No. 25-2609

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

LUCIANO BARRAGAN, individually and as representative of a class of participants and beneficiaries and on behalf of the Honeywell 401(k) Plan,

Plaintiff-Appellant,

v.

HONEYWELL INTERNATIONAL INC.,

Defendant-Appellee.

Appeal from the U.S. District Court for the District of New Jersey
No. 2:24-cv-04529-EP-JRA (Hon. Evelyn Padin)

BRIEF FOR THE CHAMBER OF COMMERCE OF THE UNITED STATES OF AMERICA AND THE ERISA INDUSTRY COMMITTEE AS *AMICI CURIAE* IN SUPPORT OF DEFENDANT-APPELLEE AND AFFIRMANCE

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CORPORATE DISCLOSURE STATEMENT

Each of the *Amici Curiae* individually certifies that it is a non-profit corporation, that it does not have a parent corporation, and that no publicly held corporation has ten percent or greater ownership.

Dated: December 30, 2025

s/ Jordan Bock
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INTEREST OF THE *AMICI CURIAE*[1]

The Chamber of Commerce of the United States of America ("Chamber") is the world's largest business federation. The Chamber represents approximately 300,000 direct members and indirectly represents the interests of more than three million businesses and professional organizations of every size, in every industry sector, and from every region of the country.

The ERISA Industry Committee ("ERIC") is a national non-profit business trade association representing approximately 100 of the nation's largest employers in their capacity as sponsors of employee benefit plans for their workers, retirees, and families.

Many of *Amici*'s members maintain, administer, and/or provide services to employee-benefit plans governed by the Employee Retirement Income Security Act of 1974 ("ERISA"), covering virtually all Americans who work in the private sector and participate in employer-sponsored programs. *Amici* regularly participate as *amicus curiae* in this Court and others on issues affecting benefit-plan design or administration. *See, e.g.*, *Cunningham v. Cornell Univ.*, 604 U.S. 693 (2025); *Hughes v. Nw. Univ.*, 595 U.S. 170 (2022); *Mator v. Wesco Distrib., Inc.*, 102 F.4th

[1] All parties have consented to the filing of this brief. *See* Fed. R. App. P. 29(a)(2). No counsel for a party authored this brief in whole or in part. No party, no counsel for a party, and no person other than *Amici*, their members, and their counsel made a monetary contribution to fund the preparation or submission of this brief.

172 (3d Cir. 2024); *Hutchins v. HP Inc.*, No. 25-826 (9th Cir. July 9, 2025), ECF No. 28; *Cain v. Siemens Corp.*, No. 25-2564 (3d Cir. Dec. 10, 2025), ECF No. 35.

Amici file this brief to provide the Court with greater context and historical background regarding employers' use of forfeited employer contributions and to explain why an employer's use of those forfeited contributions to offset employer contributions does not give rise to liability for a breach of fiduciary duty.

INTRODUCTION

Employees are always fully vested in their own contributions to their defined-contribution retirement plans. ERISA requires no less. But the rule is different for employer contributions, which under ERISA can be made subject to a vesting schedule that encourages employee retention. When retirement plan participants leave their employment before their employer's contributions fully vest, they forfeit their interest in the non-vested portion of those contributions. Under ERISA, the forfeited employer contributions cannot be refunded to the employer; they must stay in the plan and be used to defray the reasonable expenses of administering the plan or to provide plan benefits. Because of this requirement, plan sponsors design their plans to permit those forfeited amounts to be used to help satisfy their employer-contribution obligations to participants who remain in the retirement plan.

Until a recent rash of lawsuits, this common practice has long been understood to be entirely permissible under ERISA. The Treasury Department (which regulates employee-benefit plans alongside the Department of Labor ("DOL")) has specified that this practice conforms to the provisions of the Internal Revenue Code governing tax-advantaged retirement plans. For decades—predating ERISA's enactment—the Treasury Department has expressly allowed the use of forfeited contributions in these tax-advantaged plans to offset remaining employer contributions under the Tax Code, including Tax Code provisions that mirror ERISA's fiduciary provisions. Congress has acknowledged the same. It would be not just exceedingly odd but legally incoherent for ERISA to impose fiduciary liability for a practice that is allowed under the Tax Code's analogous regulations and does not result in participants receiving fewer benefits than they were promised. In reliance on this settled understanding, many employers have specified in plan documents that they have the flexibility to choose whether to use forfeitures to offset employer contributions or for other permissible purposes, *e.g.*, to restore benefits for former employees who return to employment or to pay the reasonable expenses of administering the plan. Importantly, when a plan containing this type of provision is submitted to the Internal Revenue Service for an advance determination that the plan meets all required provisions of the Tax Code, the IRS has for decades issued favorable "determination letters" confirming that the plan meets these requirements.

Plaintiff invites this Court to disrupt the long-standing consensus regarding the use of forfeitures. His theory is that Honeywell International Inc. ("Honeywell") could not use forfeited employer contributions to offset employer contributions for other participants, notwithstanding that the Honeywell Plan documents expressly authorize just that. He offers no valid basis for upending widespread settled expectations or contradicting the Treasury Department's position by adopting this novel approach. To the contrary, Plaintiff's theory is fundamentally inconsistent with a foundational tenet of ERISA—that an employer has discretion regarding whether and on what terms to provide benefits. Apart from an employer's contractual obligations, as set out in plan documents, an employer is not obligated to provide any particular level of benefits or to provide employees *more* than their contractually defined benefits. And here, there is no dispute that Honeywell followed its plan document to a T. This Court should reject Plaintiff's efforts to require employers to offer a purported benefit (free or highly subsidized administrative expenses) that has no basis in either the text of ERISA or the text of the plan document.

ARGUMENT

I. The use of forfeitures to reduce employer contribution obligations has extensive historical support.

Retirement plans may operate *exactly* in the way that Plaintiff faults Honeywell's Plan for operating here. That is the inevitable conclusion to be drawn from decades of practice reflected in long-existing and proposed clarifying regulations from the Treasury Department, as well as legislative history.

This extensive history is highly relevant. ERISA commands 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 in the conduct of an enterprise of a like character and with like aims." 29 U.S.C. § 1104(a)(1)(B). Despite Plaintiff's novel theory about how plans *should* operate, a long-established practice based on a settled understanding of the relevant regulatory and statutory context clearly bears both on what a plan sponsor designing its plan would expect and on how a reasonable and prudent plan administrator would act "under the circumstances then prevailing." *Id.*

A. The Treasury Department's long-standing view of forfeitures validates Honeywell's approach here.

1. The Treasury Department's treatment of forfeitures informs the proper interpretation of ERISA.

The Treasury Department's understanding of how forfeitures may be used is highly probative because ERISA and the Tax Code are inextricably linked. Indeed, the "401(k)" in "401(k) plan" is a Tax Code designation, not an ERISA designation, and ERISA itself amended the Tax Code and serves as the source of many of the Tax Code's requirements for plans to qualify for tax-advantaged status. *See, e.g.*, U.S. Dep't of Lab., *History of EBSA and ERISA*, https://bit.ly/45UrBeC ("Title II of ERISA, which amended the Internal Revenue Code to parallel many of the Title I rules, is administered by the IRS."). The DOL and the Treasury Department therefore coordinate in promulgating regulations and enforcing ERISA to the extent the statutes overlap. *See* 29 U.S.C. § 1204(a). The Treasury Department also has the statutory authority to apply particular provisions of ERISA, including its vesting provisions. *See* Reorganization Plan No. 4 of 1978, 5 U.S.C. App. 1, 92 Stat. 3790 (transferring relevant authority to the Treasury Secretary); 29 U.S.C. § 1202(c) (Treasury Department's authority over ERISA's participation, vesting, and funding standards). It likewise has non-exclusive enforcement authority with respect to prohibited transactions. *See* 26 U.S.C. § 4975.

The Tax Code and ERISA contain a number of parallel provisions, and courts appropriately look to the Treasury Department's interpretation of the Tax Code for guidance on the proper interpretation of the corollary provision in ERISA. *See, e.g.*, *Cent. Laborers' Pension Fund v. Heinz*, 541 U.S. 739, 746 (2004) (reasoning that an IRS interpretation of the Tax Code could shed light on the meaning of a parallel ERISA provision). In particular, Honeywell's Plan—like all tax-advantaged retirement plans—must comply with provisions in the Tax Code to ensure both the deductibility of employer contributions and the tax deferral of employer and pre-tax employee contributions and investment earnings. *See* 26 U.S.C. § 401. One of those provisions is 26 U.S.C. § 401(a)(2), which lists the requirements for a trust to be treated as a "qualified" retirement plan—including that assets in the trust not be "used for, or diverted to, purposes other than for the exclusive benefit of" the employees and beneficiaries for whom the trust is established. ERISA has an analogous provision, 29 U.S.C. § 1104(a)(1)(A), that directs fiduciaries to act "solely in the interest of the participants and beneficiaries" and "for the exclusive purpose" of providing benefits to participants and defraying reasonable plan expenses. Whether conduct is consistent with the "exclusive benefit" language in § 401(a)(2) of the Tax Code is thus directly relevant to whether that same conduct is consistent with ERISA's analogous "exclusive purpose" provision. And critically, it is § 1104(a)(1)(A) that provides the basis for Plaintiff's claim for breach of the duty of loyalty. Opening Br. 9, 17-22.

2. The Treasury Department has long provided that employers may use forfeitures to reduce employer contributions.

For more than 60 years, Treasury Department regulations have expressly authorized using forfeitures to reduce employer contributions, at least for certain types of plans. Before ERISA's enactment, the Treasury Department promulgated a regulation *requiring* qualified pension plans (*i.e.*, defined-benefit plans) to contain provisions expressly providing that forfeitures "be used as soon as possible to reduce the employer's contributions under the plan." 26 C.F.R. § 1.401-7(a). Under this regulation, forfeitures in fact could *not* "be applied to increase the benefits any employee would otherwise receive under the plan." *Id.*; *see also* Rev. Rul. 67-68, 1967-1 C.B. 86, 1967 WL 15409, at *1 (Jan. 1, 1967). The Treasury Department later invoked this provision when explaining that defined-contribution plans—like

Honeywell's—could satisfy the Tax Code's § 401(a) qualification provisions where they provide that "forfeitures are to be used to reduce the employer contributions that would otherwise be required under the plan." Rev. Rul. 71-313, 1971-2 C.B. 203, 1971 WL 26693, at *1 (Jan. 1, 1971).[2] Critically, the § 401(a) qualification provisions include the "exclusive benefit" requirement that mirrors ERISA. *See supra* pp. 6-7.

Informal guidance from both DOL and the Treasury Department has only bolstered this understanding over the past 50 years, repeatedly making clear that employers who sponsor defined-contribution plans may use forfeitures to reduce employer contributions. In 1979, after ERISA was enacted, DOL provided a set of opinions on a defined-contribution plan for which forfeitures were "applied to reduce future employer contributions." U.S. Dep't of Lab. Advisory Op. No. 79-56A, 1979 WL 7031, at *2 (Aug. 9, 1979). While addressing at length certain other aspects of the plan, DOL notably never suggested that the plan's use of forfeitures violated ERISA. *See id.*

[2] As the district court recognized, this Revenue Ruling notes that 26 C.F.R. § 1.401-7(a) "does not extend to profit-sharing and stock bonus plans." Appx20 n.5 (quoting Rev. Rul. 71-313, 1971 WL 26693, at *1). But while 26 C.F.R. § 1.401-7(a) does not *require* the use of forfeitures to reduce employer contributions, the Revenue Ruling recognizes that employers *may* use forfeitures to reduce employer contributions without jeopardizing their tax qualification status. The Ruling thus fully supports Honeywell's argument here. And as noted above, the Treasury Department subsequently cited and applied this regulation to defined-contribution plans. *See supra* pp. 7-8.

The Treasury Department has been even more explicit. In 2010, the IRS explained to employers sponsoring defined-contribution plans that "forfeitures may be used to pay for a plan's administrative expenses and/or to reduce employer contributions." Dep't of the Treasury, Internal Revenue Serv., *Retirement News for Employers* 4-5, Publ'n 4278-B (Spring 2010), https://bit.ly/3Tp0lh0 ("*Retirement News for Employers*").[3] It would entirely upend this understanding if this same conduct were suddenly held to violate ERISA.

B. Congress has likewise consistently recognized that forfeitures may and will be used to reduce employer contributions.

The history of the Tax Code demonstrates that Congress holds the same understanding as the Treasury Department. In 1986, Congress amended 26 U.S.C. § 401(a)(8)—which prohibits using forfeitures to "increase the benefits any employee would otherwise receive"—to clarify that this prohibition applies to defined-benefit plans. Pub. L. No. 99-514, § 1119(a), 100 Stat. 2085 (1986). In explaining the bill, however, the House Conference Report made clear that Congress understood existing law to *already* permit defined-contribution plans to use forfeitures to "reduce future employer contributions or to offset administrative expenses." H.R. Rep. No. 99-841, Vol. II at 442 (1986). As the Supreme Court has recognized, "when Congress revisits a statute giving rise to a longstanding

[3] While this publication cites 26 C.F.R. § 1.401-7(a), which governs pension plans, it does so in the context of addressing defined-contribution plans.

administrative interpretation without pertinent change, the 'congressional failure to revise or repeal the agency's interpretation is persuasive evidence that the interpretation is the one intended by Congress.'" *Commodity Futures Trading Comm'n v. Schor*, 478 U.S. 833, 846 (1986) (citation omitted). That principle is particularly forceful where Congress did not simply *silently* fail to revise the administrative interpretation, but rather echoed it in describing then-existing law.

Most recently, the Treasury Department has proposed a regulation to "clarify that," as described in the House Conference Report, "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 benefits in other participants' accounts in accordance with plan terms." 88 Fed. Reg. 12282, 12283 (Feb. 27, 2023) (emphasis added) (citing the House Conference Report). The purpose of this regulation was to confirm uses of forfeitures that would *not violate* the Tax Code's qualification provisions, including the ERISA-analogous "exclusive benefit" provision, 26 U.S.C. § 401(a)(2), which the Treasury Department referenced expressly. 88 Fed. Reg. at 12282.[4]

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[4] In dismissing Plaintiff's original complaint, the district court commented that the 2023 proposed regulation "does not foreclose liability," because it applies only to plan years 2024 or later and because proposed regulations do not have the force of law. *See* Appx20 n.5. As explained *supra* p. 10, however, the proposed regulation

C. Plaintiff's theory would flip longstanding practice on its head.

The consistent understanding of Congress and the Treasury Department explicitly authorizes the very practice that Plaintiff challenges. Accordingly, to accept Plaintiff's theory that Honeywell violated ERISA by allocating forfeitures to employer contributions (in accordance with its Plan document) would require this Court to conclude that the Treasury Department (which is vested with co-regulatory and enforcement authority over ERISA-governed retirement plans) has explicitly and continuously authorized a practice that violates ERISA. It would also require the Court to construe the "exclusive purpose" requirement in ERISA's fiduciary-breach provision (29 U.S.C. § 1104(a)(1)(A)) to have a different scope than the analogous "exclusive benefit" requirement in the Tax Code (26 U.S.C. § 401(a)(2)).

But ERISA and the Tax Code are inextricably intertwined.[5] It makes little sense to create a gap between when assets in a trust are "used for … purposes other than for the exclusive benefit of" employees under the Tax Code and when fiduciaries are acting "for the exclusive purpose" of providing benefits to participants under ERISA. If the Treasury Department has concluded that using

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is relevant to how a reasonable and prudent plan administrator would act "under the circumstances then prevailing." 29 U.S.C. § 1104(a)(1)(B). Moreover, the proposed regulation is intended to "clarify"—not to change—governing law. 88 Fed. Reg. at 12283.

[5] Plaintiff's argument also fails under ERISA § 514(d), because ERISA cannot be interpreted to modify the Treasury regulations. *See infra* pp. 13-16.

forfeitures to reduce employer contributions is consistent with acting for "the exclusive benefit of" employees, then that same act should not run afoul of ERISA's analogous "exclusive purpose" provision.

In light of this historical context, it is unsurprising that the overwhelming majority of district courts tasked with resolving the recent wave of forfeiture actions have dismissed as implausible theories of ERISA liability very similar to those Plaintiff advances here. *See, e.g.*, *Madrigal v. Kaiser Found. Health Plan, Inc.*, 2025 WL 1299002, at *4-7 (C.D. Cal. May 2, 2025) (explaining that the plaintiff's similar forfeiture theory "marks a significant departure from previously well-settled law"); *see also Hernandez v. AT&T Servs., Inc.*, 2025 WL 3208360, at *4 (C.D. Cal. Nov. 14, 2025); *Polanco v. WPP Grp. USA, Inc.*, 2025 WL 3003060, at *3-9 (S.D.N.Y. Oct. 27, 2025); *Dimou v. Thermo Fisher Sci. Inc.*, 2025 WL 2611240, at *6-7 (S.D. Cal. Sept. 9, 2025), *appeal docketed*, No. 25-6364 (9th Cir. Oct. 9, 2025); *Sievert v. Knight-Swift Transp. Holdings, Inc.*, 780 F. Supp. 3d 870, 878 (D. Ariz. 2025). This Court should do the same.

II. Plaintiff's claims fail as a matter of law for two independent reasons.

For two separate reasons, Plaintiff's claims fail as a matter of law out of the gate. First, Plaintiff's theory runs smack into ERISA § 514(d), 29 U.S.C. § 1144(d), which provides that ERISA cannot be interpreted to modify or invalidate other existing federal law—here, the Treasury Department regulation authorizing

Honeywell's approach to forfeitures. Second, Plaintiff's theory is implausible because nothing in ERISA requires plan participants to receive *more* than they were contractually promised when—as Plaintiff acknowledges here—ERISA does not itself prohibit the use of forfeitures to offset employer contributions.

A. Plaintiff's claims fail under ERISA § 514(d) because the conduct Plaintiff challenges is consistent with Treasury Regulations.

Under Plaintiff's theory, Honeywell violated ERISA by doing precisely what the Treasury Department permits. In addition to making little sense historically, *see supra* pp. 4-12, Plaintiff's theory cannot be reconciled with ERISA § 514(d), which states that "[n]othing" in ERISA "shall be construed to alter, amend, modify, invalidate, impair, or supersede any law of the United States . . . or any rule or regulation issued under any such law." 29 U.S.C. § 1144(d). This provision makes "'explicit that [ERISA] shall not be construed to invalidate or impair any federal regulation.'" *Martin v. Nat'l Bank of Alaska*, 828 F. Supp. 1427, 1433 (D. Alaska 1992) (quoting *First Nat'l Bank of Chi. v. Comptroller of Currency of U.S.*, 956 F.2d 1360, 1368 (7th Cir. 1992)). Therefore, "[t]here can be no violation of ERISA" if a plan "compl[ies] with a valid regulation." *First Nat'l Bank of Chi.*, 956 F.2d at 1368.

Courts have repeatedly applied this principle to reject alleged ERISA violations. In *First National Bank of Chicago*, for example, the Seventh Circuit held that a defendant could not violate ERISA by complying with a regulation promulgated by the Office of the Comptroller of the Currency. *Id.* (citing 29 U.S.C.

§ 1144(d)). Likewise, while ERISA's anti-inurement rule might be interpreted to prohibit the return of contributions to a debtor's estate in certain circumstances, bankruptcy courts have nevertheless held that they can authorize such a return so long as the Bankruptcy Code permits it. *See In re Pulaski Highway Express, Inc.*, 41 B.R. 305, 309 (Bankr. M.D. Tenn. 1984) (rejecting the argument that ERISA's anti-inurement rule "is an exception to the unambiguous language of" § 1144(d)). As one court explained in rejecting an anti-inurement challenge, "[t]he language of § 1144(d) could be no clearer: *nothing* in ERISA should be interpreted to impact other federal law." *Id.*

DOL has also repeatedly invoked § 514(d) when interpreting ERISA. For example, DOL has advised that, "pursuant to ERISA section 514(d)," plan trustees that comply with a section of the Tax Code concerning tax levies are "not . . . in violation of ERISA sections 403(c)(1) and 404(a)(1)." U.S. Dep't of Lab. Advisory Op. No. 79-90A, 1979 WL 7027, at *3 (Dec. 28, 1979). Section 404(a)(1) is, of course, ERISA's fiduciary-breach provision—the same one Plaintiff invokes here. *See* 29 U.S.C. § 1104(a)(1).[6]

DOL has taken a similar approach with respect to the intersection of ERISA and the Securities Exchange Act of 1934. The Securities Exchange Act permits, but does not require, a variety of investment-related conduct. Specifically, it allows

[6] For a helpful ERISA/U.S. Code cross-reference guide, see https://bit.ly/4eubbf4.

trustees or managers who exercise discretion with respect to an account (and are therefore fiduciaries with respect to that account) to enter into "soft dollar" arrangements through which they purchase goods or services with a portion of the brokerage commission paid for executing a transaction. *See* 15 U.S.C. § 78bb(e). While these arrangements are hypothetically susceptible to challenge under ERISA's anti-inurement and prohibited-transaction provisions, DOL has explained that these arrangements comply with ERISA if they comply with the Securities Exchange Act. *See* ERISA Technical Release No. 86-1 at 3-4 (1986).[7]

Applying these principles here, § 514(d) protects Honeywell's treatment of forfeitures. Forfeitures of non-vested employer contributions are governed by the Tax Code, in addition to ERISA. *See generally* 26 U.S.C. § 411; *see supra* pp. 5-12. As discussed above, a Treasury Department regulation governing defined-benefit pension plans states that forfeitures "must be used as soon as possible to reduce the employer's contributions under the plan." 26 C.F.R. § 1.401-7(a); *see supra* pp. 7-8. Plaintiff's forfeiture theory—which is in no way cabined to defined-contribution plans—would abrogate this regulation by tying employers' hands and requiring them to use forfeitures to offset plan expenses. Moreover, the Treasury Department has consistently applied 26 C.F.R. § 1.401-7(a) to defined-contribution plans. *See supra* pp. 8-9. Plaintiff's theory would therefore contravene the

[7] http://bit.ly/3GhiVER.

regulatory authority allowing forfeitures to be used to decrease employer contributions, in direct violation of § 514(d). *See First Nat'l Bank of Chi.*, 956 F.2d at 1368. In short, the fundamental inconsistency between Treasury Department regulations and Plaintiff's theory renders Plaintiff's theory not just implausible but unlawful under § 514(d).

B. Plaintiff's claims are implausible under ERISA.

Plaintiff's theory is infirm for a separate reason. At bottom, Plaintiff's complaint is that Honeywell should have been required to contribute *more* to the Plan, and that plan participants should have been required to pay *less* in administrative expenses. But nothing in "ERISA mandate[s] what kind of benefits employers must provide if they choose" to sponsor a benefit plan. *Lockheed Corp. v. Spink*, 517 U.S. 882, 887 (1996); *see also Bennett v. Conrail Matched Sav. Plan Admin. Comm.*, 168 F.3d 671, 677 (3d Cir. 1999) ("ERISA does not confer substantive rights on employees; rather it ensures that they will receive those benefits that the employers have guaranteed to them."). Plaintiff's argument cannot be squared with this bedrock principle. As the district court recognized in its order dismissing the amended complaint, Plaintiff's approach mandates "that in any year in which there were forfeitures, those forfeitures would first be used to reduce administrative expenses for individual Plan participants." Appx10 (quoting *Hutchins v. HP Inc.*, 767 F. Supp. 3d 912, 922 (N.D. Cal. 2025), *appeal docketed*, No. 25-826 (9th Cir. Feb. 7, 2025)).[8] That mandate would "override" the terms of the Plan and compel Honeywell to provide an "additional benefit" beyond what it has chosen to promise to participants. *Id.*[9]

1. ERISA does not require plan sponsors to provide any particular level of benefits.

ERISA does not require employers to offer a retirement plan, let alone to maximize pecuniary benefits for any plan they do offer. *See Wright v. Or. Metallurgical Corp.*, 360 F.3d 1090, 1100 (9th Cir. 2004) ("ERISA 'does not create an exclusive duty to maximize pecuniary benefits.'") (citation omitted); *Foltz v. U.S. News & World Rep., Inc.*, 865 F.2d 364, 373 (D.C. Cir. 1989) (same). Rather, employers "are generally free under ERISA, for any reason at any time, to adopt, modify, or terminate" employee benefit plans. *Lockheed*, 517 U.S. at 890 (citation omitted). As a result, employees cannot use fiduciary liability to force an employer "to contribute more to the Plan than it" did. *Loomis v. Exelon Corp.*, 658 F.3d 667, 671 (7th Cir. 2011), *abrogated on other grounds as recognized in Hughes v. Nw. Univ.*, 63 F.4th 615, 624 (7th Cir. 2023). In other words, employers cannot be held

[8] While this *amicus* brief focuses on Plaintiff's fiduciary-breach claims, the district court also properly dismissed Plaintiff's prohibited-transaction claim. *See* Appx12-13.

[9] Honeywell's Plan makes especially clear that it does *not* promise participants an additional benefit of free or reduced administrative expenses. Section 14.5 of the Plan states that—other than in the case of a narrow exception not relevant here—"[a]ll costs and expenses of administering the Plan . . . shall be borne by the Participants and paid from their Accounts in the Plan." Appx163.

liable under ERISA on the basis that they did not make a retirement plan "more valuable to participants." *Id.* "When deciding how much to contribute to a plan, employers may act in their own interests." *Id.*

Critically, these principles do not immunize an employer from liability for failing to provide employees with the benefits they have been promised. Once an employer has decided to sponsor a plan, employees can "rel[y] on the face of written plan documents" to "protect contractually defined benefits." *US Airways, Inc. v. McCutcheon*, 569 U.S. 88, 100-101 (2013) (identifying "ERISA's principal function" as the "protect[ion]" of contractual benefits) (citations omitted). But where a plaintiff objects to the level of benefits received, his basis for liability must derive from the plan documents rather than general theories of fiduciary liability. *See Bennett*, 168 F.3d at 677 ("ERISA does no more than protect the benefits which are due to an employee under a plan").

Applying these principles here, Plaintiff's claim has no legal basis. Plaintiff does not—and could not—argue that Honeywell violated the terms of the Plan when it used forfeitures to reduce employer contributions. Opening Br. 2, 6, 17; *see also* Appx10-11 (DCT Order Dismissing Amended Complaint) (Plaintiff "makes no allegations that Honeywell failed to abide by the Plan or that any participant received less than promised"). Nor does Plaintiff argue that ERISA categorically prohibits the use of forfeitures to offset employer contributions. Opening Br. 29 n.4 & 30.

Rather, Plaintiff's theory is that, even though Honeywell *could* use forfeitures to offset contributions under the Plan, and even though Honeywell informed Plan participants of precisely that, ERISA nevertheless precluded Honeywell from doing so. In other words, despite having a menu of options for the use of forfeitures, Honeywell violated ERISA by selecting one of those options.

This theory is "a non-starter." *Loomis*, 658 F.3d at 671. Whether forfeited contributions are used to reduce employer contributions or to pay plan expenses is a decision regarding how much an employer is obligated to contribute and how much employees owe in expenses—and those decisions cannot give rise to liability under ERISA. Plaintiff would presumably agree that he could not raise a cognizable claim that Honeywell violated its fiduciary duty by declining to pay a specific percentage of administrative expenses, but his current theory seeks to accomplish precisely that: namely, an increase in the amount of administrative expenses paid by the employer (vis-à-vis forfeited employer contributions), rather than by plan participants. Similarly, Plaintiff would presumably agree that he could not raise a cognizable claim that Honeywell violated its fiduciary duty by declining to make, on a discretionary basis, employer contributions that are not promised by the terms of the Plan—but, again, his current theory seeks to accomplish precisely that. *See* Response Br. 31, 34, 42. Plaintiff should not be able to use forfeitures to accomplish indirectly what he could not accomplish directly. *See Loomis*, 658 F.3d at 671 (rejecting a theory that would require the plan sponsor "to contribute more to the Plan than it does").

Notably, DOL agrees. DOL recently made clear that an employer's "deci[sion] to use Plan forfeitures to fund matching contribution benefits" does not state a plausible claim for breach when permitted by the plan documents. Br. for the U.S. Sec'y of Lab. as *Amicus Curiae* Supporting Defendant-Appellee at 15, *Hutchins v. HP Inc.*, No. 25-826 (9th Cir. July 9, 2025), ECF No. 24. As DOL's brief explains, "it is axiomatic that 'ERISA does no more than protect the benefits which are due to an employee under a plan.'" *Id.* at 17 (quoting *Wright*, 360 F.3d at 1100). Thus, where a plaintiff has "no allegation" that he received "less than the full contribution promised to him by [the employer] under the Plan," the plaintiff has failed to state a claim for breach of fiduciary duty. *Id.* at 17-18.

2. Plaintiff's approach to the Plan document undermines his own position.

Plaintiff suggests that this would be a different case if the Plan had directed Honeywell to use forfeitures *only* to offset employer contributions. As he acknowledges, Honeywell "is free to redesign the Plan" to require that forfeitures be used to offset employer contributions rather than to defray administrative expenses. Opening Br. 29 n.4, 30. But, Plaintiff contends, because Honeywell included in the Plan a "menu" of options for reallocating forfeitures, it was required to "endeavor to choose the option that is best for participants." *Id.* at 28. In other words, Honeywell could have treated forfeitures in *precisely the same way* if it had simply tweaked the Plan document to eliminate flexibility—but, once it provided *options* for allocating forfeitures, it was limited to one option. This argument is off base. As Honeywell makes clear, the Plan is *already* written in the manner that Plaintiff hypothesizes, as its terms do not permit using forfeitures to pay participants' share of Plan costs and expenses. *See* Response Br. 27-35. Even assuming that Plaintiff's contrary interpretation of the Plan were correct, however, his approach to the Plan document makes no sense and further reveals a fundamental flaw in his legal theory.

To start, this argument suggests that the problem Plaintiff identifies is not about the exercise of any *actual* fiduciary discretion but a quibble with how the Plan was written—in other words, that a change in one sentence could somehow flip the switch on fiduciary liability. But the writing of the plan document is indisputably a *settlor* function, not a fiduciary one. *See Lockheed*, 517 U.S. at 890 (recognizing that employers "are analogous to the settlors of a trust" when they act to "adopt, modify, or terminate" employee benefit plans) (citation omitted). Indeed, the whole purpose of the settlor-fiduciary distinction is that an employer is *not* subject to fiduciary liability arising from plan-design decisions if it adheres to the contractual benefits it promised to participants. *See Hughes Aircraft Co. v. Jacobson*, 525 U.S. 432, 444 (1999) ("ERISA's fiduciary duty requirement simply is not implicated where [an employer], acting as the Plan's settlor, makes a decision regarding the form or structure of the Plan ….”). It would eviscerate the settlor function if an employer could nonetheless be sued for following the terms of the plan it put into place.

Moreover, Plaintiff's argument is premised on the notion that the plan document, if written differently, could have displaced ERISA's fiduciary obligations—*i.e.*, that the fiduciary obligation to use forfeitures to pay administrative expenses applies only where the plan does not provide otherwise. But that is completely contrary to the position consistently being taken in many contexts by ERISA plaintiffs, who frequently point to the directive in 29 U.S.C. § 1104(a)(1)(D) that fiduciaries must discharge their fiduciary obligations "in accordance with" the plan document "insofar as" the plan document is "consistent with the provisions of this subchapter." *See also Fifth Third Bancorp v. Dudenhoeffer*, 573 U.S. 409, 421 (2014) ("This provision makes clear that the duty of prudence trumps the instructions of a plan document . . . .").

In short, if the decision of how to use forfeitures were actually a fiduciary decision (rather than a settlor one)—and if ERISA's fiduciary obligations *always* require funds to be used to increase participant benefits—then under Plaintiff's theory ERISA would *require* plan fiduciaries to disregard the plan document and *always* use forfeitures to pay administrative expenses. Accordingly, it makes no sense to suggest, as Plaintiff now attempts to do, that Honeywell has a fiduciary obligation to use contributions in a particular way, *but* a plan sponsor can effectively override that obligation by writing the plan document slightly differently.

Notably, there are many sound reasons *why* plan documents provide choices about how to use forfeitures—and none that suggest it is a *fiduciary* determination whether to use forfeitures to pay employee expenses. For one thing, retirement plans governed by the Tax Code (which most retirement plans are, *see supra* pp. 5-7) have long understood that they are not permitted to keep unallocated forfeitures sitting in plans; instead, the Treasury Department instructs plans to use or allocate forfeitures "in the plan year incurred," or else they can lose their "qualified" status (*i.e.*, their eligibility for significant tax benefits). *Retirement News for Employers* 4; *see also* Rev. Rul. 80-155, 1980-1 C.B. 84, 1980 WL 130029, at *1 (June 16, 1980). At the same time, how to use forfeitures can vary significantly from year to year in ways that cannot be predicted *ex ante* when plan documents are drafted. Depending on, for example, how many employees leave in a given year before their benefits vest, when forfeitures arise, and the amount of administrative expenses, it may make more or less sense to use forfeitures to fund administrative expenses over employer contributions or vice versa.

Under Plaintiff's approach, however, a plan sponsor can use forfeitures to fund employer contributions *only* if it eliminates the option to use forfeitures to fund administrative expenses. *See* Opening Br. 28-29 (acknowledging this aspect of

Plaintiff's theory). As the district court correctly recognized when dismissing Plaintiff's original complaint, "[t]he crux of [Plaintiff's] allegations is that *any* time a fiduciary is given the option to use forfeited amounts to either reduce employer contributions or pay administrative costs, the fiduciary *must* choose the latter." Appx22; *see also* Appx10 (DCT Order Dismissing Amended Complaint) (noting Plaintiff's theory "effectively imposes a new mandate"). Thus, before each plan year begins, a sponsor would have to tie itself to a particular approach that might in fact make little sense based on the actual experience during that particular year.

For another thing, a plan document providing a choice between using forfeitures to reduce employer contributions *or* to pay administrative expenses is not inherently a choice between one option that benefits the employer and another that benefits the employee. Even in defined-contribution plans in which participants pay recordkeeping expenses, there are *many* administrative expenses often paid by the plan sponsor—including the costs of an independent auditor, legal counsel, and more. Accordingly, a choice about whether to use forfeitures to pay administrative expenses or reduce employer contributions need not have *anything* to do with reducing participant costs at all. Rather, an employer selecting between using forfeitures either to offset remaining contributions or to pay plan administrative expenses might simply be choosing between two different options that each offset the *employer's* expenses—suggesting, again, that treatment of forfeitures consistent with the plan documents should not give rise to a claim for breach of fiduciary duties.

III. Plaintiff's claims, if accepted, will undermine ERISA's text and purpose and harm plan participants.

A. Plaintiff's approach cannot be squared with Congress's objectives in enacting ERISA.

Plaintiff repeatedly trumpets ERISA's fiduciary provisions as directing a ruling in his favor. But allocating forfeitures to participant accounts—*i.e.*, using them *to provide plan benefits*—is fully consonant with those obligations, including with the concept of acting "solely in the interest of the participants." *See Hughes Aircraft*, 525 U.S. at 442 (ERISA's "exclusive purpose" language "focuses exclusively on whether fund assets were used to pay pension benefits to plan participants"); *cf. Raymond B. Yates, M.D., P.C. Profit Sharing Plan v. Hendon*, 541 U.S. 1, 22 (2004) ("The [anti-inurement] provision demands only that plan assets be held for supplying benefits to plan participants.").

Moreover, Plaintiff's theory undercuts the flexibility Congress afforded plan sponsors who offer retirement plans. As discussed above, ERISA does not impose any obligation on employers to offer a particular level of benefits, or even to offer benefits at all. *See Lockheed*, 517 U.S. at 887. Thus, an employee's entitlement to benefits is a "contractually defined" right that is protected by the "written plan documents." *US Airways*, 569 U.S. at 100-101 (citations omitted). Plaintiff's theory here, however, is that even if plan participants get every benefit and every penny they are promised by the plan documents, ERISA's fiduciary provisions require plans to be interpreted in a way that would entitle participants to *more* benefits than they have been promised—here, free or highly subsidized administrative expenses. That is completely inconsistent with Congress's objective.

B. Plaintiff's theory harms both employers and employees.

Interpreting ERISA to give rise to fiduciary obligations that Congress and regulators have *never* understood to exist would disrupt the settled expectations of plan sponsors. It would impose "gotcha" liability on plan sponsors who simply incorporated Treasury regulations into their plan documents[10]—over 65 of whom have been sued thus far[11]—simply because they did not use whatever magic words Plaintiff suggests could have enabled them to avoid a lawsuit. As the Supreme Court has explained, though, when enacting ERISA Congress knew that if it adopted a system that was too inflexible or "complex," then "administrative costs, or litigation expenses, [would] unduly discourage employers from offering . . . benefit plans in the first place." *Varity Corp. v. Howe*, 516 U.S. 489, 497 (1996). Plaintiff's theory would have precisely that effect.

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[10] That is precisely what Honeywell did here, as Section 7.3 of the Plan document lists the menu of options for how forfeitures may be allocated, including "for any other purpose permitted under IRS rules." Appx159.

[11] *See* Groom Law Group, *401(k) Plan Forfeitures – the Department of Labor Backs Employers in Arguing that Lawsuit Should Be Dismissed* (July 14, 2025), https://bit.ly/4p9nhin.

Plaintiff's theory will not redound to the benefit of employees, either. According to Plaintiff's theory, so long as an employer writes its plan document to dictate that forfeitures must be used to offset employer contributions, then there is no requirement they be used to offset administrative expenses. The result? Plan documents will simply be revised to remove the flexibility that the Treasury Department has permitted for decades, and the same flexibility that helps employers most effectively use forfeited contributions. *See supra* pp. 25-26. Moreover, with no assurance that forfeited contributions could be used as specified in the plan document without giving rise to liability for a potential fiduciary breach (or, at minimum, to an expensive and time-consuming lawsuit), Plaintiff's theory would discourage employers from offering "match" contributions as incentives for remaining employed for a particular period of time.

* * *

Plaintiff's theory has nothing to recommend it. It will not result in any meaningful benefit to employees, and it is inconsistent with ERISA, historical practice, and employers' settled expectations. The Court should reject this novel approach.

CONCLUSION

The judgment of the district court should be affirmed.

December 30, 2025

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify on that December 30, 2025, I electronically filed the foregoing with the Clerk of the Court for the United States Court of Appeals for the Third Circuit using the Court's CM/ECF system. Counsel for all parties to the case are registered CM/ECF users and will be served by the CM/ECF system.

Dated: December 30, 2025

s/ Jordan Bock
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CERTIFICATE OF COMPLIANCE

This brief complies with the type-volume limitations of Federal Rule of Appellate Procedure 29(a)(5) because it contains 6,479 words, excluding the parts of the brief exempted by Federal Rule of Appellate Procedure 32(f).

This brief complies with the typeface requirements of Federal Rule of Appellate Procedure 32(a)(5) and the type-style requirements of Federal Rule of Appellate Procedure 32(a)(6). The brief has been prepared in a proportionally spaced typeface using Microsoft Word 365 in 14-point Times New Roman font.

This brief complies with the electronic filing requirements of L.A.R. 31.1(c) because the text of this electronic brief is identical to the text of the paper copies, and Microsoft Defender for Antivirus (version 1.443.402.0) has been run on the file containing the electronic version of this brief and no viruses have been detected.

This brief complies with L.A.R. 46.1(e) because Jaime A. Santos and Jordan Bock are members of the bar of this Court and in good standing.

Dated: December 30, 2025

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