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UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

DAVID VENTURA, *individually and as a representative of a class of participants and beneficiaries*, Plaintiff, v. LITHIA MOTORS, INC., Defendant.	Case No. 2:26-cv-01786-HDV-RAO **ORDER PARTIALLY GRANTING DEFENDANT'S MOTION TO DISMISS [30]**

I. INTRODUCTION

Plaintiff David Ventura brings this putative class action against his former employer, Lithia Motors, Inc. ("Defendant" or "Lithia") for alleged violations of the Employee Retirement Income Security Act of 1974 ("ERISA"). Plaintiff asserts three theories for the violations, namely that Defendant (1) failed to keep administrative costs reasonable, (2) chose in its discretion to use unvested employer-contributed funds to pay down future employer contribution obligations, and (3) transitioned a majority of the plan's assets from mutual funds to collective investment trusts.

Before the Court is Defendant's Motion to Dismiss ("Motion") [Dkt. 30], which seeks dismissal of all five ERISA-based claims under Federal Rule of Civil Procedure 12(b)(6). For the reasons discussed more fully below, the Court concludes that Plaintiff has sufficiently alleged a violation of Defendant's fiduciary duties under an excessive cost theory but finds that the Complaint does not state a claim under the other two bases for relief. To wit, Plaintiff's claim that the use of forfeitures to pay future Plan contributions violates ERISA is foreclosed by settled law and practice. In addition, Plaintiff's threadbare, conclusory allegations that the transition of Plan assets from mutual funds to collective investment trusts do not state a claim for relief. Defendant's Motion to Dismiss is granted in part and denied in part.

II. BACKGROUND

A. Factual Background

Plaintiff David Ventura is a former employee of Defendant Lithia Motors and participated in the Lithia Motors, Inc. 401(k) Plan ("Plan"), a defined contribution employee retirement account. Defendant, through its officers and a 401(k) committee ("Committee"), is responsible for the operation and administration of the Plan. Complaint [Dkt. 1] ¶¶ 8–10. The Plan is funded by employee and employer contributions, which are deposited in the Plan's trust fund. *Id.* ¶ 11. Vesting in employer contributions is graded, and participants who terminate employment before full vesting forfeit the non-vested portion of employer contributions. *Id.* ¶ 19. The Plan offers a mix of common collective trust funds, registered investment companies (mutual funds), Lithia Motors company stock, and a stable value fund. *Id.* ¶ 63. By December 31, 2024, the Plan held over $1.03 billion in net assets and had 26,680 participants with account balances. *Id.* ¶ 15.

1. Administrative Fees

Defendant contracted with Bank of America to serve as the Plan's custodian and trustee and Merrill Lynch, Pierce, Fenner & Smith, Inc. ("Merrill Lynch") to serve as the Plan's recordkeeper and third-party administrator. *Id.* ¶ 12. Merrill Lynch is "an affiliate" of Bank of America. *Id.* ¶ 29. The Plan paid $1,633,011 for recordkeeping services to Merrill Lynch, which equates to at least approximately $61 per participant with an account balance. *Id.* ¶ 29. The Form 5500 Schedule C for each year in the Class Period reports that Merrill Lynch received "eligible indirect compensation" from sources other than the Plan or Plan sponsor in undisclosed amounts. *Id.* ¶ 72.

2. Use of Forfeitures

The Plan's governing document granted Defendants the discretion to use forfeited non-vested accounts ("forfeitures") to either pay Plan administrative expenses or reduce employer contributions. *Id.* ¶ 59. Defendants consistently used forfeitures to reduce Lithia's employer contribution obligations. *Id.* ¶ 45.

3. Collective Investment Trusts

Throughout the Class Period and through at least December 31, 2023, the Plan's target-date fund ("TDF") lineup consisted of JPMorgan SmartRetirement Blend R6 mutual fund shares – registered investments classified as Level 1 assets in the Plan's fair value hierarchy. *Id.* ¶ 64. As of December 31, 2023, these JPMorgan SmartRetirement Blend R6 mutual funds held approximately $472.7 million in Plan assets across eleven target-date vintages, representing more than 56% of the Plan's total investments. *Id.*

Between plan years 2023 and 2024, Defendant caused the Plan to replace the entire JPMorgan SmartRetirement Blend R6 mutual fund lineup with JPMCB SmartRetirement Passive ("PASV") collective investment trust ("CIT") units. As of December 31, 2024, these CIT units held approximately $570.6 million in Plan assets – more than 57% of the Plan's total investments. *Id.* ¶ 65. CITs deduct investment management fees, trustee fees, and administrative expenses directly from the fund's net asset value ("NAV") before the NAV is reported to participants. *Id.* ¶ 70. Unlike mutual fund expense ratios, which are standardized, publicly reported, and readily comparable across providers, CIT fees are embedded within the NAV calculation and are not required to be separately itemized in any public filing. *Id.* Plaintiff contends that the JPMCB SmartRetirement Passive CIT funds pay revenue-sharing, sub-transfer agency, or other indirect compensation to Merrill Lynch and/or BANA out of the CIT's management fees or other fund-level expenses. *Id.* ¶ 72.

4. Claims

Plaintiff brings five ERISA-based causes of action.

First, Plaintiff asserts a claim for prohibited transactions under 29 U.S.C. § 1106. Plaintiff alleges that Defendant engaged in prohibited transactions by paying excessive fees from Plan assets to parties in interest, Bank of America and Merrill Lynch. Complaint ¶ 99. Plaintiff also contends that Defendant violated this same ERISA provision by using forfeitures to offset its own future employee contributions to the Plan. *Id.* ¶ 98.

Second, Plaintiff avers that Defendant breached its duties of loyalty and prudence by incurring excess administrative fees, paying fees to parties in interest, and utilizing forfeitures to decrease future employer contributions. *Id.* ¶ 103–04.

Third, the Complaint avers a claim for breach of ERISA's anti-inurement provision. The Complaint states that Defendant's use of forfeitures to pay for employer contributions violates this provision.

Fourth, Plaintiff asserts again that Defendant breached its duty of prudence, this time by transitioning most of the Plan assets from mutual funds to CITs. According to Plaintiff, this transition was imprudent because a portion of CIT fees are paid through revenue-sharing with Plan service providers in amounts that are not publicly disclosed. *Id.* ¶¶ 114–116.

And lastly, the Complaint contains a failure to monitor claim, alleging that Defendant failed to monitor the use of forfeitures and excessive administrative fees. *Id.* ¶ 22.

Defendant moves to dismiss all claims. The Court heard oral argument on August 6, 2026, and took the matter under submission. [Dkt. 46].

III. LEGAL STANDARD

Under Rule 12(b)(6), a party may move to dismiss a complaint for failure to state a claim upon which relief may be granted. Fed. R. Civ. P. 12(b)(6). To survive such a motion, "a complaint must 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)). "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." *Id.* Determining whether a complaint satisfies this standard is a "context-specific task that requires the reviewing court to draw on its judicial experience and common sense." *Id.* at 679. In making this determination, allegations of material fact should be construed in the light most favorable to the plaintiff. *Resnick v. Hayes*, 213 F.3d 443, 447 (9th Cir. 2000) (citation omitted).

IV. DISCUSSION

A. Claim One: Prohibited Transactions

The first claim asserts that the "excessive and unreasonable administrative fees" paid to Bank of America and Merrill Lynch, as parties in interest, constitute prohibited transactions. Complaint ¶ 99.

ERISA "supplements the fiduciary's general duty of loyalty to the plan's beneficiaries . . . by categorically barring certain transactions deemed 'likely to injure the pension plan.'" *Harris Trust and Sav. Bank v. Salomon Smith Barney Inc.*, 530 U.S. 238, 241–242 (2000) (quoting *Commissioner v. Keystone Consol. Industries, Inc.*, 508 U.S. 152, 160 (1993)). Section 406(a) of ERISA prohibits certain transactions between the plan and parties in interest,[1] which include plan insiders and entities providing services to the plan. 29 U.S.C. §1106(a)(1). The Ninth Circuit has taken a broad view of Section 406(a)'s bar on transactions with parties in interest. *See Bugielski v. AT&T Servs.*, Inc., 76 F.4th 894, 901 (9th Cir. 2023). Read literally, as the Ninth Circuit has done, the statute defines service providers as parties in interest and prohibits them from conducting transactions with the plan that constitute a "furnishing of goods, services, or facilities[.]" *Id.* at 903 (citing 29 U.S.C. §§ 1106(a)(1)(C), 1002(14)(B)). Thus, "contracts between a plan and a service provider, like a recordkeeper, are prohibited transactions[.]" *Id.* at 902 (citation omitted). However, "plans are able to routinely enter into contracts with service providers" because ERISA § 408(b)(2) exempts necessary services paid for with reasonable compensation from § 406's prohibition. *Id.*

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[1] Section 406(a) states,

> (1) A fiduciary with respect to a plan shall not cause the plan to engage in a transaction, if he knows or should know that such transaction constitutes a direct or indirect--
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> (A) sale or exchange, or leasing, of any property between the plan and a party in interest;
> (B) lending of money or other extension of credit between the plan and a party in interest;
> (C) furnishing of goods, services, or facilities between the plan and a party in interest;
> (D) transfer to, or use by or for the benefit of a party in interest, of any assets of the plan; or
> (E) acquisition, on behalf of the plan, of any employer security or employer real property in violation of section 1107(a) of this title.

29 U.S.C.A. § 1106(a).

Defendant advances two main arguments in support of its position that these transactions were lawful under ERISA. Defendant argues that Bank of America and Merrill Lynch were not parties in interest at the time Defendant engaged them to provide services to the Plan because they had no prior relationship with Defendant. Motion at 11–12. And Defendant maintains that a prohibited transaction claim based on the service transaction between the Plan and Merrill Lynch is barred by ERISA's six-year statute of repose. *Id.* at 12–13.

Neither argument is persuasive. The cases that Defendant relies on for its first assertion are non-binding, either from courts outside of the Ninth Circuit,[2] or district court decisions that predate the Ninth Circuit's *Bugielski* decision.[3] Nor does the statute of repose provide any cover. The statute states that no action may be commenced "six years after [] the date of the last action which constituted a part of the breach or violation[.]" 29 U.S.C.A. § 1113. Here, the Complaint alleges that between 2023 and 2024, Defendant caused the Plan to transition the majority of its assets from mutual funds to CIT units, and that CIT funds pay compensation to Bank of America and/or Merrill Lynch through revenue sharing in undisclosed amounts. *Id.* ¶ 65. Thus, this "last action" is easily within the six-year period. The claim survives.[4]

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[2] *Tedford v. Equitable Fin. Life Ins.* Co., No. 25-cv- 2180, 2026 WL 1398640, at *6 (D.N.J. May 19, 2026) ("a recordkeeping servicer, was not a party in interest at the time the recordkeeping contract was formed"); *D.L. Markham DDS, MSD, Inc. 401(k) Plan v. Variable Annuity Life Ins.*, 88 F.4th 602, 612 (5th Cir. 2023) ("§ 1106(a) limits scrutiny to contracts involving preexisting relationships").

[3] *TML Recovery LLC v. Nw. Mut. Life Ins. Co.*, No. 8:18-cv-02011-JLS-ADS, 2019 WL 6898941, at *3 (C.D. Cal. June 21, 2019) (a party is not a party in interest "[w]hen no such relationship yet exists"); *Lauderdale v. NFP Ret., Inc.*, No. 8:21-cv-00301-JVS-KES, 2022 WL 17260510, at *22 (C.D. Cal. Nov. 17, 2022) ("It is circular to suggest that an entity which becomes a party in interest by providing services to the Plan has engaged in a prohibited transaction simply because the Plan has paid for those services."); *Bouvy v. Analog Devices, Inc.*, No. 19-cv-881 DMS (BLM), 2020 WL 3448385, at *12 (S.D. Cal. June 24, 2020) (same). Defendant cites one decision from a district court within the Ninth Circuit, written after *Bugielski*, but that decision relied on non-binding out of circuit case law for its finding that a contracted entity was not a party in interest. *See Maneman v. Weyerhauser Co.*, No. C24-2050-KKE, 2026 WL 884985, at *14 (W.D. Wash. Mar. 31, 2026)

[4] Plaintiff separately avers that Defendant's use of forfeitures to pay its own contributions constitutes a prohibited transaction. The Court is unconvinced that this theory is viable. *See Hutchins v. HP Inc.*,

B. Claim Two: Breach of Fiduciary Duties

ERISA "establishes standards for employee benefit plans to protect the interests of plan participants." *Bugielski v. AT&T Servs., Inc.*, 76 F.4th 894, 897 (9th Cir. 2023) (citing 29 U.S.C. § 1001.) To that end, ERISA imposes duties on fiduciaries, two of which—the duty of prudence and the duty of loyalty— are relevant to this action. Under the duty of prudence, a plan fiduciary must 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.A. § 1104(a)(1)(B); *Santomenno v. Transamerica Life Ins. Co.*, 883 F.3d 833, 837 (9th Cir. 2018).

The duty of loyalty requires plan fiduciaries to discharge their "duties with respect to a plan solely in the interest of the participants and beneficiaries and [] 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.A. § 1104 (a)(1)(A); *Anderson v. Intel Corp. Inv. Pol'y Comm.*, 137 F.4th 1015, 1019 (9th Cir. 2025). "Among other things, the duty of loyalty requires the fiduciary to deal fairly and honestly with beneficiaries, so as to ensure that a plan receives all funds to which it is entitled[.]" *Cunningham v. Cornell Univ.*, 604 U.S. 693, 696 (2025) (citations omitted). At the same time, "the circumstances facing an ERISA fiduciary will implicate difficult tradeoffs, and 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).

Plaintiff asserts claims for breach of the duties of prudence and loyalty based on the same alleged conduct, namely by: (1) allowing excessive administrative fees to be paid from the Plan,

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737 F. Supp. 3d 851, 868 (N.D. Cal. 2024) ("Plaintiff's allegations show that forfeited amounts remain Plan assets and are merely reallocated to provide pension benefits to other employees through use as matching contributions. But this is not a prohibited transaction."); *Liao v. Fisher Asset Mgmt.*, LLC, No. 24-CV-02036-JST, 2024 WL 4351869, at *6 (N.D. Cal. Sept. 30, 2024) ("reallocation of funds within the Plan in accordance with the Plan's terms—forfeited funds used to defray Plan expenses…is not a prohibited transaction under ERISA.").

(2) permitting prohibited transactions between parties in interest,[5] and (3) using forfeitures to decrease future employer contributions. Complaint ¶¶ 103, 104.

Regarding administrative fees, the Complaint alleges that, in 2024, direct recordkeeping fees paid to Merrill Lynch amounted to $61 per Plan participant, whereas participants in three other comparator plans paid between $3 and $31 for recordkeeping services. *Id.* ¶¶ 29, 40. Specifically, Plaintiff maintains that during the class period, the *Disney Savings and Investment Plan* paid between $3 and $11 per participant; the *Providence Health & Services Plan* paid between $4 and $26 per participant; and the *CBRE 401(k) Plan* paid between $18 and $31 per participant for identical or substantially similar services. *Id.* ¶ 40. The allegations that recordkeeping fees for the Plan were between 20 and 2 times greater than other similar plans (comparators with $1 billion in assets and approximately 26,000 participants) are sufficient to state a claim for breach of fiduciary duty. *See Johnson v. Fujitsu Tech. & Bus. of Am., Inc.*, 250 F. Supp. 3d 460, 467 (N.D. Cal. 2017) ("[R]ecordkeeping expenses were five to ten times higher than fees for similarly sized plans during the period in question. On these facts alone, the Court can draw a plausible inference that defendants failed to act prudently."); *Zimmerman v. Cedars-Sinai Med. Ctr.*, No. 5:23-CV-01124-JLS-SP, 2024 WL 1135773, at *7 (C.D. Cal. Feb. 18, 2024) (finding a breach of fiduciary duty based on excessive fees sufficiently alleged where "Plaintiffs allege specific facts supporting their claims that the Plan's fees and [costs] were excessive for its size.").[6]

As to Defendant's use of forfeitures, the Complaint admits that the Plan's governing document granted Defendant the discretion to use forfeitures to either pay Plan administrative

[5] There are no additional specific facts that allowing prohibited transactions also breached Defendant's fiduciary duty. Therefore, the Court finds that the alleged prohibited transactions do not separately state a breach of fiduciary duty claim.

[6] Defendant argues that these other plans are not adequate comparators given their larger size. Reply at 2. The Court disagrees. As other courts have noted, an "apples to apples" comparison need not be exquisitely granular at this early pleading stage. *See McGeathy v. Reinalt-Thomas Corp.*, No. CV-25-01439-PHX-DLR, 2026 WL 617343, at *3 (D. Ariz. Mar. 5, 2026) (finding defendants' arguments unpersuasive because they "would require a plaintiff alleging imprudence to not just compare apples to apples but only Gala apples to Gala apples and Fuji apples to Fuji apples.")

expenses or reduce employer contributions, Complaint ¶ 59, but asserts that Defendant violated its fiduciary duties by consistently using these forfeitures to reduce Lithia's own employer contribution obligations. *Id.* ¶ 45. In evaluating similar claims, courts have consistently recognized "the long history of using forfeitures to reduce employer contributions." *Hutchins v. HP Inc.*, 767 F. Supp. 3d 912, 923 (N.D. Cal. 2025) ("*Hutchins II*"). Indeed, a recent decision from the District of Arizona noted that "[t]o 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." *Sievert v. Knight-Swift Transportation Holdings, Inc.*, 780 F. Supp. 3d 870, 878 (D. Ariz. 2025).

In *Hutchins v. HP Inc.* ("*Hutchins I*"), Judge Freeman of the Northern District of California held that a finding of breach of fiduciary duty where an employer used forfeitures to pay future plan contributions would go well beyond the intent of ERISA and lead to implausible results. 737 F. Supp. 3d at 862–863 ("Plaintiff's theory would require any fiduciary to use forfeited amounts to pay administrative costs… contrary [to] the settled understanding of Congress and the Treasury Department regarding defined contribution plans..."). This is because "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***." *Id.* at 863 (N.D. Cal. 2024) (citing *Lockheed Corp. v. Spink*, 517 U.S. 882, 887 (1996); *Wright v. Oregon Metallurgical Corp.*, 360 F.3d 1090, 1100 (9th Cir. 2004) (emphasis added)). Stated differently, the legal focus is on the ***plan***, and here (as in all other similar cases), the Plan expressly allows the forfeitures to be used to pay the employe's contributions. Importantly, "ERISA does not create an exclusive duty to maximize pecuniary benefits." *Wright*, 360 F.3d at 1100. The majority of courts evaluating this issue have reached this same result. *See, e.g.*, *Curtis v. Amazon.com Servs.*, LLC, No. C24-2164RSM, 2026 WL 124323, at *3 (W.D. Wash. Jan. 16, 2026) (collecting cases). In sum, the Court finds the *Hutchins* reasoning persuasive and for the same reasons concludes that the allegations regarding forfeitures do not state a claim for breach of fiduciary duty.

Lastly, the Complaint alleges that Defendant breached its duty of prudence by transitioning the Plan's default target-date suite from mutual funds to CITs, which held approximately $570.6

million – over 57% of Plan assets – as of December 31, 2024. Complaint ¶ 115. Plaintiff's theory appears to be that the purchase of CITs was imprudent because they have different reporting requirements than mutual funds and make less information about administrative expenses directly available to Plan participants. *Id.* ¶¶ 67, 78, 79, 81. The Complaint states in a conclusory fashion that the decrease in investment information available to ***participants*** impairs ***Defendant***'s ability to monitor the Plan's investments and violates Defendant's duty of prudence. *Id.* ¶ 71. These speculative allegations are insufficient to plausibly allege a breach of the duty of prudence.[7]

In summary, the Motion is denied as to the breach of fiduciary duty claims based on excessive fees and granted as to the fiduciary duty claims relating to forfeitures and CITs.

C. Claims Three: Anti-Inurement

Plaintiff's third claim avers that Defendant violated ERISA's anti-inurement provision by using forfeitures to reduce its own future employer contributions. ERISA mandates 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).

But the Complaint itself admits that the forfeited funds are ***only*** reallocated to pay future contributions and never leave the Plan. *Id.* ¶ 22, 44, 59. In other words, because Plaintiff "do[es] not allege that [Defendant] used any of the assets for a purpose other than to pay its obligations to the Plan's beneficiaries, [Defendant] could not have violated the anti-inurement provision under ERISA § 403(c)(1)." *Hughes Aircraft Co. v. Jacobson*, 525 U.S. 432, 443 (1999); *see also Madrigal v. Kaiser Found. Health Plan, Inc.,* No. 2:24-CV-05191-MRA-JC, 2025 WL 1299002, at *6 (C.D. Cal. May 2, 2025) (collecting cases where courts applied *Hughes* and found that the use of forfeitures to pay future employer contributions does not inure to the employer). The claim is dismissed.

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[7] In addition, the Motion argues that Plaintiff lacks standing to allege this claim based on CITs because he alleges no concrete injury from the Plan's transition to CITs. Motion at 13–14. The Court agrees. *See TransUnion LLC v. Ramirez*, 594 U.S. 413, 442 (2021) ("No concrete harm, no standing.").

D. Claim Four: Duty of Prudence

The Complaint asserts that Defendant's CIT selection states a breach of the duty of prudence separately as Claim Four. Since these factual allegations represent another theory of liability for a breach of fiduciary duty and not a separate cause of action, the Court consolidates it and evaluates it with Claim Two, above. Claim Four is dismissed for being duplicative of Claim Two.

E. Claim Five: Failure to Monitor

The Complaint asserts a failure to monitor claim that is derivative of its breach of fiduciary duty claims. Complaint ¶ 122. "A failure to monitor claim is only viable when there is an underlying claim for breach of fiduciary duty." *Partida v. Schenker Inc.*, No. 22-CV-09192-AMO, 2024 WL 1354432, at *9 (N.D. Cal. Mar. 29, 2024). Because Plaintiff's fiduciary duty claim survives as discussed above, this claim survives as well.

F. Leave to Amend

A district court may properly dismiss a claim "without leave to amend if 'amendment would be futile.'" *Airs Aromatics, LLC v. Victoria's Secret Stores Brand Mgmt., Inc.*, 744 F.3d 595, 600 (9th Cir. 2014) (citing *Carrico v. City & Cnty. of San Francisco*, 656 F.3d 1002, 1008 (9th Cir. 2011). Here, as in the numerous other complaints Plaintiff's counsel has filed with similar or identical allegations,[8] the claims based on the use of forfeitures rest on "a novel legal theory that is unsupported by present law." *See Wright v. JPMorgan Chase & Co*, No. 2:25-CV-00525-JLS-JC, 2025 WL 1683642, at *7 (C.D. Cal. June 13, 2025). As such, additional factual allegations would

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[8] Plaintiff's counsel has filed a number of complaints with similar or identical allegations claiming that the plan-compliant use of forfeitures to pay future employer obligations violates ERISA. *See Wright v. JPMorgan Chase & Co*, No. 2:25-CV-00525-JLS-JC, 2025 WL 1683642, at *1 (C.D. Cal. June 13, 2025) (dismissing forfeiture-based claims for failure to state a claim); *Madrigal v. Kaiser Found. Health Plan, Inc.*, No. 2:24-CV-05191-MRA-JC, 2025 WL 1299002, at *5 (C.D. Cal. May 2, 2025) (same); *Clark v. Centene Corporation*, No. 25-CV-09743-RFL, 2026 WL 2069784, at *2 (N.D. Cal. July 16, 2026) (same); *Shulak v. BMO Fin. Corp.*, No. 25-CV-02232, 2026 WL 879652, at *5 (N.D. Ill. Mar. 30, 2026) (same); *Hernandez v. AT&T Servs., Inc.*, No. 2:25-CV-00676-ODW (PVCX), 2025 WL 3208360, at *5 (C.D. Cal. Nov. 14, 2025) ("If counsel plan to continue recycling their filings…").

fail to cure the claims' defects and amendment would be futile. The claims based on forfeitures are dismissed without leave to amend.

V. CONCLUSION

Defendant's Motion to Dismiss is granted in part and denied in part. Claim one involving prohibited transactions, claim two for breach of fiduciary duty related to excessive fees, and claim five for failure to monitor based on excessive fees survive. Claims three and four are dismissed without leave to amend.

Dated: September 2, 2026

Hernán D. Vera
United States District Judge