IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

GAUDALUPE CANO,

Plaintiff,

v.

THE HOME DEPOT, INC., *et al.*,

Defendants.

CIVIL ACTION NO.
1:24-cv-03793-TRJ

## ORDER

This matter is before the Court on Defendants' Motion to Dismiss Plaintiff's Class Action Complaint for failure to state a claim. (Doc. 15). Upon review and consideration, and with the benefit of oral argument, Defendants' Motion to Dismiss is **GRANTED**.

## BACKGROUND

Plaintiff Gaudalupe Cano was a participant in the Home Depot FutureBuilder Plan (the "Plan")[1], a retirement plan for employees of The Home Depot, Inc. (the "Company"). (Doc. 1 at ¶ 1). The Company is the Plan's sponsor, and the Administrative Committee of the Home Depot FutureBuilder is the Plan's

[1] Although Cano did not attach the Plan to her Complaint, the Court considers the Plan attached to Cano's response brief. (Doc. 18-1); *see Tellabs, Inc. v. Makor Issues & Rts., Ltd.*, 551 U.S. 308, 322 (2007) ("[C]ourts must consider . . . when ruling on Rule 12(b)(6) motions to dismiss . . . documents incorporated into the complaint by reference, and matters of which a court may take judicial notice."); *see also Day v. Taylor*, 400 F.3d 1272, 1276 (11th Cir. 2005) ("[T]he court may consider a document attached to a motion to dismiss . . . if the attached document is (1) central to the plaintiff's claim and (2) undisputed.") (citation omitted).

administrator (collectively, "Home Depot"). (*Id.* at ¶¶ 5–6). The Plan is an individual account, defined contribution retirement plan, funded by a combination of wage withholdings by the Plan participants and company contributions that are deposited into the Plan's trust fund. (*Id.* at ¶¶ 11–12). While participants vest their own contributions and earnings immediately, a participant must work for the Company for three years before vesting in the Company's matching contributions. (*Id.* at ¶ 15). If a participant's employment ends before the vesting of the Company's contributions, the unvested contributions are forfeited. (*Id.* at ¶ 16). The administrative fees of the Plan are directly charged to the Plan participants, ultimately reducing the total funds available for distribution and investing. (*Id.* at ¶¶ 13–14).

According to Cano, despite the requirements of the Employee Retirement Income Security Act of 1974 ("ERISA"), Home Depot consistently failed to use the forfeited funds to reduce or eliminate the amounts charged to the Plan participants to cover administrative expenses. (*Id.* at ¶ 19). Instead, Home Depot used the forfeited funds to cover its own company contributions to other Plan participants' accounts, utilizing the funds "exclusively for the Company's own benefit." (*Id.* at ¶ 20). Because Home Depot had to choose between using forfeitures to benefit itself (by covering its own contributions) or benefit the Plan participants (by covering administrative fees), Cano claims that Home Depot had a conflict of interest. (*Id.* at ¶¶ 22–23). Cano also claims that Home Depot did not "investigate whether there was a risk that Home Depot would default on its matching contribution obligation if forfeitures were used to pay Plan expenses," investigate whether the forfeitures could have eliminated Plan expenses while still offsetting a portion of the Company's own contribution obligations, or consult with an independent, non-conflicted decisionmaker for advice. (*Id.* at ¶¶ 25–26).

According to Cano, Plan contributions were reduced by $3,910,284 in 2018 because of the use of the forfeited funds; $4,201,999 in 2019; $4,641,500 in 2020; $7,300,000 in 2021; and $5,600,000 in 2022. (*Id.* at ¶¶ 28–32). Cano claims that Home Depot's use of the forfeited funds "harmed the Plan, along with its participants and beneficiaries, by reducing Company contributions that would otherwise have increased Plan assets and by causing participants to incur deductions from their individual accounts to cover administrative expenses that would otherwise have been covered in whole or in part by utilizing forfeited funds." (*Id.* at ¶ 33). Because of this alleged harm, Cano filed this class action suit against Home Depot on August 26, 2024, for (1) breach of the fiduciary duty of loyalty under 29 U.S.C. § 1104(a)(1)(A); (2) breach of the fiduciary duty of prudence under 29 U.S.C. § 1104(a)(1)(B); (3) breach of ERISA's anti-inurement provision under 29 U.S.C. § 1103(c)(1); (4) prohibited transactions under 29 U.S.C. § 1106(a)(1); and (5) prohibited transactions under 29 U.S.C. § 1106(b)(1). (Doc. 1 at ¶¶ 40–68). On November 12, 2024, Home Depot moved to dismiss Cano's claims for failure to state a claim. (Doc. 15).[2] On May 13, 2025, the Court heard oral argument from the parties. (Doc. 27).

[2] Both parties have filed multiple notices of supplemental authority. (Docs. 23–26, 29–33). While this Order may not cite to every case identified in the parties' notices of supplemental authority, the Court has reviewed and considered each case in issuing this Order.

## LEGAL STANDARD

Under Federal Rule of Civil Procedure 12(b)(6), a complaint should be dismissed only where it appears that the facts alleged fail to state a "plausible" claim for relief. *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009); FED. R. CIV. P. 12(b)(6). "A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." *Iqbal*, 556 U.S. at 678. Thus, a claim will survive a motion to dismiss if the factual allegations in the pleading are "enough to raise a right to relief above the speculative level." *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555 (2007). Moreover, at the motion to dismiss stage, "all well-pleaded facts are accepted as true, and the reasonable inferences therefrom are construed in the light most favorable to the plaintiff." *FindWhat Inv'r Grp. v. FindWhat.com*, 658 F.3d 1282, 1296 (11th Cir. 2011) (citation modified). Courts are not required, however, to accept as true legal conclusions "couched" as factual allegations. *Twombly*, 550 U.S. at 555 (citation omitted).

## DISCUSSION

Cano's claims are novel but not new; similar claims have been filed nationwide over the past year challenging the use of forfeited funds to cover employer contributions under ERISA. Though this is a matter of first impression in this Court, the Court finds the reasoning of the majority of district courts that have decided this issue and dismissed similar claims persuasive, and Cano has failed to effectively distinguish these cases. *See Hutchins v. HP Inc.*, 737 F. Supp. 3d 851 (N.D. Cal. 2024) ("*Hutchins I*"); *Hutchins v. HP Inc.*, 767 F. Supp. 3d 912 (N.D. Cal. 2025) ("*Hutchins*

*II*"); *Sievert v. Knight-Swift Transp. Holdings, Inc.*, 780 F. Supp. 3d 870 (D. Ariz. 2025); *Dimou v. Thermo Fisher Sci. Inc.*, No. 23-CV-1732 TWR (JLB), 2024 WL 4508450 (S.D. Cal. Sep. 19, 2024); *Madrigal v. Kaiser Found. Health Plan, Inc.*, No. 2:24-cv-05191-MRA-JC, 2025 WL 1299002 (C.D. Cal. May 2, 2025); *Barragan v. Honeywell Int'l Inc.*, No. 24cv4529 (EP) (JRA), 2024 WL 5165330 (D.N.J. Dec. 19, 2024); *Cain v. Siemens Corp.*, No. 24-8730, 2025 WL 2172684 (D.N.J. July 31, 2025); *McWashington v. Nordstrom, Inc.*, No. C24-1230 TSZ, 2025 WL 1736765 (W.D. Wa. June 23, 2025).

### A. Breach of Fiduciary Duty Claims (Counts I and II)

#### 1. Home Depot acted as a plan fiduciary, and forfeitures constitute plan assets.

To start, a party that is not acting as a fiduciary cannot be said to have breached a fiduciary duty. "In every case charging breach of ERISA fiduciary duty, then, the threshold question is whether the person employed to provide services under a plan was acting as a fiduciary (that is, was performing a fiduciary function) when taking the action subject to complaint." *Hutchins I*, 737 F. Supp. 3d at 860 (citing *Pegram v. Herdrich*, 530 U.S. 211, 226 (2000)) (citation modified). Under ERISA,

> a person is a fiduciary with respect to a plan to the extent (i) he exercises any discretionary authority or [ ] control respecting management of such plan or exercises any authority or control respecting management or disposition of its assets, . . . or (iii) he has any discretionary authority or discretionary responsibility in the administration of such plan.

29 U.S.C. § 1002(21)(A). On the other hand, a "settlor's" decisions involve "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." *Hughes Aircraft Co. v. Jacobson*, 525

U.S. 432, 444 (1999) (citation omitted).

Courts have consistently held that an employer choosing how to allocate forfeited funds is acting in a fiduciary role, while choosing whether to contribute and how to structure the Plan details are inherently settlor functions. *Hutchins I*, 737 F. Supp. 3d at 860; *Madrigal*, 2025 WL 1299002, at *4; *Dimou*, 2024 WL 4508450, at *8. Here, the terms of the Plan expressly allocate these duties such that the Administrative Committee is the fiduciary. "Fiduciary duties consist of such actions as the administration of the plan's assets," and the Administrative Committee had "complete and final discretionary authority to construe the Plan and to determine all questions that [would] arise thereunder." (Doc. 18-1 at 77), *see also Barragan*, 2024 WL 5165330, at *3 (citation modified).

As to the Company, as sponsor of the Plan and as the "Controlling Company," the fiduciary question is a closer call. The Company has the authority to oversee fiduciary duties and allocate responsibilities accordingly. (Doc. 18-1 at 82). Specifically, the Company has the power, in limited circumstances, to "coordinate with such fiduciaries the execution of such authority and responsibility, and the decision of the Controlling Company with respect to such authority and responsibilities will be controlling." (*Id.*) The Plan also conspicuously refers to the Company as the "settlor of the plan." (*Id.* at 78). While most of the control over the fiduciary duties fall to the Administrative Committee, there are at least limited circumstances where the Company can exercise discretionary authority or control over the Plan and its administration. *Compare Madrigal*, 2025 WL 1736765, at *3 (finding control over a plan's administration to be insufficient to classify a company as a fiduciary) *with Dimou*, 2024 WL 4508450, at *7–8 (finding that the company acted as a fiduciary when it shared the plan's administration responsibilities with the committee and had "the sole responsibility for making Plan contributions."). Thus, construing all inferences in Cano's favor, it is plausibly alleged that the Company acted as a fiduciary.

Additionally, forfeited funds reasonably constitute plan assets. "Forfeitures are plan assets if they are property owned by the ERISA plan." *Cain*, 2025 WL 2172684, at *4 (citation modified); *see also Pro. Helicopter Pilots Ass'n v. Denison*, 804 F. Supp. 1447, 1453 (M.D. Ala. 1992) ("[T]he contributions became plan assets subject to ERISA once the wages were deducted from paychecks for deposit into the fund[.]"). Under the terms of the Plan, the "defined contribution plan" includes "any income, expenses, gains, losses and *forfeitures* of accounts of other participants, which may be allocated to such participant's account." (Doc. 18-1 at 16) (emphasis added); *see also Hutchins I*, 737 F. Supp. 3d at 866 (referring to the forfeited amounts as plan assets); *Perez-Cruet v. Qualcomm Inc.*, No. 23-cv-1890-BEN (MMP), 2024 WL 2702207, at *6 (S.D. Cal. May 24, 2024) ("Nonvested contributions fall within the functional definition of assets of the pension plan."). Thus, the forfeited funds are plan assets.

### 2. Home Depot's actions did not constitute a breach of any fiduciary duty.

Cano alleges two breach of fiduciary duty claims—breach of loyalty and breach of prudence. (Doc. 1 at 13–17). To satisfy ERISA's fiduciary duty of loyalty, a fiduciary must act solely in the interest of plan participants and for the exclusive purpose of providing plan participants benefits and defraying their expenses. *See* 29 U.S.C. § 1104(a)(1)(A). And, plan trustees must act with the "care, skill, prudence, and diligence . . . 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). Courts "must give due regard to the range of reasonable judgments a fiduciary may make based on her experience and expertise." *Hughes v. Nw. Univ.*, 595 U.S. 170, 177 (2022). To succeed on a breach of fiduciary duty claim under either theory, a plaintiff must show that "the fiduciary's choice was objectively unreasonable—that it was not one that a prudent fiduciary would also have made." *Pizzaro v. The Home Depot, Inc.*, 111 F.4th 1165, 1177 (11th Cir. 2024).

Here, Cano has not plausibly alleged that Home Depot breached a fiduciary duty of loyalty or prudence to Cano or other Plan participants. First, Cano does not (and cannot) allege that Home Depot violated the terms of the Plan. A fiduciary is required to act "in accordance with the documents and instruments governing the plan insofar as such documents and instruments are consistent with the provisions of [ERISA]." 29 U.S.C. § 1104(a)(1)(D); *see also Fifth Third Bancorp v. Dudenhoeffer*, 573 U.S. 409, 421 (2014). The Plan allowed Home Depot to choose between using forfeited funds for the purpose of offsetting administrative costs or paying contributions to other accounts. (Doc. 18-1 at 42). The benefit Home Depot received from using forfeitures in this way does not constitute a breach. *See Hutchins I*, 737 F. Supp. 3d at 863 ("ERISA does not mandate what benefits an employer must provide under a plan and does no more than protect the benefits which are due to an employee under a plan . . . and Plaintiff does not allege any facts showing that he is entitled to [the payment of his administrative costs].”); *Sievert*, 780 F. Supp. 3d at 880 (classifying “millions of dollars in contribution expenses” as “mere incidental benefits”).

Cano relies on *Rodriguez v. Intuit Inc.*, 744 F. Supp. 3d 935 (N.D. Cal. 2024) for the proposition that similar allegations regarding the use of forfeited funds were sufficient to state a claim for the breach of loyalty. (Doc. 18 at 13). In *Rodriguez,* the plan language provided: “[Forfeitures] shall be applied, at the Company’s election, to: (i) pay [Plan expenses]; (ii) . . . reduce the Participating Employers’ obligation to make Safe Harbor Matching Contributions; and (iii) . . . allocated as Profit Sharing Contributions pursuant to Section 4.7.” 744 F. Supp. 3d at 940–41. The plan did not expressly permit the company to use forfeited funds to offset any other contributions. *Id.* at 944. Therefore, the *Rodriguez* court held that the plaintiff plausibly alleged that the company violated the terms of the plan and breached its fiduciary duty of loyalty. *Id.* Not so here. Section 5.8 of the Plan expressly permits Home Depot to “use such Forfeitures to pay the reasonable administrative expenses of the Plan or may deem such Forfeitures to be Matching or Supplemental Contributions that will first be used to reduce the Participating Companies’ obligation . . . .” (Doc. 18-1 at 42). Home Depot complied with Section 5.8 of the Plan by allocating forfeited funds for matching contributions. *See Wright v. JPMorgan Chase & Co.*, No. 2:25-cv-00525-JLS-JC, 2025 WL 1683642, at *5 (C.D. Cal. June 13, 2025) (“The theories addressed in [*Rodriguez*] and [*Perez-Cruet*] are meaningfully different from that advanced here, as the plaintiffs there alleged that the defendants' use of forfeitures violated the express terms of the plans at issue.").

Second, and more importantly, Cano has not plausibly alleged that Home Depot's use of forfeitures violated ERISA's requirements. While it is true that "following a Plan is not a shield against ERISA's requirement to follow fiduciary duties," ERISA gives discretion to fiduciaries to decide how best to administer the plan for the benefit of the plan participants. *See McManus v. The Clorox Co.*, No. 4:23-CV-05325-YGR, 2024 WL 4944363, at *5 (N.D. Cal. Nov. 1, 2024); *Dudenhoeffer*, 573 U.S. at 422–23. Cano selectively quotes from the statute in arguing that forfeited funds must be used "exclusively" to "defray the expenses charged to participant accounts." (Doc. 18 at 13–14). But the statutory language is more descriptive, requiring fiduciaries to act:

> (A) for the exclusive purpose of: (1) providing benefits to participants and their beneficiaries; and (2) defraying reasonable expenses of administering the plan;
>
> (B) 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; [. . .] and
>
> (D) in accordance with the documents and instruments governing the plan . . . .

29 U.S.C. § 1104(a)(1). This language is far from unequivocal regarding the defrayment of expenses because it qualifies such aim with a requirement that the fiduciary act reasonably prudent under the "circumstances then prevailing" and comply with the plan documents. Thus, a fiduciary is not required to maximize

pecuniary benefits in favor of plan participants in all circumstances. *Lockheed Corp. v. Spink*, 517 U.S. 882, 887 (1996) ("Nothing in ERISA requires employers to establish employee benefit plans. Nor does ERISA mandate what kind of benefits employers must provide if they choose to have such a plan."); *Hutchins I*, 737 F. Supp. 3d at 863 ("[I]t is neither disloyal nor imprudent under ERISA to fail to maximize pecuniary benefits.") (citation omitted). Nor does ERISA require fiduciaries to eliminate administrative costs all together. *See Pizzaro*, 111 F.4th at 1178. Cano has not alleged facts sufficient to demonstrate that the Plan, which permits the allocation of forfeited funds to company contributions, violates ERISA.

Moreover, Cano's theory of relief would frustrate the purposes outlined in ERISA's plain language. As alleged, the only acceptable use of forfeited funds would be to reduce administrative costs to participants. Though Cano suggests that limited circumstances, such as when the "value of forfeitures exceeds the Plan's administrative expenses," would permit use of forfeited funds for uses other than defraying administrative costs, her strict reading removes all discretion, care, prudence, or consideration of the circumstances and the Plan documents from Home Depot's fiduciary decision making. (Doc. 18 at 20 n.2). This is inconsistent with the plain language of the statute. *Hutchins I*, 737 F. Supp. 3d at 862–63; *Barragan*, 2024 WL 5165330, at *5 ("Barragan's broad theory would 'require any fiduciary to use forfeited amounts to pay administrative costs regardless of any such context or circumstances.'"); *McWashington*, 2025 WL 1736765, at *14 ("Plaintiffs' contention allows for no set of circumstances and no context in which a prudent and loyal course of action would be to apply amounts in the ‘forfeiture suspense account’ toward the matching contributions[.]”).

Finally, Home Depot’s actions align with decades of regulatory guidance which speaks to the fiduciary’s required consideration of the “circumstances then prevailing” under § 1104(1)(a)(B). Home Depot relies on Department of Labor guidance and the Conference Report for the Tax Reform Act of 1986, both of which do not condemn the use of forfeitures for employer contributions. (Doc. 15-1 at 25–27); DOL Adv. Op. 79-56A, 1979 WL 7031 (Aug. 9, 1979) (describing circumstances under which “[f]orfeitures are applied to reduce future employer contributions” and providing guidance without any suggestion that such practice would violate ERISA); H.R. Rep. No. 99-841, pt. 2 at 442 (1986) (“[F]orfeitures in a defined contribution plan” can either be (1) “reallocated to the remaining participants” in a nondiscriminatory manner, or (2) “used to reduce future employer contributions or to offset administrative expenses.”). And, Two Treasury regulations, 26 C.F.R. § 1.401-7(a) and 88 Fed. Reg. 12282, address the proper use of forfeited funds under an employee benefit plan.

“The Treasury Department and Congress have long understood that forfeitures in defined contribution plans could be . . . used to reduce future employer contributions, or used to offset administrative expenses of the plan.” *Hutchins I*, 737 F. Supp. 3d at 859 (citation modified); *Sievert*, 780 F. Supp. 3d at 878 (“To find that Defendant’s decision to use forfeited assets to reduce its own contributions is motivated by self-interest and violates its duties of loyalty or prudence would contravene decades of federal regulations suggesting that such a decision is entirely permissible."). 26 C.F.R. § 1.401-7(a) provides that forfeitures "must be used as soon as possible to reduce the employer's contributions under the plan." *See also* 88 Fed. Reg. at 12283, nn.2–3 (describing circumstance where forfeitures are applied to reduce employer contributions and providing guidance without suggesting that such a practice violated ERISA). Though none of these regulations are dispositive, they provide a regulatory framework around employee benefit plans which has not precluded the use of forfeited funds to reduce employer contributions. Given this history, Cano can hardly say that it was unreasonable or imprudent for Home Depot to act both consistently with its own Plan documents and consistently with regulations that have been effective for decades. *See Hutchins I*, 737 F. Supp. 3d at 858–60, 863–64; *Dimou*, 2024 WL 4508450, at *9. For these reasons, Cano has failed to plausibly allege Home Depot breached its fiduciary duties in violation of ERISA.

### B. Anti-Inurement Provision Claim (Count III)

Cano also alleges that Home Depot violated ERISA's anti-inurement provision because it caused the Plan assets to inure to the benefit of itself. (Doc. 1 at ¶¶ 53–57). ERISA's anti-inurement provision provides that "the assets of a plan shall never inure to the benefit of any employer and shall be held for the exclusive purposes of providing benefits to participants in the plan and their beneficiaries and defraying reasonable expenses of administering the plan." 29 U.S.C. § 1103(c)(1). "The [anti-inurement provision] can only be violated if there has been a removal of plan assets for the benefit of the plan sponsor or anyone other than the plan participants." *Aldridge v. Lily-Tulip, Inc. Salary Ret. Plan Benefits Comm.*, 953 F.2d 587, 592 n.6

(11th Cir. 1992) (citation omitted).

Here, Cano has not plausibly alleged a violation of the anti-inurement provision because the forfeited amounts were Plan assets that never left the Plan and were used to pay contribution expenses—not used to pay a "debt," as Cano claims. (Doc. 18 at 20); *Dimou*, 2024 WL 4508450 at *10 ("[A]n employer's voluntary reduction in future contribution is not equivalent to a debt."). Moreover, Home Depot never owed any amounts to the Plan participants prior to the voluntary creation of the Plan, and its actions have consistently followed the Plan's requirements. *Barragan*, 2024 WL 5165330, at *5 ("When a plaintiff 'do[es] not allege that [the defendant] used any of the assets for a purpose other than to pay its obligations to the Plan's beneficiaries, [the defendant] could not have violated the anti-inurement provision.'") (citation omitted). The fact that Home Depot may have also benefited is not dispositive. *Hutchins I*, 737 F. Supp. 3d at 864 (citing *Hughes Aircraft Co. v. Jacobson*, 535 U.S. 432, 445 (1999)) (other citations omitted); *Sievert*, 780 F. Supp. 3d at 880 ("ERISA does not create any duty for a plan sponsor to maximize pecuniary benefits, only to ensure that participants have received the benefits promised to them[.]"). Thus, Cano's anti-inurement provision claim must be dismissed.

### C. Prohibited Transaction Claims (Counts IV and V)

Finally, Cano alleges prohibited transaction claims against Home Depot under both 29 U.S.C. § 1106(a)(1) and (b)(1). (Doc. 1 at ¶¶ 58–68). "In order to allege a violation of § 1106(a)(1) or (b), the plaintiff must allege an unlawful transaction." *Hutchins I*, 737 F. Supp. 3d at 867 (citing *Spink*, 517 U.S. at 888). An unlawful transaction could occur (1) between a plan and a party in interest under 29 U.S.C. § 1106(a), or (2) between a plan and a fiduciary under 29 U.S.C. § 1106(b).

Under § 1106(a)(1), a prohibited transaction occurs when a fiduciary "knows or should know that such transaction constitutes a direct or indirect . . . exchange . . . of any property between the plan and a party in interest . . . or use by or for the benefit of a party in interest, of any assets of the plan." The Supreme Court has emphasized that the types of transactions set forth in Section 1106(a) "are commercial bargains that present a special risk of plan underfunding because they are struck with plan insiders, presumably not at arm's length," and generally involve using plan assets in a way that could harm the plan. *Spink*, 517 U.S. at 892–93. Here, no such bargain risking underfunding is alleged, nor could there be where Home Depot reallocated forfeited funds to contribute to the Plan for the benefit of the Plan participants and beneficiaries. The payment of benefits is not a "transaction." *See id.*; *Sievert*, 780 F. Supp. 3d at 880; *Barragan*, 2024 WL 5165330, at *7.

As to a fiduciary, a fiduciary cannot "deal with the assets of the plan in his own interest or for his own account." 29 U.S.C. § 1106(b)(1). "The purpose of Section 1106(b) is to prevent a fiduciary from being put in a position where he has dual loyalties and, therefore, he cannot act exclusively for the benefit of a plan's participants and beneficiaries." *Barragan*, 2024 WL 5165330, at *7 (citation modified). Cano's prohibited transaction claim under (b)(1) fails for the same reasons as her claim under (a)(1)—"the re-allocation of forfeited nonvested funds does not constitute a 'transaction' governed by ERISA § 406(b)(1)." *McWashington*, 2025 WL 1736765, at

*16. And, without a transaction, there can be no prohibited transaction claim.

### D. Leave to Amend

In the event the Court agreed that Cano fails to state a claim, Cano requests leave to amend her Complaint. (Doc. 18 at 33). Courts "should freely give leave [to amend] when justice so requires." FED. R. CIV. P. 15. The Supreme Court has made clear that "this mandate is to be heeded." *Foman v. Davis*, 371 U.S. 178, 182 (1962). Denial of leave to amend is only appropriate in the following circumstances: (1) where there has been an undue delay, bad faith, dilatory motive, or repeated failures to cure deficiencies by amendments previously allowed; (2) where allowing amendment would cause undue prejudice to the opposing party; or (3) where amendment would be futile. *Bryant v. Dupree*, 252 F.3d 1161, 1163 (11th Cir. 2001).

Here, the Court has reviewed the Plan documents and given Cano the opportunity to address the Court's concerns at oral argument. As in several of the similar suits filed by plan beneficiaries asserting this theory, "[b]ecause the deficiencies of plaintiffs' [ ] claims concerning the allocation of forfeited funds . . . relate to plaintiffs' misinterpretation of the Plan's terms and their reliance on an incognizable theory of liability, the Court is persuaded that amendment would be futile and that leave to amend need not be given." *McWashington*, 2025 WL 1736765, at *15; *see also Wright*, 2025 WL 1683642, at *6–7 ("Plaintiff had the benefit of drafting his Opposition after numerous rulings in similar ERISA cases, yet failed to meaningfully address those rulings[.]"). Here, Cano's claims cannot overcome the plain language of the Plan documents or the weight of authority rejecting her theories of relief. Therefore, because amendment would be futile, Cano's request for leave to amend the Complaint is **DENIED**.

## CONCLUSION

Accordingly, Home Depot's Motion to Dismiss Cano's Class Action Complaint (Doc. 15) is **GRANTED**. The claims against Defendants The Home Depot, Inc. and the Administrative Committee of the Home Depot FutureBuilder are **DISMISSED** for failure to state a claim. Cano also named Does 1 to 10 as defendants in this action but has yet to identify them. "As a general matter, fictitious-party pleading is not permitted in federal court" unless the plaintiff's description of the defendant is very specific. *Richardson v. Johnson*, 598 F.3d 734, 738 (11th Cir. 2010). Thus, Cano is **ORDERED** to file, by **September 9, 2025**, an Amended Complaint alleging facts sufficient to state a claim against Defendants Does 1 to 10, including the identity of these defendants and the basis for jurisdiction in this Court. Failure to file an amended pleading identifying the Doe defendants and alleging facts sufficient to state a claim for relief in this Court will result in dismissal of the Doe defendants.

SO ORDERED, this 26th day of August, 2025.

TIFFANY R. JOHNSON<br>
United States District Judge