No. 25-4235

IN THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

DANIEL J. WRIGHT,

Plaintiff-Appellant,

v.

JPMORGAN CHASE & CO., ET AL.,

Defendants-Appellees.

On Appeal from the United States District Court for the
Central District of California
Case No. 2:25-cv-00525-JLS-JC

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

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TABLE OF CONTENTS

TABLE OF AUTHORITIES

Page(s)

Federal Cases

Federal Statutes

Rules

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." *See Sec'y of Lab. v. Fitzsimmons,* 805 F.2d 682, 691–93 (7th Cir. 1986) (en banc). To that end, the Secretary has an interest in effectuating ERISA's express purpose of "establishing standards of conduct, responsibility, and obligation for fiduciaries of employee benefit plans." *See* 29 U.S.C. § 1001(b).

Here, Plaintiff-Appellant Daniel Wright ("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 pay benefits for remaining participants 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).

STATEMENT OF THE CASE

A. Factual Background

Plaintiff is a participant in the JPMorgan Chase 401K Savings Plan (the "Plan"), a defined contribution, individual account plan sponsored by Defendants JPMorgan Chase & Co and JPMorgan Chase Bank, N.A. (together, "JPM" or "Bank"). ER-29, 92 (Plan §§ 1.10, 12.3); ER-276 (Compl. ¶ 5–6). The Plan Administrator is the named fiduciary that administers the Plan. ER-28 (Plan § 1.1). The reasonable expenses of administering the Plan may be charged to the accounts of each participant unless JPM, as the Plan's settlor, determines "[in] its discretion" that it will pay or cause to be paid by a Participating Company any such expense. ER-64 (Plan § 6.9).

The Plan is funded by deferred contributions from Plan participants as well as matching contributions from JPM, both of which are deposited into the Plan's trust fund. ER-277 (Compl. ¶ 13). The Plan provides for three types of employer contributions: mandatory matching contributions, discretionary contributions, and profit-sharing contributions. ER-51–52, 54–58 (Plan §§ 4.4, 4.11, 4.14).

All three types of JPM's contributions are subject to a three-year cliff vesting schedule, meaning that a participant must remain employed by JPM or a

Participating Company for three years to be vested in JPM's contributions. ER-65–66 (Plan § 7.2); ER-277 (Compl. ¶ 14). If a participant experiences a five-year break in service prior to the full vesting of JPM's contributions, the participant forfeits the balance of JPM's unvested contributions in the participant's individual Plan account. ER-83 (Plan § 10.6); ER-277 (Compl. ¶ 15).

The Plan Administrator has control over how those forfeited contributions are allocated, with the Plan providing that forfeited amounts "shall reduce future contributions of the Participating Company from which the forfeited contribution originated or such Participating Company's share of Plan expenses not paid directly by the Plan;" however, "if no future contributions are anticipated to be made by such Participating Company, such forfeitures shall reduce future contributions of the Bank or the Bank's share of Plan expenses not paid directly by the Plan." ER-53 (Plan § 4.6).

B. Proceedings Below

Plaintiff filed suit in 2025 in the United States District Court for the Central District of California seeking to represent a class of participants and beneficiaries of the Plan. Plaintiff alleged that each year from 2019 until 2023, Defendants violated ERISA by deciding to use forfeited funds to pay their future employer contributions rather than reducing the participants' administrative expenses or otherwise allocating the funds to participants' accounts. ER-277–78 (Compl. ¶¶ 16,

18). The complaint alleged four causes of action: (1) breach of fiduciary duty in violation of 29 U.S.C. § 1104(a); (2) inurement in violation of 29 U.S.C. § 1103(c); (3) prohibited transactions in violation of 29 U.S.C. § 1106; and (4) failure to monitor fiduciaries. ER-281–85 (Compl. ¶¶ 32–54).

Defendants moved to dismiss all claims, and the district court granted the motion. *See* ER-4. First, the district court rejected Defendants' argument that Plaintiff lacked constitutional standing, holding that Plaintiff's allegation that Defendants' forfeitures decision diminished his account balance and reduced his investment returns alleged a sufficient injury in fact. ER-7–8. Further, Plaintiff's injury was redressable because if he were to prevail, the court would order Defendants to restore the misused funds to Plaintiff's account. ER-8.

The district court held, however, that Plaintiff failed to state a claim as to each count in the complaint. ER-9–16. As to Plaintiff's claim for breach of fiduciary duty, the district court held that the Plan does not give Defendants the discretion to use forfeited funds to pay administrative expenses that would otherwise be covered by the Plan. ER-11. The plain language of Section 4.6 only permits the use of forfeitures to reduce the employer's future contributions or to pay Plan expenses that would otherwise be paid by the employer. ER-11. If there are no such expenses, then the forfeitures shall be used for the Bank's future contributions or share of expenses. *Id.* Thus, the district court concluded,

Defendants were not permitted to use Plan forfeitures to pay administrative expenses that were otherwise the responsibility of the Plan, and Plaintiff failed to state a claim. ER-11–12.

In the alternative, the district court held that even if the Plan did allow the use of forfeitures advocated by Plaintiff, Plaintiff did not plausibly plead that Defendants breached ERISA's fiduciary duties by failing to use forfeitures to pay the Plan's share of the administrative expenses. ER-12–13. Relying on the district court's opinions in *Hutchins v. HP, Inc.*, 737 F. Supp. 3d 851 (N.D. Cal. 2024) ("*Hutchins I*") and 767 F. Supp. 3d 912 (N.D. Cal. 2025) ("*Hutchins II*"), the court rejected Plaintiff's theory, which the court concluded amounted to a requirement that, given the option between applying forfeitures to administrative expenses or using them to reduce employer contributions, a fiduciary must always choose to pay administrative expenses. *Id.* The court explained that not only did Plaintiff's theory ignore Supreme Court precedent stating that "the plausibility of allegations of breach of fiduciary duty is a 'context specific' inquiry dependent on the particular circumstances but it also ignored that ERISA does not require fiduciaries to 'maximize pecuniary benefits' but rather functions to 'protect contractually defined benefits.'" ER-12 (citing *Wright v. Or. Metallurgical Corp.*, 360 F.3d 1090, 1100 (9th Cir. 2004); *US Airways, Inc. v. McCutchen,* 569 U.S. 88, 100 (2013)). Because Plaintiff did not allege that he or any other participant did not

receive the promised benefits, the court determined he failed to state a claim under ERISA. ER-13. The court also noted that holding otherwise would contravene decades of Treasury regulations that stated that it was permissible to use forfeitures to reduce employer contributions. *See id.*.

Plaintiff argued that Section 6.9 of the Plan gives JPM the discretion to allocate administrative expenses to itself and that the exercise of this discretion was a fiduciary function guided by the fiduciary duties of loyalty and prudence rather than a settlor function of plan design. The district court rejected this argument in a footnote but did not engage with the distinction between settlor and fiduciary functions. *See* ER-11, n.3. The district court also assumed without deciding that Defendants acted as fiduciaries in deciding how to allocate forfeitures under Section 4.6. *See* ER-9, n.2.

The district court also dismissed Plaintiff's other claims. The court held that Plaintiff failed to state a claim for inurement because the complaint did not allege that the forfeited assets left the Plan or that they were used for a purpose other than the payment of benefits under the Plan. ER-14. And Plaintiff failed to state a claim for prohibited transactions because none of Plaintiff's allegations involved a prohibited transaction under ERISA. *See* ER-15–16. Finally, the court dismissed Plaintiff's claim for failure to monitor fiduciaries since it was derivative of the claim for fiduciary breach. *See* ER-16. The district court also denied Plaintiff leave

to amend the complaint, holding that amendment would be futile, and dismissed the claims with prejudice.[1] ER-16–17.

SUMMARY OF THE ARGUMENT

Plaintiff's allegations are insufficient to state a claim for breach of fiduciary duty. The Plan permits the fiduciary to use forfeited contributions to offset employer contributions or pay the employer's share of the Plan's administrative expenses. As the district court correctly held, the plain terms of the Plan do not give the fiduciary the discretion to use forfeitures to pay administrative expenses otherwise paid by the Plan or to otherwise make allocations to participants' accounts. And design of the Plan in this manner was a settlor decision not subject to ERISA's fiduciary duties. Similarly, while Section 6.9 of the Plan allows Defendants to allocate some portion of the administrative expenses to the participating employer or to the Bank, a decision to increase an employer's share of expenses in order to utilize forfeitures for these expenses and decrease participants' expenses would be a settlor decision regarding plan funding and

[1] The Secretary of Labor believes the district court properly dismissed Plaintiff's claims for violation of ERISA's anti-inurement provision (29 U.S.C. § 1103(c)(1)), violation of ERISA's prohibited transactions provision (29 U.S.C. § 1106), and failure to monitor. The Secretary omits further discussion of these claims because the district court's analysis and Defendant's arguments adequately address these claims.

design and thus could not be compelled by the fiduciary in charge of determining how forfeitures are used.

Moreover, even if Plaintiff were correct that the Plan language allows Defendants to use forfeited amounts to pay expenses otherwise paid out of participants' Plan accounts, Plaintiff's bare allegations that failing to use forfeitures for that purpose was imprudent and put Defendants' 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 including the risks to the plan that using forfeitures to cover expenses rather than contributions might entail. Plaintiff's theory here 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 JPM 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 or otherwise allocate funds to participants' accounts.

ARGUMENT

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

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

The district court did not engage with the parties' arguments about whether and when JPM was acting as a fiduciary and when it was performing a settlor function. Rather, the district court assumed without deciding that JPM acted as a fiduciary in allocating forfeited amounts.

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*. "Funding a plan is a settlor function," reserved for the plan sponsor. *Petroff v. Ret. Benefit Plan of Am. Airlines, Inc.*, No. LACV1402866, 2015 WL 13917970, at *14 (C.D. Cal. July 28, 2015); *see also Coulter v. Morgan Stanley & Co. Inc.*, 753 F.3d 361, 367 (2d Cir. 2014) ("'Settlor' functions . . . include conduct such as establishing, funding, amending, or terminating a plan . . . [and] decisions relating to the timing and amount of contributions." (citations omitted)). 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 Section 4.6 of the Plan. Forfeited amounts are still Plan assets, *see* ER-277, 283, and Section 4.6 gives the Plan Administrator discretion to use those assets either to reduce future employer contributions *or* to reduce the employer's share of Plan expenses not paid directly by the Plan.

However, the decision-making regarding whether JPM or the Plan would pay Plan expenses provided for in Section 6.9 of the Plan does not involve authority or control over plan assets but rather concerns the amount of funding the Plan will receive from the employer or the Bank—a quintessential settlor decision. ER-64 (Plan § 6.9) ("[T]he Bank may at its discretion elect to pay, or cause to be paid by the Participating Companies, any of such costs, fees and expenses."); *see Loomis v. Exelon Corp.*, 671 (7th Cir. 2011), *abrogated on other grounds by Hughes v. Nw. Univ.,* 63 F.4th 615 (7th Cir. 2023) (stating decision of "whether to cover [plan] expenses is a question of plan design, not of administration"). Appellant's Opening Brief recognizes as much, acknowledging that under Section 6.9, "the employer *may elect to pay*" administrative costs of the Plan. *See* Opening Br. for Pl.-Appellant, Dkt. 20.1 at 24 [hereinafter "Appellant's Br."] (emphasis added); *see also id.* at 35–36 ("Section 6.9 confirms that plan administrative costs may otherwise be charged to participant accounts *unless the employer elects to pay them*." (emphasis added)).

Fiduciary conduct implicates control or authority over Plan assets, and decision-making under Section 6.9 only implicates the assets of the employer or the Bank. *See* Employee 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."); *see also* Appellant's Br. at 5 ("[O]nce employee and employer contributions *are deposited,* they become Plan assets." (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,* 6 F.3d 1192, 1207 (10th Cir. 2005) (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

To survive a motion to dismiss, the plaintiff must allege "enough facts to state a claim to relief that is plausible on its face." *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007). A plaintiff must allege facts sufficient to "raise a right to relief above the speculative level." *Id*. at 555. "[A]llegations that are merely conclusory, unwarranted deductions of fact, or unreasonable inferences" will not

suffice to state a claim. *In re Gilead Scis. Sec. Litig.*, 536 F.3d 1049, 1055 (9th Cir. 2008) (internal quotation marks and citations omitted).

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 the Defendants "placed their interests above the interests of Plan participants and beneficiaries" by "cho[osing] to apply forfeited Plan assets to decrease future employer contributions, instead of using those funds for the benefit of Plan participants." ER-281 (Compl. ¶ 33). Plaintiff's opening brief confirms that Plaintiff's sole argument is that JPM breached its duty of loyalty because it "repeatedly" chose to use forfeitures to offset future employer contributions. Appellant's Br. at 30–31; *see also id.* at 36 ("Those factual allegations—consistent selection of the employer-benefiting option, while participants bore administrative charges that forfeitures could have offset—state a classic loyalty claim.").

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 Defendants "failed to engage in a reasoned and impartial decision making process" in deciding how to allocate forfeitures and "failed to consider whether participants would be better served by another use of these Plan assets after considering all relevant factors." ER-281–82. Plaintiff's brief on appeal relies on the "consisten[cy]" of the Plan Administrator's decision as the only basis for its claim for breach, asking the court to infer that the Plan Administrator's consistent use of forfeitures, "year after year," to offset employer contributions means the Plan fiduciary failed to use an adequate decision-making process. Appellant's Br. at 38.

Here, however, as the district court correctly observed, there is no allegation that the fiduciary's administration of the Plan caused participants and beneficiaries to receive less than the full contribution promised by JPM under the Plan. *See Wright*, 360 F.3d at 1100 ("ERISA does no more than protect the benefits which are due to an employee under a plan." (quoting *Bennett v. Conrail Matched Sav. Plan Admin. Comm.,* 168 F.3d 671, 677 (3d Cir. 1999))); *see also US Airways*, 569 U.S. at 100 ("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)).

Plaintiff's bald statement that "repeatedly" applying forfeitures to decrease future employer contributions is a breach of the duty of loyalty and the conclusory assertion that the fiduciary employed an insufficient process, do not "move the needle on his claim from 'speculative' to 'plausible.'" *Hutchins II*, 767 F. Supp. 3d at 925.

This is especially true because Plaintiff's fiduciary breach claim ignores the constraints on the fiduciary's decision-making that are evident from the face of the complaint and the Plan terms. Plaintiff has not identified any expenses that were "not paid directly by the Plan" and thus eligible for to be paid with forfeitures under the Plan. *See* ER-53 (Plan § 4.6). To the extent Plaintiff alleges that by using Plan forfeitures to pay administrative expenses the Plan Administrator could have compelled the sponsor to increase its contributions, Plaintiff misunderstands the boundary between settlor and fiduciary functions. *See* ER-278, 282 (Compl. ¶¶ 18, 36) (arguing that the fiduciary's forfeiture allocation "reduc[ed] Plan assets" and "caused the Plan to receive fewer future employer contributions than it would otherwise received"). As detailed above, setting the amount the sponsor contributes to the Plan (either directly as contributions or indirectly through the sponsor's payment of expenses that would otherwise be borne by the Plan) is a settlor

function solely within the sponsor's control, and cannot be dictated by a fiduciary's decision. *See Glazing Health & Welfare Fund v. Lamek*, 896 F.3d 908, 910 (9th Cir. 2018); *Thondukolam v. Corteva, Inc.*, No. 19-CV-03857, 2020 WL 1984303, at *2 (N.D. Cal. Apr. 27, 2020); *Petroff*, 2015 WL 13917970, at *14. The Plan Administrator cannot compel the sponsor to increase its contributions simply by making a forfeiture allocation decision.

The Plan Administrator's forfeiture allocation decision is therefore more constrained than Plaintiff admits. Under the plain language of the Plan, the Plan Administrator could only use forfeitures to pay Plan expenses if the Bank allocated some portion of the administrative expenses either to the Participating Company or to itself in the first instance, a decision over which the Plan Administrator has no control. Even if the Bank assumed responsibility for more of the administrative expenses of the Plan, allocating forfeitures to cover those expenses would leave a funding shortfall unless the sponsor agreed to pay more to the Plan for its contributions—another decision within the control of the sponsor not the Plan Administrator.

The risk of shortfall is also present even reading the Plan, as Plaintiff posits, to permit the fiduciary to use forfeitures to pay expenses that would otherwise be paid by the Plan through charges to participant accounts. In such a scenario, a fiduciary who uses forfeitures to pay expenses would still face the need to

somehow obtain additional employer contributions from the plan sponsor or face a funding shortfall.

Faced with risk of a funding shortfall, the Plan Administrator would either have to allocate the forfeitures to cover unpaid employer contributions (as the Administrator did here) or engage in a potentially protracted legal dispute using Plan assets to obtain the full amount of contributions from the sponsor. During such a dispute, participants could lose out on the timely payment of these contributions and any interest they would earn thereon. The sponsor could also amend the Plan, in its settlor capacity, to reduce its employer contributions in the future to match its chosen funding level and offset any losses from the one-time forfeiture dispute. These risks are not present if the fiduciary uses the forfeitures to offset future employer contributions.

The competing arguments about Plan interpretation in this case underscore the uncertainty and legal risk for a plan that engages in such a dispute with its sponsor. For example, the district court interpreted Section 4.6 of the Plan as foreclosing the possibility of allocating forfeitures to reduce Plan expenses. *See* ER 10-12. Plaintiff, on the other hand, argues that reading Section 4.6 in the context of Sections 6.9 and Sections 12.10 creates the option for Defendants to pay Plan administrative expenses not formally allocated to the Bank or the employer. *See* Appellant's Br. at 17–20 (arguing that Plan sections 4.6, 6.9, and 12.10 must be

read together to allow forfeitures to be used to pay Plan administrative expenses).[2] There is no fiduciary duty to litigate this dispute.

The types of risks outlined above 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 (Feb. 1, 2008) ("In determining what collection actions to take, a fiduciary should weigh the value of the plan assets involved, the likelihood of a successful recovery, and the expenses expected to be incurred."). Yet Plaintiff makes no factual allegations that support an inference that the fiduciary failed to engage in this inquiry while determining how to allocate Plan forfeitures and the consequences of such a dispute.

Protecting participants' contractually promised benefits—like the employer contributions that could be jeopardized by Plaintiff's proposed course of action—is ERISA's principal function. *See US Airways*, 569 U.S. at 100–01 (2013); *Wright*,

[2] Further adding to the uncertainty and legal risk is the fact that Plaintiff's own interpretation of these Plan provisions seems to have evolved since he briefed this matter before the district court. Before the district court, for example, Plaintiff argued that the Bank's option to allocate administrative expenses to the employer or to itself was a fiduciary decision to be made in conjunction with its decision under Section 4.6. *See* Opposition to Motion to Dismiss at 12–13, *Wright*, No. 25-cv-00525 (C.D. Cal. 2025), ECF No. 37. As noted above, in contrast, Appellant's opening brief appears to acknowledge that only the decision to allocate forfeitures pursuant to Section 4.6 is a fiduciary function of the Plan Administrator, while the assignment of administrative expenses under Section 6.9 is at the discretion of the employer. *See* Appellant's Br. at 22–28, 36.

360 F.3d at 1100; *Spink*, 517 U.S. at 887. With this principle in mind, the fiduciary's decision, as pleaded by the Plaintiff here, does not support a plausible claim for breach of fiduciary duty. Indeed, it is entirely likely that the fiduciary made its forfeiture allocation decision with "care, skill, prudence, and diligence" and acted with the "exclusive purpose of . . . providing benefits to participants and their beneficiaries," by ensuring that participant accounts were timely credited with the contributions owed under the terms of the Plan. It may well have been neither prudent nor loyal to imperil the timely receipt of benefits guaranteed by the Plan document with a potentially prolonged, expensive, and futile legal dispute with the sponsor. *See* 29 U.S.C. § 1104(a)(1). Considering the context of the Plan Administrator's decision, the complaint contains no factual allegations to state a plausible claim that the fiduciary's decision was disloyal or imprudent. *See Fifth Third Bancorp v. Dudenhoeffer*, 573 U.S. 409, 425 (2014) (noting in the context of a motion to dismiss that "[b]ecause the content of the duty of prudence turns on 'the circumstances . . . prevailing' at the time the fiduciary acts . . . the appropriate inquiry will necessarily be context specific").

CONCLUSION

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

Respectfully submitted,

Date: January 8, 2026

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UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

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Signature s/ *Sarah M. Karchunas*___ **Date** _January 8, 2026__

CERTIFICATE OF SERVICE

I hereby certify that on this day, January 8, 2026, I electronically filed the foregoing amicus brief with the Clerk of the Court for the U.S. Court of Appeals for the Ninth Circuit by using the ACMS system. I certify that all participants in this case are registered ACMS users and that service will be accomplished by the ACMS system.

/s/ *Sarah M. Karchunas*
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