UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

EDMUND ANG, et al.,

Plaintiffs,

v.

FRANKLIN RESOURCES, INC., et al.,

Defendants.

Case No. 25-cv-06130-VC

ORDER DENYING FRANKLIN DEFENDANTS' MOTION TO DISMISS; GRANTING IN PART AND DENYING IN PART GALLAGHER'S MOTION TO DISMISS

Re: Dkt. Nos. 62, 64

The Franklin Defendants' motion to dismiss is denied. Gallagher's motion to dismiss is granted as to the claims predating the amendment of the Plan in 2023 and denied as to the remaining claims. This order assumes the reader's familiarity with the facts of the case, the parties' arguments, and the applicable law.

Pre-2023 Amendment Claims. The complaint plausibly alleges that, in the period prior to the amendment of the Plan in 2023, the relevant Franklin Defendants breached their fiduciary duties under ERISA by loading the Plan's investment options with Franklin-affiliated funds. *See* 29 U.S.C. §§ 1104(a)(1)(A) (duty of loyalty), (a)(1)(B) (duty of prudence).[1] The Franklin Defendants point to the fact that the independent fiduciary appointed in 2023, Gallagher, chose to keep on the three funds that the plaintiffs highlight as some of the worst-performing affiliated funds (the Franklin Income Fund, the Franklin Growth Fund, the Templeton Foreign Fund).

[1] The plaintiffs bring claims against Franklin as well as two internal Franklin committees associated with the Plan: (1) the Investment Committee, which oversaw the Plan's investment policy prior to the 2023 amendment and was disbanded thereafter; and (2) the Plan Committee, which served as the Plan's administrator after the 2023 amendment. *See* Franklin Mot. at 3–4.

According to the Franklin Defendants, Gallagher's independent retention of these funds shows that the Franklin Defendants' earlier decision to retain the funds was not disloyal or imprudent. But the terms of the Plan required Gallagher to retain certain funds, including these three funds, unless doing so would constitute a violation of ERISA. The plaintiffs have plausibly alleged that the way this requirement was implemented resulted in Gallagher not complying with its fiduciary duties under ERISA. Given the plausible allegation that Gallagher also breached its fiduciary duties by retaining the funds, Gallagher's decision to retain the funds carries little weight in validating the Franklin Defendants' pre-2023 decision to retain them.

The Franklin Defendants also argue that the plaintiffs' performance analysis is hindsight based and relies on inappropriate benchmarks. But analyzing the past performance of a fiduciary's chosen investments is an acceptable way to establish a breach of duty of prudence claim, so long as that analysis uses meaningful benchmarks. *See Anderson v. Intel Corporation Investment Policy Committee*, 137 F.4th 1015, 1022 (9th Cir. 2025), *cert. granted*, 2026 WL 120679 (U.S. Jan. 16, 2026). In fact, the plaintiffs stick closely to the guidance in *Anderson*. *See id.* at 1023 (discussing how the plaintiffs should have "present[ed] a comparison to Intel's composite benchmarks or to available funds with similar risk-mitigation strategies and objectives"). For example, for the Franklin Income Fund, the plaintiffs use Franklin's own customized benchmark, as well as specific comparator funds with similar investment goals. *See* Amended Complaint ¶¶ 61–62, 65; *see also id.* ¶¶ 69–71, 73 (Franklin Growth Fund); *id.* ¶¶ 77–79, 81 (Templeton Foreign Fund).

Moreover, the claim here is not simply that the Franklin Defendants used an imprudent process, as evidenced by the poor performance of the funds. The plaintiffs plausibly allege that the Franklin Defendants included affiliated funds in the investment menu so that Franklin would earn more investment management fees, and that a fiduciary acting primarily in the interest of Plan participants would not have included these funds. The underperformance allegations are therefore just one part of the plaintiffs' theory, which is also bolstered by allegations about the overall poor quality of the affiliated funds and their relatively high fees. Considering these

allegations in their totality, the plaintiffs have alleged enough to raise the inference that the Franklin Defendants breached their fiduciary duties under ERISA.

Finally, the Franklin Defendants argue that the presence of affiliated funds in the Plan is not enough to plausibly demonstrate disloyalty or imprudence. But the plaintiffs don't allege that the mere inclusion of affiliated funds violates ERISA. Rather, as described above, they allege that the Franklin Defendants prioritized Franklin's interest in earning investment management fees over choosing sound investments for the Plan. The argument that ERISA permits the inclusion of affiliated funds is therefore not responsive to the allegations. More on point are the Franklin Defendants' arguments about why the Plan's investment menu does not necessarily reflect an improper process, notwithstanding the high number of affiliated funds. But those arguments go to the inferences the Court should make from the alleged facts about the unpopularity, poor ratings, and high fees of the affiliated funds. They don't, as the Franklin Defendants claim, render the allegations in the complaint implausible.

The complaint does not plausibly allege that Gallagher had any relevant involvement with the Plan prior to its appointment as an independent fiduciary in 2023. Thus, Gallagher's motion to dismiss is granted as to those claims. If discovery reveals that Gallagher played a role in the choice of investment options prior to its appointment, the plaintiffs can always seek leave to amend the complaint.

Post-2023 Amendment Claims. The plaintiffs have also plausibly alleged that the relevant Franklin Defendants and Gallagher breached their fiduciary duties after September 21, 2023, when Franklin amended the terms of the Plan to make two key changes: (1) twenty-one affiliated funds (the "Flagship Funds") were required to be offered to Plan participants; and (2) Gallagher was retained as the "Flagship Fund Independent Fiduciary" and given the exclusive responsibility to monitor the Flagship Funds and determine whether those funds could be retained in the Plan consistent with ERISA.

Both the Franklin Defendants and Gallagher suggest that the context of this "independent fiduciary structure" requires the plaintiffs to satisfy a higher pleading standard. *See* Franklin

Mot. at 15; Gallagher Mot. at 8. But they also acknowledge that the terms of a plan cannot lower the fiduciary responsibilities mandated by ERISA. *See Fifth Third Bancorp v. Dudenhoeffer*, 573 U.S. 409, 412 (2014). To the extent the Plan terms (or the guidelines implementing the terms) purported to modify the fiduciary duties imposed by ERISA, the law is clear that the fiduciary duties have be prioritized over the duty to follow plan terms. *See id.* at 421 ("[T]he duty of prudence trumps the instructions of a plan document."); *see also* 29 U.S.C. § 1104(a)(1)(D) (requiring fiduciaries to follow plan documents only to the extent they "are consistent with the provisions of this subchapter"). Assume instead that the Plan terms did not attempt to limit the fiduciaries' duties under ERISA in any way. Under this scenario, if retaining any funds would violate ERISA, the terms themselves dictate that the funds should not be retained. In other words, the fact that the Plan requires the retention of certain funds doesn't tell us anything about whether retaining them was consistent with ERISA. *See Dudenhoeffer*, 573 U.S. at 420 (rejecting that "the content of ERISA's duty of prudence varies depending upon the specific nonpecuniary goal set out in an ERISA plan"). The relevant question is whether the fiduciary review process used fell short of what ERISA requires. The plaintiffs plausibly allege that it did.[2]

Additionally, the Franklin Defendants and Gallagher assert that the independent fiduciary structure limits their responsibility after 2023. Gallagher asserts that it had a limited mandate to review the performance of the Flagship Funds such that it was not required to "determine whether each fund was appropriate based on the total fund lineup." Gallagher Mot. at 12. Franklin, for its part, asserts it is not responsible because under ERISA, trustees who hire an independent 3(38) fiduciary are not "liable for the acts or omissions of such investment manager." 29 U.S.C. § 1105(d)(1). At this stage, it is not clear whether the independent fiduciary

[2] With respect to the post-2023 period, Gallagher makes similar arguments as the Franklin Defendants' arguments as to the pre-2023 period, such as criticizing the plaintiffs' choice of benchmarks. These arguments are rejected for the reasons already stated. Gallagher also argues that the plaintiffs have not alleged that it profited from the inclusion of the Flagship Funds. But that is not the standard—the ERISA duty of loyalty requires fiduciaries to act solely in the interests of Plan beneficiaries. *See* 29 U.S.C. § 1104(a)(1)(A). The plaintiffs allege Gallagher violated this duty by placing Franklin's interests above those of Plan beneficiaries.

structure permissibly allocated responsibility amongst the named fiduciaries—especially given that both the Franklin Defendants and Gallagher disclaim responsibility for monitoring the overall plan portfolio—and whether each fiduciary complied with the duties it did have. In light of these issues and the plaintiffs' plausible allegations that at least some funds were improperly retained, the defendants' argument that neither of them is responsible must be rejected.[3]

As discussed at the hearing, it is unclear whether the independent fiduciary structure itself violates ERISA. The Franklin Defendants argue that Franklin was executing a non-fiduciary function when it adopted the independent fiduciary structure. *See Hughes Aircraft Co. v. Jacobson*, 525 U.S. 432, 444, (1999) ("decision[s] 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" do not implicate ERISA's fiduciary duty requirement); *see also Lockheed Corp. v. Spink*, 517 U.S. 882 (1996) (involving challenge to plan amendment establishing early retirement program). To the extent the adoption of the independent fiduciary structure was an attempt to circumvent fiduciary responsibilities under ERISA, it is not clear that it would be fairly characterized as the type of decision *Hughes* and *Spink* contemplated as non-fiduciary actions. In any event, the plaintiffs don't challenge the "act of amending." *Hughes Aircraft Co.*, 525 U.S. at 438, 444. Rather, they allege that the structure, as well as the way the structure was implemented, resulted in a fiduciary review process that violated ERISA.

Monitoring Claims. The plaintiffs have adequately pleaded a claim against Franklin for violating the duty to monitor its appointed fiduciaries. The plaintiffs adequately allege that the Investment Committee violated ERISA before the 2023 amendment, and that Gallagher violated

[3] Section 1105(d)(1) is explicitly about trustee liability, and it is unclear whether it covers the Franklin Defendants at all. *See Mills v. Molina Healthcare, Inc.*, 2022 WL 17825534, at *8 (C.D. Cal. Dec. 8, 2022) (discussing split in authority and declining to apply 1105(d)(1) to fiduciaries who are not trustees). But even assuming it applies, Section 1105(d) only limits a trustee's secondary liability for the independent fiduciary's actions, as opposed to liability for the trustee's own actions. *See* 29 U.S.C. § 1105(d)(2) ("Nothing in this subsection shall relieve any trustee of any liability under this part for any act of such trustee."). Thus, at best, Section 1105(d)(1) would shield the Franklin Defendants from liability for Gallagher's actions. But to the extent that the Franklin Defendants' own actions might constitute a violation of ERISA, the limited safe harbor in Section 1105 appears to be of little help.

ERISA after the amendment. Combined with factual allegations about Franklin's role relative to those exercising primary fiduciary responsibility, the complaint adequately states a derivative claim for breach of duty to monitor. *Cf. Foster v. Adams & Assocs., Inc.*, 2020 WL 3639648, at *2 (N.D. Cal. July 6, 2020).

Standing. Gallagher asserts that the named plaintiffs lack standing to challenge the defendants' conduct with respect to many of the funds at issue because they have only personally invested in a subset of the proprietary funds offered by the Plan. But "allegations of investment in a specific fund is not a prerequisite for standing to challenge plan-wide mismanagement so long as a plaintiff can plead injury to their own plan account." *In re LinkedIn ERISA Litigation*, 2021 WL 5331448, at *4 (N.D. Cal. Nov. 16, 2021) (collecting cases). The named plaintiffs challenge the defendants' plan-wide practice of loading the Plan with proprietary Franklin funds and allege that they were financially injured because they invested in specific funds that the defendants should not have included in the Plan's investment menu. Thus, the plaintiffs sufficiently allege that they have standing to assert the claims at issue here.

IT IS SO ORDERED.

Dated: April 17, 2026

VINCE CHHABRIA
United States District Judge