No: 25-2564

UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

JIM CAIN, individually and as a representative of a class of participants and beneficiaries on behalf of the Siemens Savings Plan,
Appellant

v.

SIEMENS CORPORATION; DOES 1-10

New Jersey - Newark

U.S. District Court N.J.

2:24-cv-08730

BRIEF FOR THE U.S. SECRETARY OF LABOR AS AMICUS CURIAE SUPPORTING DEFENDANTS-APPELLEES

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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 the Employee Retirement Income Security Act ("ERISA") and is responsible for "assur[ing] the . . . uniformity of enforcement of the law under the ERISA statutes." *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 Jim Cain ("Plaintiff") alleges that the Plan Administrator's decision to allocate forfeitures to fund matching contributions for the remaining participants, rather than using those funds to defray participants' 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 defray future employer contributions rather than using those funds to defray administrative expenses. 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).

CONCISE STATEMENT OF THE CASE

A. Factual Background

The Siemens Savings Plan (“Plan”) is a defined contribution, individual account plan sponsored by Siemens Corporation (“Siemens”). Appx18 (First Amended Complaint (“FAC”) ¶¶ 6, 8). The Plan Administrator named in the Plan is an Administrative Committee and Investment Committee of Siemens (the “Committees”). Appx18 (FAC ¶ 8), Appx103 (Plan § 14.1(a)). Plaintiff Jim Cain is a Plan participant. Appx17 (FAC ¶ 3).

The Plan provides that “All expenses incurred in connection with the administration of the Plan and the Fund . . . shall be paid from the Fund unless paid by the Employers [i.e., Siemens or its affiliated companies].” Appx104 (Plan § 14.1(e)). Fees for recordkeeping services to the Plan are charged to participants as a set monthly amount and deducted from their individual accounts. Appx20 (FAC ¶ 23). The Plan also pays asset-based fees, which are part of an investment’s expense ratio and are not deducted as a monthly amount from participant accounts. Appx21 (FAC ¶ 24).

The Plan is funded by wage withholdings from Plan participants as well as matching contributions from Siemens, both of which are deposited into the Plan’s trust fund. Appx20 (FAC ¶ 15). The Plan specifies that for most participants, Siemens must make matching contributions equal to the first 6% contributed by a participant. Appx20 (FAC ¶ 17). Siemens’s matching contributions are subject to a five-year cliff vesting schedule, meaning a participant only becomes 100 percent vested in Siemens's contributions if they remain employed by Siemens for five years. Appx20 (FAC ¶ 20). If a participant experiences a break in service prior to the full vesting of Siemens's matching contributions, the participant forfeits the balance of Siemens's unvested matching contributions in the participant's individual Plan account. Appx20 (FAC ¶ 21). Siemens, through the Committees that serve as Plan Administrator, then has control over how those forfeited matching contributions are allocated, with the Plan providing that forfeited amounts:

> shall be used as soon as practicable to pay reasonable administrative expenses of the Plan, other than expenses paid for by monthly charges to Members' accounts, or to reduce Employer Contributions. Notwithstanding the foregoing, the amount of forfeitures used to pay administrative expenses of the Plan shall not exceed $1,500,000 in any Plan Year.

Appx351 (Plan Amendment Art. XII); *see also* Appx21 (FAC ¶ 27).

B. Proceedings Below

Plaintiff filed an amended complaint in November 2024 in the United States District Court for the District of New Jersey seeking to represent a class of participants and beneficiaries of the Plan. Appx17 (FAC ¶ 3). Plaintiff alleged that each year from 2018 through 2022, Siemens used forfeited funds to reduce Siemens's contributions to the Plan rather than using them to pay any part of the Plan expenses charged to participants. Appx23–24 (FAC ¶¶ 37–41). The amended complaint alleged that Siemens faced a "conflict of interest" when deciding how to use forfeited amounts, as Siemens would benefit financially from choosing to use forfeited amounts to reduce Siemens's contributions to the Plan. Appx22 (FAC ¶ 30). The amended complaint also alleged that despite this conflict of interest, Siemens failed to investigate which option was in the participants' best interest. Appx22 (FAC ¶ 31). For example, the amended complaint alleged that Siemens did not investigate "whether there was a risk that Siemens would default on its contribution obligations if up to $1,500,000 in forfeitures were used to pay the Plan's asset-based administrative expenses," or "whether there were sufficient forfeitures to pay up to $1,500,000 of the Plan's asset-based administrative expenses charged to participants and still offset a portion of Siemens' own contribution obligations." Appx22 (FAC ¶ 32). The amended complaint alleged that Siemens's use of forfeited amounts to reduce its contributions harmed the Plan and its participants by reducing the amount of contributions the Plan would have otherwise received, and by causing asset-based fees to be paid out of participants' individual accounts rather than forfeited amounts. Appx24 (FAC ¶ 42). Plaintiff asserted 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). Appx27–31 (FAC ¶¶ 48–66).

Defendant moved to dismiss and the district court granted Defendant's motion as to all three claims. Appx5 (Dist. Ct. Order). The court found that Plaintiff had standing to bring his claims, and that Siemens was acting as a fiduciary when deciding how to allocate forfeited amounts. But the court found that Plaintiff had not plausibly alleged breaches of the duties of loyalty and prudence. Plaintiff's theory would "impose liability beyond the requirements of ERISA." Appx12. Under Plaintiff's position, a fiduciary would always be required to opt to use forfeited amounts to pay administrative costs, even when the plan document also authorizes the use of forfeited amounts to reduce employer contributions. This would amount to "creat[ing] a new benefit to participants that is not provided in the plan document itself." Appx12 (citing *Hutchins v. HP Inc.*, 737 F. Supp. 3d 851, 863 (N.D. Cal. 2024)). Plaintiff's theory was also in tension with the Supreme Court's holding in *Fifth Third Bancorp v. Dudenhoeffer* that "the content of the duty of prudence turns on 'the circumstances . . . prevailing' at the time the fiduciary acts," 573 U.S. 409, 425 (2014), because Plaintiff's theory did not turn on the particular context but would impose categorical liability anytime a company chose to use forfeitures to reduce its own contributions. Appx12–13.

The court also found that Plaintiff failed to allege a self-dealing claim under § 1106(b)(1). The parties disagreed regarding whether an ERISA self-dealing claim under § 1106(b)(1) requires an allegation that there was an unlawful transaction. The court found, even assuming as Plaintiff advocated that no allegation of an unlawful transaction was required, Plaintiff still failed to allege facts sufficient to raise a plausible claim. Regardless of whether § 1106(b)(1) requires an allegation of an unlawful transaction, Plaintiff failed to allege self-dealing, as Plaintiff merely alleged that Siemens took actions expressly authorized by the Plan document and did not assert facts comparable to other § 1106(b)(1) violations. Additionally, the court observed "as with his fiduciary duty theory, Plaintiff's self-dealing theory conflicts with the congressional and regulatory understanding that ERISA permits the reallocation of Forfeitures to reduce future employer contributions."[1] Appx14.

[1] The Secretary believes the district court properly dismissed Plaintiff's claim for violation of ERISA's prohibition on self-dealing in § 1106(b)(1) for the reasons explained by the court. The Secretary omits further discussion of this claim because the district court's analysis adequately addresses it.

SUMMARY OF 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 in this case. However, with the added context that funding the Plan remains a settlor decision, Plaintiff's bare allegations that failing to use forfeitures for that purpose was imprudent and put Defendant's interests above those of the Plan alone are not sufficient to state a plausible claim for breach of ERISA's fiduciary duties of loyalty and prudence. A court evaluating a fiduciary's compliance with ERISA's fiduciary duties necessarily must consider the context of the fiduciary's decision, which here includes the potential risks to the plan of using forfeitures to cover expenses rather than contributions. Plaintiff's theory conversely would require fiduciaries to use forfeitures to pay plan expenses regardless of the particular context and constraints facing the fiduciary.

Additionally, Plaintiffs do not allege that the fiduciary's administration of the Plan caused participants and beneficiaries to receive less than the full contribution promised by Siemens under the Plan. Accordingly, Plaintiff's bare allegations in this case failed to allege a factual basis from which the court could reasonably infer that the fiduciary acted improperly in using forfeitures to offset employer contributions rather than pay plan expenses.

ARGUMENT

A. Choosing How to Allocate Forfeitures is a Fiduciary Decision, but Plan Funding is a Settlor Decision

"The elements of an ERISA breach of fiduciary duty claim are: (1) a plan fiduciary, (2) breaches an ERISA-imposed duty, (3) causing a loss to the plan." *Mator v. Wesco Distrib., Inc.*, 102 F.4th 172, 184 (3d Cir. 2024) (citation omitted). 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 a plaintiff challenges the decision of a fiduciary wearing two hats, as a threshold matter a court must determine whether the fiduciary was acting as a settlor/sponsor or as a fiduciary when engaging in the conduct. *See Payonk v. HMW Indus., Inc.,* 883 F.2d 221, 225 (3d Cir. 1989).

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 Co. v. Jacobson*, 525 U.S. 432, 444 (1999).

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.").

The Plan Administrator here acted as a fiduciary when it allocated forfeitures under Plan Amendment Art. XII. Forfeited amounts are still Plan assets, *see* Appx20 (FAC ¶¶ 15–16, 18), and Plan Amendment Art. XII gives the Plan Administrator multiple options for the disposition of these assets, including to reduce employer contributions *or* defray certain administrative expenses of the Plan. *See* Appx351 (Plan Amend. Art. XII).

On the other hand, decisions on plan funding and plan design, such as whether the plan or the employer will cover expenses or whether the plan will require expenses to be charged to participant accounts, are settlor functions. "Courts have widely held that decisions related to funding are settlor functions which do not implicate fiduciary duties." *Cottillion v. United Refining Co.*, 279 F.R.D. 290, 309 (W.D. Pa. Dec. 21, 2011) (internal quotation marks and citations omitted); *see also, e.g., Walling v. Brady*, 125 F.3d 114, 119–20 (3d Cir. 1997) (recognizing that sponsors of a plan "amending, altering, terminating, or otherwise redesigning the plan itself" are acting as settlors, not fiduciaries); *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."); *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").

Settlor decisions include 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"); *see also In re RCN Litigation,* No. 04-5068, 2006 WL 753149 at *6 n. 4 (D. N.J. March 21, 2006) (decisions related to profit sharing contributions and company matching contributions were "not functions undertaken in the Company's role of plan administrator and do not implicate ERISA's fiduciary duties"). They also include the decision of whether and to what extent to cover plan expenses. *Loomis* *v. Exelon Corp.*, 658 F.3d 667, 671 (7th Cir. 2011), (stating decision of "whether to cover these expenses is a question of plan design, not of administration"), *abrogated on other grounds by Hughes v. Nw. Univ.,* 63 F.4th 615 (7th Cir. 2023). The treatment of both employer contributions and also plan expenses in the plan document involves not plan assets but rather the assets of Siemens. Appx104 (Plan § 14.1(e)) ("All expenses incurred in connection with the administration of the Plan . . . shall be paid from the Fund *unless paid by the Employers.*") (emphasis added); Appx70 (Plan § 5.1(a)) ("Each Employer shall make Employer Contributions to the Plan . . ."); *see also* Emp. Benefits Sec. Admin., U.S. Dep't of Labor, *Field Assistance Bulletin 2008–1,* at 1–2 (Feb. 1, 2008) ("[E]mployer contributions become an asset of the plan only when the contribution has been made."); Appellant's Br. at 15 ("Employer contributions become 'plan assets' *once they are paid to the plan*.") (emphasis added). In addition, "business decisions" made by an employer with respect to the employer's own funds are not fiduciary decisions, even though such decisions may ultimately affect the plan. *See In re Luna*, 406 F.3d at 1207 (holding that the employers' "business decisions with respect to general corporate funds" should "not be confused with fiduciary action" even though "virtually every business decision an employer makes can have an adverse impact on an employee benefit plan") (citations omitted).

B. Plaintiff Does Not State a Plausible Claim for Breach of Fiduciary Duty

Applying these settlor and fiduciary principles, the district court correctly held that "Defendant's reallocation of Forfeitures is . . . a fiduciary act." Appx11 (citing *Barragan v. Honeywell Int'l Inc.*, No. 24-CV-4529, 2024 WL 5165330, at *3 (D.N.J. Dec. 19, 2024); *Hutchins*, 737 F. Supp. 3d at 860–61). It involves a decision regarding management and control of plan assets, which 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); Appx11 ("once Defendant pays the 'Employer Contributions' into the Fund, they become Plan assets and remain so even if they are forfeited by an employee"); *Hughes Aircraft*, 525 U.S. at 444; *Waller v. Blue Cross of California*, 32 F.3d 1337, 1342 (9th Cir. 1994) (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 Plan Administrator decided to use Plan forfeitures to offset future employer contributions—an option explicitly granted by the Plan document—does not state a plausible claim for breach.

ERISA's duty of loyalty requires 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 Defendant had a "conflict of interest" when making the forfeiture allocation decision and chose to "act in their own self-interest . . . by using all forfeitures to reduce Company contributions." *See* Appx17, 22, 23, 27–28 (FAC ¶¶ 2, 30, 35, 50–52); Appellant's Br. at 20–22.

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 Defendant "utilized an imprudent and flawed process" to decide how to allocate forfeitures and "failed to undertake any investigation into which option was in the best interest of the Plan's participants." *See, e.g.*, Appx17, 22, 29 (FAC ¶¶ 2, 31–33, 58); Appellant's Br. at 23–26.

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. "[T]hreadbare recitals of the elements of a cause of action, legal conclusions, and conclusory statements" are all disregarded. *City of Cambridge Retirement Sys. v. Altisource Asset Mgmt. Corp.*, 908 F.3d 872, 878–79 (3d Cir. 2018) (internal quotation marks and citation omitted).

The allegations in this case, as the district court recognized, are functionally an attempt to bolster Plaintiff's theory—a theory that is "too broad to be plausible." Appx12 (quoting *Dimou v. Thermo Fisher Sci. Inc.*, No. 23-cv-1732, 2025 WL 2611240, at *9 (S.D. Cal. Sept. 9, 2025), *appeal docketed*, No. 25-6364 (9th Cir.)). Under Plaintiff's theory, "a fiduciary would always be required to use Forfeitures to pay administrative costs even if the plan document gave it the option to reallocate those funds to reduce employer contributions." Appx12 (citing *Hutchins*, 737 F. Supp. 3d at 863). While fiduciary duties apply to the Plan Administrator's forfeiture allocation decision, the fundamental problem with the plaintiff's fiduciary breach claims is that they are premised on an untenable legal theory that ignores the constraints on the fiduciary's decision-making that are evident from the face of the amended complaint and the Plan terms.

It is axiomatic that "ERISA does no more than protect the benefits which are due to an employee under a plan." *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, there is no allegation participants and beneficiaries received less than the 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 Defendant 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* Appx24, 28, 29 (FAC ¶¶ 42, 53, 59) (alleging that the fiduciary's forfeiture allocation "reduc[ed] the amount of contributions the Plan otherwise would have received" and "caus[ed] deductions from participants' investment earnings to cover the Plan's asset-based administrative expenses that otherwise would have been covered in whole or in part by Plan forfeitures"); Appellant's Br. at 20 (arguing that the fiduciary's forfeiture allocation resulted in the Plan "receiv[ing] decreased Company contributions"). 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 Cottillion*, 279 F.R.D. at 309; *Coulter*, 753 F.3d at 367; *Glazing Health & Welfare Fund v. Lamek*, 896 F.3d 908, 910 (9th Cir. 2018). The fiduciary cannot compel the sponsor to increase its contributions and participants' benefits simply by making a forfeiture allocation decision. But Plaintiff's claims hinge on the misunderstanding that if the fiduciary chose to use Plan forfeitures to pay Plan expenses rather than reduce employer contributions, this would somehow compel the sponsor to increase their contributions (and thereby increase participants' benefits).

With this framework in mind, the Plan Administrator'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 Siemens's matching contribution obligation. *See* Appx23–24, 30 (FAC ¶¶ 37–41, 64) (alleging that forfeitures were consistently used "as a substitute for [the employer's] own contributions owing to the Plan."). If the Plan Administrator chose to use forfeitures to pay Plan expenses rather than reduce employer contributions in this scenario, it 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 pay the matching contributions required by the Plan terms. The fiduciary would then need to engage in a potentially protracted legal dispute using Plan assets to obtain the full amount of matching contributions from the sponsor, while participants could lose out on the timely payment of these contributions and any interest and gain thereon.

Plaintiff's argument that Defendant acted imprudently because it failed to "'investigate whether there was a risk that [it] would default on its contribution obligations' if forfeitures were used to pay administrative expenses," Appellant's Br. at 25 (quoting Appx22 (FAC ¶ 32)), misses the point. That the plan sponsor might not have adequate assets to make its matching contributions is not the sole threat that a fiduciary has to be concerned about. As detailed above, plan funding is a settlor function, and the plan sponsor could easily decide, if plan forfeitures are not allocated to employer contributions, to amend the Plan and reduce the amount of matching contributions it would provide going forward to reflect its chosen funding level and offset any losses from the one-time forfeiture dispute. Neither of these risks is present if the fiduciary simply chooses to use forfeitures to cover the remaining matching contribution amount.

The competing arguments about Plan interpretation in this case underscore the uncertainty and legal risk for a plan that engages in a dispute, like this one, with its sponsor. Here, for example, Defendant interprets the Plan language authorizing the use of forfeitures for "annual administrative expenses of the Plan, other than expenses paid for by monthly charges to participants' accounts," Appx351 (Plan Amend. Art. XII), as prohibiting the use of forfeitures to reduce administrative expenses that are incurred as "investment-management fees" and based on participants' chosen investment options. *See* Appellee's Br. at 52–53 ("The Committees could reach Cain's desired result . . . only by unlawfully 'disregard[ing] the terms of the Plan.'") (citing *Naylor v. BAE Sys., Inc.*, No. 24-cv-00536, 2024 WL 4112322, at *6 (E.D. Va. Sept. 5, 2024); Plan Amend. Art. XII). Plaintiff, on the other hand, offers a competing interpretation of the Plan language. *See* Pl.'s Mem. in Opp'n to Mtn. to Dismiss, ECF No. 28, at 19–20 (arguing that "administrative expenses of the plan" must be interpretated to include "at least *some* types of asset-based fees paid through expense ratios for the forfeiture provision to make any sense"). 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 or gain thereon. The fiduciary would also run the risk of the sponsor amending the Plan to reduce its matching contributions going forward, which would, of course, be well within the rights of the plan sponsor, as settlor.

These types of risks are appropriately factored into a fiduciary's assessment of which course of action best satisfies its duties of loyalty and prudence. *See* Emp. Benefits Sec. Admin., U.S. Dep't of Labor, *Field Assistance Bulletin 2008-1*, 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's sole allegation related to this inquiry is that Defendant did not determine whether there was a risk the employer would be unable to otherwise fund its matching contributions. Plaintiff makes no allegations to suggest that the fiduciary failed to engage in an inquiry about the other potential risks 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); *Bennett*, 168 F.3d at 677; *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 at least equally 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* Appx70

(Plan § 5.1(a)) (requiring matching contributions) with Appx351 (Plan Amend. Art. XII) (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 was not made with "care, skill, prudence, and diligence." *See* 29 U.S.C. § 1104(a)(1)(B). Faced with the decision to either ensure the participants timely received the matching contributions they were owed under the Plan, or to risk the Plan sponsor deciding to reduce its matching contributions going forward, 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; *Bennett*, 168 F.3d at 677; *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 Dudenhoeffer*, 573 U.S. at 425 (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").

CONCLUSION

The Secretary respectfully suggests this Court should affirm the district court's decision dismissing the complaint.

Respectfully submitted,

Date: January 23, 2026

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CERTIFICATION OF BAR MEMBERSHIP STATUS

Pursuant to L.A.R. 28.3(d), I hereby certify that as a federal government attorney, I am exempt from the requirement to be a member of the bar of the United States Court of Appeals for the Third Circuit.

Dated: January 23, 2026

s/Alyssa C. George
ALYSSA C. GEORGE

COMBINED CERTIFICATES OF COMPLIANCE

1. This brief complies with the type-volume limitations of Federal Rule of Appellate Procedure 29(a)(5) because it contains 4,753 words, excluding the parts of the brief exempted by Federal Rule of Appellate Procedure 32(f).

2. This brief complies with the typeface requirements of Federal Rule of Appellate Procedure 32(a)(5) and the type-style requirements of Federal Rule of Appellate Procedure 32(a)(6). The brief has been prepared in a proportionally spaced typeface using Microsoft Word in 14-point Times New Roman font.

3. This brief complies with the electronic filing requirements of L.A.R. 31.1(c) because the text of the hard copy and electronic copy of this brief are identical, and Microsoft Defender for Antivirus has been run on the file containing the electronic version of this brief and no viruses have been detected.

Dated: January 23, 2026

s/Alyssa C. George
ALYSSA C. GEORGE

CERTIFICATION OF SERVICE

I hereby certify on that January 23, 2026, I electronically filed the foregoing with the Clerk of the Court for the United States Court of Appeals for the Third Circuit using the Court's CM/ECF system. Counsel for all parties to the case are registered CM/ECF users and will be served by the CM/ECF system.

Dated: January 23, 2026

s/Alyssa C. George
ALYSSA C. GEORGE