides that "a fiduciary shall discharge his duties with respect to a plan solely in the interest of the participants and beneficiaries," and that a fiduciary shall act "for the exclusive purpose of: (i) providing benefits to participants and their beneficiaries; and (ii) defraying reasonable expenses of administering the plan." 29 U.S.C. § 1104(a)(1)(A). Plaintiff's only allegation specific to the alleged breach of this duty is that the HP Plan Committee had a "conflict of interest" between the sponsor and the participants in making its forfeiture allocation decision. *See* FAC ¶¶ 2, 24–26, 46–

47; Appellant's Opening Br. at 20–23, ECF No. 10.1, [hereinafter, Appellant's Br.]. However, allegations that "support at most the *potential* for a conflict of interest . . . without more, [are] not synonymous with a plausible claim of fiduciary disloyalty." *Wehner*, 2021 WL 2417098, at *11 (internal quotations omitted).

ERISA also imposes a duty of prudence that requires a fiduciary to act "with the care, skill, prudence, and diligence under the circumstances then prevailing that a prudent man acting in a like capacity and familiar with such matters would use in the conduct of an enterprise of a like character and with like aims." 29 U.S.C. § 1104(a)(1)(B). Plaintiff's only allegation to support a claim for breach of this duty is the bare assertion that HP "utilized an imprudent and flawed process" to decide how to allocate forfeitures and "failed to undertake any investigation." *See, e.g.*, FAC ¶¶ 2, 27–29, 54; Appellant's Br. at 25–27.

While these fiduciary duties apply to the HP Plan Committee's forfeiture allocation decision, the fundamental problem with Plaintiff's fiduciary breach claims is that they ignore the constraints on the fiduciary's decision-making that are evident from the face of the complaint and the Plan's terms. To survive a motion to dismiss, the plaintiff must allege "enough facts to state a claim to relief that is plausible on its face." *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007). A plaintiff must allege facts sufficient to "raise a right to relief above the speculative level." *Id.* at 555. "[A]llegations that are merely conclusory, unwarranted deductions of fact, or unreasonable inferences" will not suffice to state a claim. *In re Gilead Scis. Sec. Litig.*, 536 F.3d 1049, 1055 (9th Cir. 2008) (internal quotation marks and citations omitted). Plaintiff's bare allegations of a potential conflict of interest and conclusory assertions that the fiduciary employed an insufficient process do not "move the needle on his claim from 'speculative' to 'plausible'" because they ignore other considerations relevant to the fiduciary's decision to use forfeitures to fund contributions. *See Hutchins*, 767 F. Supp. 3d at 925.

It is axiomatic that "ERISA does no more than protect the benefits which are due to an employee under a plan." *Wright*, 360 F.3d at 1100 (quoting *Bennett v. Conrail Matched Sav. Plan Admin. Comm.*, 168 F.3d 671, 677 (3d Cir. 1999)); *see also US Airways, Inc. v. McCutchen*, 569 U.S. 88, 100 (2013) ("ERISA's principal function [is] to 'protect contractually defined benefits.'" (quoting *Mass. Mut. Life Ins. Co. v. Russell*, 473 U.S. 134, 148 (1985))); *Spink*, 517 U.S. at 887 (ERISA "ensure[s] that employees will not be left empty-handed once employers have *guaranteed them* certain benefits") (emphasis added). Here, the district court correctly observed that there is no allegation participants and beneficiaries received less than the 4% matching contribution guaranteed under the Plan language, nor is there any allegation that the Plan's administrative fees were excessive. Thus, Plaintiff makes no allegation that the fiduciary's administration of the Plan caused him to receive less than the full contribution promised to him by HP under the Plan.

To the extent Plaintiff alleges that by using Plan forfeitures to pay administrative expenses the fiduciary could have compelled the sponsor to increase its contributions, Plaintiff misunderstands the boundary between settlor and fiduciary functions. *See* FAC ¶¶ 38, 47, 55 (arguing that the fiduciary's forfeiture allocation "reduc[ed] the amount of assets the Plan otherwise would have received," "decreased Company contributions," and "caused the Plan to receive fewer contributions that would otherwise have increased Plan assets"); Appellant's Br. at 31 (arguing that "participants' account balances would have been greater had HP chosen to use forfeitures to defray the Plan's expenses").

As detailed above, setting the amount the sponsor contributes to the Plan, as well as the level of benefits provided, are settlor functions solely within the sponsor's control, and cannot be dictated by a fiduciary's decision. *See Glazing Health*, 896 F.3d at 910; *Thondukolam*, 2020 WL 1984303, at *2; *Petroff*, 2015 WL 13917970, at *14. So, it is simply not true that if the fiduciary chose to use Plan forfeitures to pay Plan expenses, the sponsor would automatically have increased its contributions (and thereby increased participants' benefits).

With this framework in mind, the HP Plan Committee's forfeiture allocation decision is more constrained than Plaintiff admits. Consider the scenario alleged here, where the Plan sponsor consistently contributed an amount equal to the difference between the amount of Plan forfeitures and HP's matching contribution obligation. *See* FAC ¶¶ 33–37, 60 (alleging that forfeitures were consistently used to "offset[] the Company's outstanding and unpaid matching contributions owing to the Plan"). If the HP Plan Committee chose to use forfeitures to pay Plan expenses rather than fund matching contributions, then the HP Plan Committee would need to ask the sponsor to contribute more funds to the Plan to cover the outstanding and unpaid matching contributions. If the sponsor refused, then the Plan would be faced with a funding shortfall and unable to timely allocate matching contributions to each participant as required by the Plan terms. The fiduciary would then need to engage in a potentially protracted legal dispute, using Plan assets, to try to obtain the full amount of matching contributions from the sponsor.

The competing arguments about Plan interpretation underscore the uncertainty and legal risk for a plan that engages in such a dispute with its sponsor. Here, for example, the district court interpreted the Plan document to reserve all funding and expense decisions to the sponsor. *See Hutchins*, 767 F. Supp. 3d at 922 (interpreting the Plan as providing that "HP (as fiduciary) will only use those forfeitures to pay Plan expenses if HP (as settlor) decided that year that the Plan administrator should use at least some forfeitures to pay Plan expenses"); *see also*

Plan §§ 11(h); 17(a) & (b). Plaintiff, on the other hand, offers a competing interpretation of the Plan language. *See* Appellant's Br. at 33–35 (arguing that Plan section 17(b) does not limit the fiduciary's allocation of Plan forfeitures under section 11(h) because Plan forfeitures are Plan assets belonging to the Plan's trust fund, not HP). There is no fiduciary duty to litigate this dispute.

Moreover, during this potentially fruitless dispute, participants could lose out on the timely allocation of their matching contributions and any interest they would earn thereon. The fiduciary would also run the risk of the sponsor amending the Plan, in its settlor capacity, to reduce its matching contributions going forward to match its chosen funding level and offset any losses from the one-time forfeiture dispute. This would, of course, be well within the rights of the Plan sponsor, as settlor. *Hughes Aircraft*, 525 U.S. at 444 (holding that a sponsor's decision regarding the "design of the plan itself . . . does not implicate . . . fiduciary duties").

These types of risks are eliminated where the fiduciary chooses to use the forfeitures to cover the remaining matching contribution amount. The risks of a dispute between the fiduciary and the plan sponsor are appropriately factored into a fiduciary's assessment of which course of action best satisfies its duties of loyalty and prudence. *See* EMP. BENEFIT SEC. ADMIN., FIELD ASSISTANCE BULL. NO. 2008-01 (2008), at 3 ("In determining what collection actions to take, a fiduciary should weigh the value of the plan assets involved, the likelihood of a successful recovery, and the expenses expected to be incurred."). Yet Plaintiff makes no allegations to suggest that the fiduciary failed to engage in this inquiry while determining how to allocate Plan forfeitures and the consequences that a dispute could entail.

Protecting participants' contractually promised benefits, like the matching contributions that would have been jeopardized by Plaintiff's proposed course of action, is ERISA's principal function. *See US Airways*, 569 U.S. at 100–01 (2013); *Wright*, 360 F.3d at 1100; *Spink*, 517 U.S. at 887. With this principle in mind, the fiduciary's decision here does not support a plausible breach of the fiduciary duty of loyalty. Indeed, it is more likely that the fiduciary acted with the "exclusive purpose of . . . providing benefits to participants and their beneficiaries," by ensuring that participant accounts were timely credited with the matching contributions they were owed under the terms of the Plan. Risking a funding shortfall and a potentially prolonged and expensive legal dispute with the sponsor in order to obtain a benefit the participants were not guaranteed by the Plan document and which the Plan sponsor could immediately recoup the following year, through Plan amendment, appears perilous and not likely to be in the best financial interest of the Plan. *See* 29 U.S.C. § 1104(a)(1)(A); *compare* Plan § 5(d) (requiring matching contributions) *with* Plan § 11(h) (merely allowing for, but not requiring, the payment of Plan expenses using forfeitures).

So, it follows that Plaintiff has also failed to state a claim that the fiduciary's forfeiture allocation decision stated a violation of the duty of prudence because it was not made with "care, skill, prudence, and diligence." Faced with the decision to either ensure the participants timely received the matching contributions they were owed under the Plan, or to risk a funding shortfall and a potentially protracted legal dispute with the Plan sponsor, a prudent fiduciary may appropriately choose to ensure participants timely received the benefits guaranteed by the Plan document. *See US Airways*, 569 U.S. at 100–01; *Wright*, 360 F.3d at 1100; *Spink*, 517 U.S. at 887. The amended complaint contains no allegations to state a plausible claim that the fiduciary's decision was imprudent in this context. *See Fifth Third Bancorp v. Dudenhoeffer*, 573 U.S. 409, 425 (2014) (noting in the context of a motion to dismiss that "[b]ecause the content of the duty of prudence turns on 'the circumstances . . . prevailing' at the time the fiduciary acts . . . the appropriate inquiry will necessarily be context specific").

In sum, Plaintiff's bare allegations fail to state a plausible breach of the fiduciary duties of loyalty and prudence.

CONCLUSION

The Secretary respectfully requests that this Court hold that Plaintiff failed to adequately plead a breach of the fiduciary duties of loyalty and prudence and uphold the district court's decision dismissing the amended complaint.

Respectfully submitted,

Date: July 9, 2025

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9th Cir. Case Number(s) 25-826

I am the attorney or self-represented party.

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I certify that this brief *(select only one)*:

[ ] complies with the word limit of Cir. R. 32-1.

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Signature s/Emma Goold **Date** July 9, 2025
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I hereby certify that on this day, July 9, 2025, I electronically filed the foregoing with the Clerk of the Court for the U.S. Court of Appeals for the Ninth Circuit by using the CM/ECF system. I certify that all participants in this case are registered CM/ECF users and that service will be accomplished by the CM/ECF system.

s/ Emma Goold
EMMA GOOLD
Trial Attorney

Date: July 9, 2025