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UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

LUIS HERNANDEZ, individually and as representative of a class of participants and beneficiaries and on behalf of the AT&T Retirement Savings Plan, Plaintiff, v. AT&T SERVICES, INC.; and DOES 1-10, inclusive, Defendants.	Case No. 2:25-CV-00676-ODW-PVC **MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF DEFENDANTS' MOTION TO DISMISS** Hon. Otis D. Wright II Hearing Date: June 16, 2025 Time: 1:30 p.m. Courtroom: 5D

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INTRODUCTION

Plaintiff is a participant in the 401(k) plan that AT&T Inc. sponsors to help employees save for retirement. In this lawsuit, Plaintiff seeks the payment of benefits beyond what the plan promises by claiming that the plan's administrator, Defendant AT&T Services, Inc. ("AT&T Services"), has an obligation to apply forfeited employer contributions to cover plan expenses. This theory seeks to impose obligations that are inconsistent with the plan document, ERISA, and decades of Treasury Department regulations. Plaintiff's attempt to rewrite the plan's terms through this lawsuit fails as matter of law.

Affiliates of AT&T Inc., the parent company of AT&T Services, make contributions to 401(k) plan participant accounts to help boost the participants' savings. When participants leave the company before the end of a vesting period, they keep their own contributions, but the employer contributions are forfeited. Forfeitures in 401(k) plans are relatively common, and Treasury Department regulations permit forfeitures to be used to reduce employer contributions or to pay plan administrative expenses. The governing document for the AT&T 401(k) plan specifically addresses what will happen to forfeited funds, in line with those rules: It instructs that forfeitures will be used "to reduce Employer Contributions next coming due, and/or to fund Employer Corrective Contributions, and/or to pay expenses incident to the administration of the Plan and Trust." Following the Treasury Department's guidance, "countless" employers have for decades drafted their plan documents and handled forfeitures in the same exact way as the AT&T plan by applying forfeited funds to reduce employer contributions. *Hutchins v. HP Inc.*, 2025 WL 404594, at *8 (N.D. Cal. Feb. 5, 2025) ("*Hutchins II*").

Now, contrary to the express language of the plan and that long-standing Treasury Department-endorsed practice, Plaintiff contends that forfeitures *must* be used to pay plan expenses and *cannot* be used to reduce employer contributions. Plaintiff is jumping on a bandwagon of cookie-cutter plan forfeiture challenges recently brought against dozens of large plans.[1] As in those cases, he alleges that using forfeitures to reduce employer contributions breaches ERISA's fiduciary duties of prudence and loyalty, violates ERISA's "anti-inurement" provision, and constitutes prohibited transactions under ERISA. But as multiple courts have concluded in dismissing analogous claims, Plaintiff's theories of liability do not work.

Start with Plaintiff's fiduciary breach claim. The Complaint's threadbare factual allegations reflect nothing more than faithful adherence to the lawful terms of the plan document and Treasury Department rules, precluding any inference of a fiduciary breach. Plaintiff is ultimately attacking the plan design decision to permit forfeitures to be applied to employer contributions—but that is a *settlor* decision, not a fiduciary one. Plaintiff cannot use a fiduciary breach claim as a back door to create an entitlement to have plan administrative expenses paid by his employer, when the plan document explicitly contemplates that *participants* will be responsible for paying expenses. Because the Complaint does not plausibly allege that AT&T Services acted as a fiduciary in applying forfeitures to contributions, the fiduciary breach claim in Count I is a non-starter.

Plaintiff's other claims are equally meritless. Plaintiff's anti-inurement claim in Count II fails because reallocating forfeitures as employer contributions does not violate ERISA's anti-inurement provision. The funds never leave the plan, and thus do not "inure" to the sponsor's benefit. They are used solely to provide benefits to participants, as the anti-inurement rule requires. Plaintiff's prohibited transaction claim in Count III fails because the decision to apply forfeitures to reduce employer

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[1] Plaintiff's counsel alone has filed half a dozen such cases in the last eight months—often (as in this case) ignoring the plain language of the plan document permitting the use of forfeitures to reduce employer contributions. *See, e.g.*, *Wright v. JPMorgan Chase*, No. 2:25-cv-525 (C.D. Cal. Jan. 21, 2025); *Shulak v. BMO 401(k) Sav. Plan*, No. 2:24-cv-9615 (C.D. Cal. Nov. 6, 2024); *Matula v. Wells Fargo & Co.*, No. 24-cv-03703 (D. Minn. Sept. 19, 2024); *Becerra v. Bank of Am.*, No. 5:24-cv-1697 (C.D. Cal. Aug. 9, 2024); *Madrigal v. Kaiser Found. Health Plan*, No. 2:24-cv-5191 (C.D. Cal. June 20, 2024).

contributions rather than pay administrative expenses is not a fiduciary decision, and because the reallocation of forfeitures within the plan does not involve a covered "transaction" between the plan and a fiduciary or other "party in interest." Count IV's failure to monitor claim fails for multiple reasons, including because it is a derivative claim that cannot survive without a plausible underlying fiduciary breach claim, which the Complaint does not provide.

The Complaint should be dismissed in its entirety.

BACKGROUND[2]

I. The AT&T Retirement Savings Plan.

Plaintiff is a participant in the AT&T Retirement Savings Plan (the "Plan"), a defined contribution plan subject to ERISA. Compl. ¶¶ 5–6. Two distinct AT&T entities are involved with the Plan: (i) AT&T Inc., a holding company and Plan sponsor, established the Plan to help eligible employees save for retirement, and (ii) Defendant AT&T Services is the "Plan Administrator." Compl. ¶ 7; Ex. A, Plan Document[3] §§ 1.1, 1.3, 3.1(89)–(90).[4]

Members of the "AT&T Controlled Group"—affiliates and subsidiaries of AT&T Inc.—are participating employers in the Plan. Plan Document § 16.1. The Plan is funded through contributions from participants and their participating employers. Compl. ¶ 12. Plan participants may elect to make their own

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[2] All "Ex." cites are to the exhibits attached to the accompanying declarations of Gary Hanson (Exs. A–D) and William Pollak (Exs. E–I). Unless otherwise noted, all internal quotations and citations are omitted.

[3] All citations and references to the "Plan Document" refer to Ex. A, the plan document effective January 1, 2020. Unless otherwise noted, the cited provisions of the 2020 Plan Document are essentially identical to the prior version of the Plan document, Ex. B, effective January 1, 2018.

[4] Courts routinely consider plan documents in connection with a motion to dismiss where, as here, the plan is central to the Plaintiff's claims and therefore incorporated by reference into the complaint. *See Hutchins v. HP Inc.*, 737 F. Supp. 3d 851, 858 (N.D. Cal. 2024) ("*Hutchins I*") (plan document incorporated by reference in case concerning allocation of forfeitures because plan document "form[ed] the basis of Plaintiff's claims"); *see also Wehner v. Genentech, Inc.*, 2021 WL 507599, at *3 (N.D. Cal. Feb. 9, 2021) (considering plan document on motion to dismiss).

contributions to the Plan, and those contributions vest immediately. *Id.* ¶ 13; Plan Document § 9.1.1. To assist participants in building their retirement savings, participating employers provide matching contributions in various amounts based on factors including the employer, the employee's role, and their hire date. Plan Document §§ 5.2.1–5.2.11. Participating employers also may exercise their discretion to make additional "nonelective contributions"—contributions made regardless of whether an employee makes any contributions of his or her own—in "any amount." *Id.* § 5.3.1. From 2019 through 2023, participating employers contributed well over $3 billion to the Plan to fund participant benefits. *See* Exs. E to I, 2019–2023 Form 5500s, at Sched. H, Part II, line 2(a)(1)(A).[5]

II. Plan Forfeitures.

Under the Plan, employer contributions generally vest in their entirety after an employee has completed three years of service. Compl. ¶ 13; Plan Document § 9.1.2. If a participant leaves employment before contributions fully vest, those contributions are forfeited. Compl. ¶ 14; Plan Document § 9.4. The Plan Document explains how such forfeitures will be used:

> **USE OF FORFEITURES**. Amounts that are forfeited under Section 9.4 or elsewhere under the Plan during a Plan Year will be applied in a manner determined by the Plan Administrator to reduce Employer Contributions next coming due, and/or to fund Employer Corrective Contributions, and/or to pay expenses incident to the administration of the Plan and Trust.

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[5] The Complaint expressly relies on the Plan's Form 5500s filed with the Department of Labor, *see* Compl. ¶¶ 17–19, and courts routinely take judicial notice of Form 5500s because they are publicly available filings with the federal government. *See Hutchins I*, 737 F. Supp. 3d at 858 (taking judicial notice of Form 5500 filings in forfeiture case); *see also Michael v. Blue Cross of Cal.*, 2020 WL 4586967, at *3 (C.D. Cal. Aug. 7, 2020); *Almont Ambulatory Surgery Ctr., LLC v. UnitedHealth Grp., Inc.*, 99 F. Supp. 3d 1110, 1125–26 (C.D. Cal. 2015).

Plan Document § 9.5.[6] The Plan further explains that, if a participant rejoins a participating employer within five years, the forfeited amounts will be restored, subject to certain conditions. *Id.* § 9.6. Any amounts to be restored "will be charged against and deducted from forfeitures for the Plan Year in which such amounts are restored that would otherwise be applied pursuant to Section 9.5." *Id.*

III. Plan administrative expenses.

The operation of a retirement plan "involves expenses for basic administrative services—such as plan recordkeeping, accounting, legal and trustee services—that are necessary for administering the plan as a whole," and plans may choose to offer a variety of additional services as well, such as customer service support, educational seminars, and investment advice. U.S. Dep't of Labor, Understanding Retirement Plan Fees and Expenses, at 2 (Sept. 2021), http://tinyurl.com/DOLFeesAndExpenses. Expenses incurred in administering a plan may be paid by the employer from its own assets, if the employer so chooses, or charged to the plan. *See id.*

The Plan also includes provisions explaining how administrative expenses will be handled. The Plan Document provides that "[a]ll expenses incident to the administration of the Plan and Trust . . . will be paid by the Trustee from the Trust," except "to the extent such expenses are paid by the Employer." Plan Document § 14.3.3. When expenses are paid from the Plan, AT&T Services is responsible for determining "which expenses are to be charged to and paid from Participants' individual Accounts, which expenses are to be charged to and paid from the Accounts of all Participants (and how they are to be allocated among such Accounts), and which expenses are to be charged to and paid from the Accounts of one or more identified groups of Participants (and how they are to be allocated

[6] This language was added to the Plan through an amendment effective January 1, 2019, and has been in effect throughout the relevant period. *See* Ex. C (Second Amendment to the AT&T Retirement Savings Plan (as Amended and Restated effective January 1, 2018)); *see also* 29 U.S.C. § 1113(1) (six-year statute of repose for ERISA claims).

among such Accounts).” *Id.* § 14.3.4. The Summary Plan Description explains this practice to participants: “Under the Plan, *all expenses incurred to administer and operate the Plan and Trust are charged to participants*, either directly to their accounts or through the Plan’s Trust or investment funds, in accordance with administrative procedures established by the Plan Administrator.” Ex. D, July 2024 Summary Plan Description (“SPD”) at 56 (emphasis added).[7]

IV. The tax rules regarding the use of retirement plan forfeitures.

The Plan Document’s terms regarding the use of forfeitures align with long-standing rules under the Tax Code and related Treasury Department regulations.

The Tax Code sets out various requirements that, if satisfied, qualify a retirement plan for preferential tax treatment. Among other things, to be “tax-qualified,” a plan must satisfy minimum vesting standards—i.e., participants must obtain a nonforfeitable right to employer contributions after a period of service. 26 U.S.C. §§ 401(a)(7), 411(a). For defined benefit plans, the Code further instructs that “forfeitures must not be applied to increase the benefits any employee would otherwise receive under the plan.” 26 U.S.C. § 401(a)(8).

In 1963, the Treasury Department promulgated a regulation expounding on these provisions. The regulation precludes the use of forfeitures to increase the benefits any employee would otherwise receive and instructs that forfeitures instead “must be used as soon as possible to reduce the employer’s contributions under the plan,” though plans may “anticipate the effect of forfeitures in determining costs under the plan.” 26 C.F.R. § 1.401-7(a).

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[7] The Court may consider this SPD because, as “a statutorily required summary of the Plan’s benefits,” it is an ERISA plan document subject to judicial notice. *Fisher v. Secchitano*, 2020 WL 1068873, at *6 (D. Or. Feb. 3, 2020); *see also Tobias v. NVIDIA Corp.*, 2021 WL 4148706, at *4-5 (N.D. Cal. Sept. 13, 2021) (taking judicial notice of SPD); *Alas v. AT&T, Inc.*, 2018 WL 6133645, at *1 n.2 (C.D. Cal. July 18, 2018); *Terraza v. Safeway Inc.*, 241 F. Supp. 3d 1057, 1067 (N.D. Cal. 2017) (same).

The core teaching of the regulation—that it is appropriate to use forfeitures to reduce employer contributions—has remained a constant ever since. For example, in a 1971 Revenue Ruling, the IRS explained that profit-sharing and stock bonus plans—types of defined contribution plans like the Plan—"may provide that forfeitures be used to reduce employer contributions that otherwise would be required under the contribution formula contained in the plan." Rev. Ruling 71-313, 1971-2 C.B. 203, 1971 WL 26693 (1971). The Tax Reform Act of 1986 amended the code to establish uniform forfeiture rules for all defined contribution plans, and the accompanying House Conference Report reflects the understanding that all defined contribution plans may use forfeitures "to reduce future employer contributions or administrative costs." H.R. Rep. No. 99-841, Vol. II at 442 (1986).[8] The IRS expressed the same view in a 2010 newsletter addressing the timing for allocating defined contribution plan forfeitures, explaining that under Revenue Ruling 84-156, "forfeitures may be used to pay for a plan's administrative expenses and/or to reduce employer contributions," and citing section 1.401-7(a)'s instruction "that forfeitures must be used as soon as possible to reduce employer contributions." 2010 Newsletter of the Employee Plans Office of the IRS Tax Exempt & Govt. Entities Div., at 4–5 (Ret. News for Employers, Vol. 7, Spring 2010), https://www.irs.gov/pub/irs-pdf/p4278.pdf.

Consistent with its prior guidance, in 2023, the Treasury Department issued proposed regulations that would amend section 1.401-7 to "clarify that forfeitures arising in any defined contribution plan . . . may be used for one or more of the following purposes, as specified in the plan: (1) to pay plan administrative expenses, (2) to reduce employer contributions under the plan, or (3) to increase

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[8] Before the amendments, the rules for money purchase plans were different from those for other defined contribution plans with respect to whether and in what circumstances forfeitures could be used to increase benefits for remaining participants. *See* H.R. Rep. No. 99-841, Vol. II at 442. Both before and after the change, the law permitted all defined contribution plans to use forfeitures to reduce employer contributions. *See id.*

benefits in other participants' accounts in accordance with plan terms." Use of Forfeitures in Qualified Retirement Plans, 88 Fed. Reg. 12282, 12283 (Feb. 27, 2023); *see id.* at 12285 (proposed amendments). The Department explained that "nothing in the proposed regulations would preclude a plan document from specifying only one use for forfeitures," though a plan might allow forfeitures to be used in multiple ways to avoid the possibility of an operational failure if forfeitures exceeded the amount that could be used for a single purpose in a given year. *Id.* at 12284.

V. Plaintiff's claims.

The Complaint asserts four causes of action, all based on the central contention that AT&T Services violated ERISA by using forfeitures to reduce employer contributions rather than to pay administrative expenses charged to participant accounts. Compl. ¶ 15. Plaintiff asserts claims for:

i. breach of ERISA's fiduciary duties, 29 U.S.C. § 1104(a)(1)(A), (B), (D) (Count I),

ii. violation of ERISA's "anti-inurement" provision, 29 U.S.C. § 1103(c)(1) (Count II),

iii. violation of ERISA's prohibited transaction provisions, 29 U.S.C. § 1106(a), (b) (Count III), and

iv. failure to monitor the individuals with responsibility for allocating forfeited funds (Count IV).

Id. ¶¶ 35–57.

LEGAL STANDARD

Under Federal Rule of Civil Procedure 12(b)(6), a complaint must be dismissed if it does not "contain sufficient factual matter, accepted as true, to 'state a claim to relief that is plausible on its face.'" *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007)); *see Depot, Inc. v. Caring for Montanans, Inc.*, 915 F.3d 643, 652 (9th Cir. 2019). To withstand a motion to dismiss, the complaint must demonstrate "more than a sheer possibility that a defendant has acted unlawfully." *Iqbal*, 556 U.S. at 678. Whether a complaint states a plausible claim is a context-specific inquiry, and conclusory allegations and assertions devoid of factual support are insufficient. *Id.* at 678–79. The Supreme Court has emphasized that motions to dismiss are an "important mechanism[] for weeding out meritless claims" in the ERISA class-action context in particular. *Fifth Third Bancorp v. Dudenhoeffer*, 573 U.S. 409, 425 (2014).

ARGUMENT

Plaintiff's claims are based on the novel position that use of forfeitures to reduce employer contributions *necessarily* violates ERISA, because it "benefits" the employer. That position cannot be reconciled with decades of Treasury Department guidance expressly permitting plans to use forfeitures in precisely the way Plaintiff contends ERISA prohibits, decades of industry practice adhering to those instructions, and the plan document here. Plaintiff's sweeping theories of liability, which rest on allegations that could be made against countless plans, do not state a plausible claim for relief.

I. Count I fails to state a claim for breach of fiduciary duty.

A. Plaintiff's fiduciary breach claim fails because it challenges a non-fiduciary, "settlor" decision.

In Count I, Plaintiff alleges that the use of forfeitures to reduce employer contributions rather than pay Plan administrative expenses breached various fiduciary duties under ERISA. *See* Compl. ¶¶ 36–38. Plaintiff's claim fails at the outset because the Complaint does not plausibly allege that the decision Plaintiff challenges was made in a fiduciary, rather than settlor, role.

Under ERISA, a person can be a fiduciary with respect to a plan for some purposes but not for others. Fiduciary status attaches only "to the extent" that a person is performing a fiduciary function. 29 U.S.C. § 1002(21)(A)(i); *see Lockheed Corp. v. Spink*, 517 U.S. 882, 890 (1996). As a result, the "threshold question" for any fiduciary breach claim is whether the defendant "was acting as a fiduciary (that is, performing a fiduciary function) when taking the action subject to complaint." *Pegram v. Herdrich*, 530 U.S. 211, 225–26 (2000).

Plaintiff's claim for breach of fiduciary duty fails out of the gate because it is well established that decisions about what benefits an employer will offer, including which administrative expenses (if any) it will pay, are not fiduciary decisions. *See Hughes Aircraft Co. v. Jacobson*, 525 U.S. 432, 444 (1999) (decisions about "who is entitled to receive Plan benefits and in what amounts" are settlor functions); *Spink*, 517 U.S. at 890 (decisions about "plan design" are not "subject to fiduciary review"). Rather, those decisions are matters of plan design, made in a "settlor" capacity. *See, e.g.*, *Hughes Aircraft*, 525 U.S. at 444; *Loomis v. Exelon Corp.*, 658 F.3d 667, 671 (7th Cir. 2011) (employer's decision to "cover [plan] expenses" using employer assets "is a question of plan design," not a fiduciary decision). Thus, when AT&T Inc. as the plan sponsor set the Plan's terms regarding forfeitures, it acted as a settlor of the Plan, not a fiduciary. AT&T Inc. also acted as a settlor in setting the Plan's terms regarding employer contributions, payment of Plan administrative expenses, and allocation of expenses to participant accounts. And the participating employers acted in a non-fiduciary role in deciding whether to pay Plan administrative expenses, either directly from their own funds or by the allocation of forfeitures for that purpose, which in turn would require the employers to pay additional funds into the Plan as contributions. By claiming that AT&T Services should have disregarded the terms of the Plan and reallocated forfeitures for his own benefit, Plaintiff is thus challenging the Plan's design—a non-fiduciary settlor function.

Plaintiff attempts to characterize allocation of forfeitures as a fiduciary decision by alleging that the Plan allows forfeitures to be used in multiple ways, which Plaintiff contends shows there is an exercise of fiduciary discretion in choosing among them. *See* Compl. ¶¶ 8, 16. Not only is that theory contrary to established principles regarding settlor and fiduciary roles, but it also ignores the remainder of the Plan Document and how the broader context informs interpretation of the forfeiture provision. As the court explained in dismissing similar claims in *Hutchins II*, any apparent fiduciary discretion with respect to the allocation of forfeitures under the plan document in that case was restricted by other provisions reflecting the sponsor's "complete and unfettered discretion [over] whether an expense of the Plan or Trust shall be paid by" the sponsor or by participants. 2025 WL 404594, at *4. Examining the provisions as a whole, the court concluded that the plan sponsor "*acting as settlor* determines whether, in a given year, Plan expenses will be paid by [the sponsor] or charged to Plan participants' accounts," and then the plan administrator "*acting as fiduciary* implements the allocation of the forfeitures." *Id.* As a result, the plan administrator could use forfeitures to pay administrative expenses only if the settlor "decided that year that the Plan administrator should use at least some forfeitures to pay Plan expenses." *Id.*

The same logic follows under the terms of the Plan here, which directs that "[a]ll expenses incident to the administration of the Plan and Trust" will be paid from the Trust—and, specifically, allocated to participant accounts—unless "such expenses are paid by the Employer." Plan Document §§ 14.3.3, 14.3.4. In doing so, the Plan underscores that the employer alone (and not AT&T Services as Plan Administrator) decides whether an expense will not be charged to participant accounts; absent an affirmative decision by the employer to cover expenses, participants pay them.[9] When expenses are paid from the Plan Trust, AT&T Services' options are to charge those expenses (1) to "Participants' individual Accounts," (2) to "the Accounts of all Participants," or (3) to "the Accounts of one

[9] While the plan in *Hutchins II* directly stated that "the Company shall have complete and unfettered discretion whether an expense of the Plan or Trust shall be paid by the" employer or by participants, the effect of the Plan Document provisions here regarding payment of expenses and allocation of those expenses to participant accounts is substantively the same. Moreover, as the *Hutchins* court recognized in citing *Hughes Aircraft*, decisions about "who is entitled to receive Plan benefits and in what amounts" are by their very nature settlor functions. *See Hutchins II*, 2025 WL 404594, at *4 (citing *Hughes Aircraft*, 525 U.S. at 444).

or more identified groups of Participants." *Id*. § 14.3.4. The Plan's expense provisions render implausible Plaintiff's reading of the forfeiture provision to give AT&T Services open-ended discretion to use forfeitures to pay expenses the Plan Document instructs should be charged to participants unless the employer voluntarily decides to pay them. *See Vaught v. Scottsdale Healthcare Corp. Health Plan*, 546 F.3d 620, 626 (9th Cir. 2008) ("In interpreting the terms of an ERISA plan[,] we examine the plan documents as a whole."); *Johnson v. Am. United Life Ins. Co.*, 716 F.3d 813, 820 (4th Cir. 2013) (meaning of ERISA plan provisions must be determined in the context of the plan as a whole); *Carr v. First Nationwide Bank*, 816 F. Supp. 1476, 1493 (N.D. Cal. 1993) (explaining that an interpretation of the plan that "gives a reasonable, lawful and effective meaning to all terms is preferred to one which leaves any part unreasonable or of no effect"). Because the Plan "cannot fairly be read to delegate the decision over whether to increase benefits to the fiduciary," *Hutchins II*, 2025 WL 404594, at *7, Plaintiff's fiduciary breach claim never gets off the ground.

B. The Complaint does not plausibly allege a breach of fiduciary duty.

Even if the choice among the uses of forfeitures were a fiduciary decision, Count I still would fail because the Complaint does not plausibly allege a breach of fiduciary duty.

ERISA requires fiduciaries to "discharge [their] duties with respect to a plan solely in the interest of the participants and beneficiaries." 29 U.S.C. § 1104(a)(1). The duty of loyalty further requires fiduciaries to act "for the exclusive purpose of: (i) providing benefits to participants and their beneficiaries, and (ii) defraying reasonable expenses of administering the plan." *Id.* § 1104(a)(1)(A). The duty of prudence, meanwhile, requires fiduciaries 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[.]" *Id.* § 1104(a)(1)(B).

ERISA also requires fiduciaries to discharge their duties "in accordance with the documents and instruments governing the plan." *Id.* § 1104(a)(1)(D).

The Complaint does not state a claim for breach of the duty of loyalty because it does not plausibly allege that AT&T Services acted for any purpose other than providing benefits and defraying reasonable expenses in carrying out its duties. Allocating forfeitures to participant accounts as employer contributions *is* using those funds to "provid[e] benefits to participants," exactly as the duty of loyalty requires. 29 U.S.C. § 1104(a)(1); *see Hughes Aircraft*, 525 U.S. at 442 ("exclusive purpose" rule "focuses exclusively on whether fund assets were used to pay pension benefits to plan participants"); *Hutchins II*, 2025 WL 404594, at *6 (dismissing loyalty claim and noting forfeitures "were used—as required—to 'provid[e] benefits to participants and their beneficiaries'" (quoting 29 U.S.C. § 1104(a)(1)(A)(i))).

Plaintiff's claim is premised on the duty of loyalty going further to demand that fiduciaries maximize the amount of employer funding coming into a plan, but neither the duty of loyalty nor anything else in ERISA "require[s] a fiduciary to resolve every issue of interpretation in favor of plan beneficiaries" or "create[s] an exclusive duty to maximize pecuniary benefits." *Wright v. Or. Metallurgical Corp.*, 360 F.3d 1090, 1100 (9th Cir. 2004); *see Hutchins I*, 737 F. Supp. 3d at 863; *Dimou v. Thermo Fisher Sci. Inc.*, 2024 WL 4508450, at *9 (S.D. Cal. Sept. 19, 2024). Nor does the mere suggestion "of a possible conflict of interest automatically amount[] to a breach of ERISA's fiduciary duty of loyalty." *Hutchins II*, 2025 WL 404594, at *5; *see Wehner v. Genentech, Inc.*, 2021 WL 2417098, at *11 (N.D. Cal. June 14, 2021) (the "potential for a conflict, without more, is not synonymous with a plausible claim of fiduciary disloyalty"). To state a disloyalty claim, a plaintiff instead must allege facts plausibly suggesting that the defendant acted "*for the purpose of* (rather than merely having the effect of) benefitting" someone other than participants. *Sacerdote v. N.Y. Univ.*, 2017 WL 3701482, at *6 (S.D.N.Y. Aug. 25, 2017); *see Munro v. Univ. of S. Cal.*, 2019 WL 4543115, at *2 (C.D. Cal. Aug. 27, 2019).

Plaintiff's allegations do not meet that standard. The proposed inference of disloyalty at the heart of Plaintiff's claim is implausible in light of the Plan's express instruction that administrative expenses will be charged to participants unless the employer elects to pay them. *See* Plan Document §§ 14.3.3, 14.3.4. Plaintiff's proposed rule would not only permit AT&T Services to use forfeitures to pay administrative expenses but *require* it to use all forfeitures for that purpose—an approach that would flip on its head the Plan's default rule that expenses are charged to participants. A plan "fiduciary is not authorized to provide Plan participants with more benefits than the Plan documents set out," yet that is what would occur if forfeitures were broadly applied to pay administrative expenses that the sponsor and participating employers intended participants to bear. *Hutchins II*, 2025 WL 404594, at *6; *see also U.S. Airways, Inc. v. McCutchen*, 569 U.S. 88, 100 (2013) (explaining "ERISA's principal function" is "to protect contractually defined benefits").

Plaintiff's claim of imprudence also has no substance. In effect, Plaintiff asks the Court to infer that AT&T Services did not use appropriate care when allocating forfeitures because, in Plaintiff's view, any prudent fiduciary would have felt compelled to maximize participant balances by using forfeitures to reduce expenses charged to participant accounts. As the court explained in *Hutchins*, the very breadth of Plaintiff's theory of imprudence "makes it implausible," as it again fails to account for the circumstances surrounding the challenged decision—context that is essential to the prudence inquiry. *Hutchins I*, 737 F. Supp. 3d at 862 (citing *Dudenhoeffer*, 573 U.S. at 425); *see also Hutchins II*, 2025 WL 404594, at *6; *Barragan v. Honeywell Int'l Inc.*, 2024 WL 5165330, at *5 (D.N.J. Dec. 19, 2024). The context here includes a Plan Document that explicitly authorizes use of forfeitures to reduce employer contributions, decades of Treasury Department guidance endorsing that approach, and a Plan provision instructing that all administrative expenses will be charged to participant accounts unless an employer chooses to pay them. Plan Document §§ 9.5, 14.3.3, 14.3.4; *see Hutchins II*, 2025 WL 404594, at *7 (dismissing imprudence claim in light of similar plan expense provision, which made implausible theory that "forfeitures must always be used to pay Plan participants' administrative expenses before they can be allocated to reducing a company's matching contributions"). The Complaint does no more than "simply *speculating* that an ERISA fiduciary might not have conducted the requisite inquiry," *Hutchins II*, 2025 WL 404594, at *8, which does not suffice.

Beyond the duties of loyalty and prudence, the Complaint also makes a passing allegation that AT&T Services violated the duty to act in accordance with the terms of the Plan by "using forfeited Plan assets in violation of Plan terms." Compl. ¶ 38. The Complaint, however, nowhere identifies any Plan provision that Plaintiff alleges was violated. To the contrary, the Plan expressly permits use of forfeitures to reduce employer contributions, *see supra* at 7, which is how Plaintiff alleges forfeitures were used under the Plan, *see* Compl. ¶ 15. The Complaint does not state a viable claim for failure to follow the terms of the Plan.[10]

II. Count II does not state a claim under ERISA's anti-inurement provision.

Plaintiff's claim that the use of forfeitures to reduce employer contributions violates ERISA's anti-inurement provision also must be dismissed, because it misunderstands what the anti-inurement rule does—and does not—prohibit. Under ERISA's anti-inurement provision, with limited exceptions, "the assets of a plan

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[10] The absence of any plausible allegation that AT&T Services used forfeitures in a way that contravened the Plan's instructions distinguishes this case from *Rodriguez v. Intuit Inc.*, where the court concluded the plaintiff stated a claim based on allegations that "the Plan did not authorize the specific decisions made by Intuit with respect to the use of forfeited Matching Contributions" because the Plan allegedly limited the types of "Matching Contribution" forfeitures could be applied to reduce. 744 F. Supp. 3d 935, 944 (N.D. Cal. 2024); *see also Perez-Cruet v. Qualcomm Inc.*, 2024 WL 2702207, at *2 (S.D. Cal May 24, 2024) (denying motion to dismiss where complaint alleged that use of forfeitures violated the plan document); *see Hutchins II*, 2025 WL 404594, at *6 (distinguishing *Rodriguez* on this basis and dismissing fiduciary breach claims).

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 rule is found in ERISA § 403, titled "Establishment of Trust," which "contains structural rules for holding plan assets." *Dupree v. Prudential Ins. Co. of Am.*, 2007 WL 2263892, at *44 (S.D. Fla. Aug. 7, 2007), *as amended* (Aug. 10, 2007). By its terms, the anti-inurement rule "focuses exclusively on whether fund assets were used to pay pension benefits to plan participants." *Hughes Aircraft*, 525 U.S. at 442; *see Raymond B. Yates, M.D., P.C. Profit Sharing Plan v. Hendon*, 541 U.S. 1, 22 (2004). The rule's objective is to "'protect participants' expected payments' by preventing employers from diverting funds to themselves." *Maez v. Mountain States Tel. & Tel., Inc.*, 54 F.3d 1488, 1506 (10th Cir. 1995).

Consistent with its text and purpose, the anti-inurement rule can be violated only "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); *see Krohnengold v. N.Y. Life Ins. Co.*, 2022 WL 3227812, at *11 (S.D.N.Y. Aug. 10, 2022) (dismissing anti-inurement claim where plaintiffs did not allege any "reversion or diversion of Plan assets" to the plan sponsor). An anti-inurement violation might occur, for example, if there is "a reversion of surplus assets to an employer at a plan's termination pursuant to a plan provision." *Maez*, 54 F.3d at 1506. But if all assets remain *in* the plan and "[t]here is no allegation that the assets were used in any way other than to pay benefits to participants and beneficiaries and to pay reasonable administrative expenses," then there is no anti-inurement problem. *Id.*; *see also Holliday v. Xerox Corp.*, 732 F.2d 548, 549, 551 (6th Cir. 1984) (affirming dismissal of anti-inurement claim based on "the transfer of funds from one pension account to another within the company's pension plan").

The Supreme Court's decision in *Hughes Aircraft* illustrates the point. There, the plan sponsor used surplus pension plan assets attributable in part to contributions by former employees to fund additional benefits to certain eligible active employees through an early retirement program. *Hughes Aircraft*, 525 U.S. at 436. The plaintiffs alleged that, by doing so, the sponsor improperly used the surplus assets for its "sole and exclusive benefit" (to secure lower labor costs) and thereby violated the anti-inurement provision. *Id.* at 441. The Supreme Court disagreed, explaining that because the plaintiffs did not "allege that [the plan sponsor] used any of the assets for a purpose other than to pay its obligations to the Plan's beneficiaries," the sponsor "could not have violated the anti-inurement provision." *Id.* at 442–43.

Plaintiff's anti-inurement claim fails because, as in *Hughes Aircraft*, the Complaint does not plausibly allege that forfeitures were removed from the Plan or used for any purpose other than paying benefits to participants or defraying reasonable expenses. Courts have dismissed analogous anti-inurement claims for this very reason, explaining that "allocation of forfeitures to reduce the employer's matching contribution does not implicate the anti-inurement provision because the forfeitures remain part of the Plan's trust funds and are used to benefit plan beneficiaries." *Dimou*, 2024 WL 4508450, at *10 (quoting *Hutchins I*, 737 F. Supp. 3d at 864–65); *see Barragan*, 2024 WL 5165330, at *6 (same); *Naylor v. BAE Sys., Inc.*, 2024 WL 4112322, at *7 (E.D. Va. Sept. 5, 2024) (same). As those decisions correctly recognize, so long as "fund assets were used to pay pension benefits to plan participants," it is immaterial that the plan sponsor may have indirectly or incidentally benefited from the use of the assets within the plan. *Hughes Aircraft*, 525 U.S. at 442, 445; *see also Flanigan v. Gen. Elec. Co.*, 242 F.3d 78, 87–88 (2d Cir. 2001); *Holliday*, 732 F.2d at 550.

III. Plaintiff's prohibited transaction claims in Count III fail for multiple reasons.

Plaintiff's prohibited transaction claims likewise suffer from critical pleading deficiencies that require dismissal. ERISA § 406, 29 U.S.C. § 1106, supplements the general fiduciary duties imposed under ERISA § 404, 29 U.S.C. § 1104, by setting forth "certain types of transactions between a plan and other parties that are per se prohibited" absent an exemption. *Kanawi v. Bechtel Corp.*, 590 F. Supp. 2d 1213, 1222 (N.D. Cal. 2008). Section 406(a) bars fiduciaries from causing the plan to enter into a range of transactions with a "party in interest," 29 U.S.C. § 1106(a)—a term broadly defined to include, for example, any fiduciary, any person providing services to the plan, any employer whose employees are covered by the plan, and any employee, officer, or director of a participating employer. *See* 29 U.S.C. § 1002(14). Section 406(b) prohibits various transactions that involve fiduciary "self-dealing"—*i.e.*, a fiduciary's use of plan assets for its *own* benefit, rather than that of some other party in interest. *See* 29 U.S.C. § 1106(b).

The Complaint alleges violations of three prohibited transaction provisions. Plaintiff asserts that, by allocating forfeitures to reduce employer contributions, AT&T Services "caused the Plan to engage in transactions that constituted a direct or indirect exchange of existing Plan assets for future employer contributions and/or a use of Plan assets by or for the benefit of a party interest," in violation of ERISA § 406(a)(1)(A) and (D), and "dealt with the assets of the Plan in [its] own interest and in [its] own account," in violation of ERISA § 406(b)(1).

Plaintiff's prohibited transaction claims fail at multiple steps. First, by their express terms, ERISA § 406(a) and (b) govern only fiduciary conduct. *See* 29 U.S.C. § 1106(a)(1) ("A fiduciary with respect to a plan shall not cause the plan to engage in a transaction[.]"); *id.* § 1106(b) ("A fiduciary with respect to a plan shall not …."); *see also Spink*, 517 U.S. at 891; *Wright*, 360 F.3d at 1100–01; *Flanigan*, 242 F.3d at 87. As discussed above, the Complaint does not plausibly allege that use of forfeitures to reduce employer contributions rather than pay administrative expenses was a fiduciary choice. *See supra* at 12–15. For that reason, the challenged forfeiture-allocation decision cannot form the basis for any prohibited transaction liability. *See Naylor*, 2024 WL 4112322, at *7 (dismissing prohibited transaction claims based on allocation of forfeitures for lack of relevant fiduciary status).

Second, the Complaint does not identify any "transaction that falls within § 1106(a)(1) or (b)," as it must to state a prohibited transaction claim. *Wright*, 360 F.3d at 1101 (citing *Spink*, 517 U.S. at 888). The challenged use of forfeitures to reduce employer contributions entails nothing more than reallocation of funds *within the Plan*; it does not involve any "transaction" between the Plan and a party in interest or fiduciary. *See, e.g.*, *Liao v. Fisher Asset Mgmt., LLC*, 2024 WL 4351869, at *5 (N.D. Cal. Sept. 30, 2024) (dismissing forfeiture-allocation-based prohibited transaction claim and holding "redistribution within a plan does not constitute a 'transaction'"); *Black v. Greater Bay Bancorp Exec. Supplemental Comp. Benefits Plan*, 2017 WL 8948732, at *8–9 (N.D. Cal. Jan. 18, 2017) (holding that use of funds available to satisfy one plan benefit to fund a different plan benefit was not a "transaction"); *Chao v. Hagemeyer N. Am., Inc.*, 2006 WL 8443663, at *6 (D.S.C. Oct. 20, 2006) (concluding "exchanges or 'reallocations' between accounts of plan participants" were not "transactions").

Even if reallocation of funds within the Plan could somehow be construed as a "transaction" between the Plan and someone else, it still would not be the type of transaction that is barred by ERISA § 406. As the Supreme Court has explained, the prohibited transaction rules are designed to prohibit "commercial bargains" that "are potentially harmful to the plan" "because they are struck with plan insiders, presumably not at arm's length." *Spink*, 517 U.S. at 893; *see Wright*, 360 F.3d at 1101. Payment of plan benefits—even if subject to conditions like waiver of employment-related claims—is not a "transaction" within the meaning of section 406, because it does not share the characteristics common to the "transactions" barred by that provision. *Spink*, 517 U.S. at 893–94. The same is true when forfeitures are allocated to participant accounts as employer contributions, as multiple courts have concluded in dismissing claims materially indistinguishable from those asserted here. *See Hutchins II*, 2025 WL 404594, at *8 (citing *Spink* and dismissing prohibited transaction claims based on use of forfeitures to reduce employer contributions); *Hutchins I*, 737 F. Supp. 3d at 868 (same); *Barragan*, 2024 WL 5165330, at *7 (same); *Dimou*, 2024 WL 4508450, at *10 (same).

IV. The Complaint does not state a derivative claim for failure to monitor fiduciary appointees in Count IV.

Plaintiff's claim in Count IV that AT&T Services breached its duty to monitor unidentified "fiduciaries to whom it delegated responsibility for Plan management" (Compl. ¶ 56) fails for multiple reasons. First, and dispositively, Plaintiff's failure to plausibly allege any claim for breach of fiduciary duty requires dismissal of the derivative monitoring claim. *See Partida v. Schenker Inc.*, 2024 WL 1354432, at *9 (N.D. Cal. Mar. 29, 2024); *Patterson v. Cap. Grp. Cos.*, 2018 WL 748104, at *6 (C.D. Cal. Jan. 23, 2018); *White v. Chevron Corp.*, 2017 WL 2352137, at *22 (N.D. Cal. May 31, 2017), *aff'd*, 752 F. App'x 453 (9th Cir. 2018).

Second, there are no well-pled allegations that AT&T Services appointed or delegated relevant fiduciary responsibility to another entity or person. *See* Compl. ¶ 54. Absent an appointment or delegation, which the Complaint does not plausibly allege, there can be no corresponding duty to monitor. *See Bowers v. Russell*, 717 F. Supp. 3d 165, 175–76 (D. Mass. 2024) (duty to monitor stems from power to appoint fiduciaries); *Kling v. Fid. Mgmt. Tr. Co.*, 323 F. Supp. 2d 132, 142 (D. Mass. 2004) (same).

Third, the Complaint does not contain a single factual allegation regarding AT&T Services' process for monitoring the unidentified fiduciary appointees or delegees, much less allegations identifying any defect in any such processes. A failure-to-monitor claim requires more than simply pointing to some underlying alleged breach and tossing in the conclusion that a defendant "failed to monitor other fiduciaries." *Bartnett v. Abbott Labs.*, 492 F. Supp. 3d 787, 797-98 (N.D. Ill.

2020) (granting motion to dismiss duty-to-monitor claim based only on actions taken by the appointee); *In re Calpine Corp.*, 2005 WL 1431506, at *6 (N.D. Cal. Mar. 31, 2005) (similar); *see also Whyte v. City of San Diego*, 2022 WL 17491178, at *2 (S.D. Cal. Dec. 7, 2022) ("'Threadbare recitals of the elements of a cause of action, supported by mere conclusory statements, do not suffice.'" (quoting *Iqbal*, 556 U.S. at 678)).

CONCLUSION

The Court should dismiss the Complaint in its entirety.

Dated: April 4, 2025

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

The undersigned, counsel of record for Defendant, certifies that this brief contains 6,981 words, which complies with the word limit of L.R. 11-6.1.

Date: April 4, 2025

/s/ Catalina Vergara
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CERTIFICATE OF SERVICE

I certify that on April 4, 2025, I electronically filed the foregoing with the Clerk of Court using CM/ECF, which automatically services all counsel of record for the parties who have appeared.

Dated: April 4, 2025

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