No. 26-1305

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

JOHN STANA, individually and on behalf of all others similarly situated; RANDALL WAGNER, individually and on behalf of all others similarly situated,

Plaintiffs-Appellants,

v.

SAS INSTITUTE, INC.; BOARD OF DIRECTORS OF SAS INSTITUTE, INC.; RETIREMENT COMMITTEE OF SAS INSTITUTE, INC.; JOHN DOES 1-30,

Defendants-Appellees.

Appeal from the U.S. District Court for the Eastern District of North Carolina
No. 5:24-cv-00105-D-RN (Hon. James C. Dever III)

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

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July 24, 2026

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: July 24, 2026

s/ Jordan Bock
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 organization. As the nation's leading advocate for business, the Chamber represents companies 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"). *Amici* regularly file *amicus curiae* briefs 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); *Lockheed Martin Corp. v. Konya*, No. 25-2061 (4th Cir. Dec. 10, 2025).

Amici file this brief to provide the Court with greater context regarding the use of forfeitures and the framework for evaluating claims of imprudence based on underperformance.

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[1] 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.

INTRODUCTION

When Congress enacted ERISA, it "did not require employers to establish benefit plans." *Conkright v. Frommert*, 559 U.S. 506, 516 (2010). Rather, it crafted a statute intended to encourage employers to offer benefit plans while also protecting the benefits promised to employees. *Id.* at 516-517; *see also* H.R. Rep. No. 93-533, at 218 (1973). 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).

Congress also knew that plan sponsors and fiduciaries must make a range of decisions and accommodate "competing considerations," often during periods of considerable market uncertainty. H.R. Rep. No. 96-869, at 67 (1980). Sponsors and fiduciaries must account for present and future participants' varying objectives, administrative efficiency, and the need to "protect[] the financial soundness" of plan assets. *Id.* As a result, Congress designed a statute that affords plan sponsors and fiduciaries considerable flexibility—"greater flexibility, in the making of investment decisions … than might have been provided under pre-ERISA common and statutory law in many jurisdictions." DOL Advisory Op. No. 81-12A, 1981 WL 17733, at *1 (Jan. 15, 1981).

The overarching flaw with Plaintiffs' underperformance and forfeiture claims is their failure to account for this framework. Plaintiffs challenge the performance of the Plan's JPMorgan Chase Bank SmartRetirement Passive Blend CF-B Target Date Funds ("JPM TDFs"), but their allegations do not account for plan fiduciaries' exercise of discretion in selecting from a vast array of investment options based on the characteristics and needs of their particular participant populations. The same is true for the allocation of forfeited employer contributions. Plaintiffs' theory here 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* than their promised benefits—here, highly subsidized plan expenses. That is completely inconsistent with Congress's objectives in enacting ERISA.

By selecting the "[p]rudent man" standard to define the scope of fiduciary duties, 29 U.S.C. § 1104(a), Congress provided fiduciaries with the "flexibility" necessary to determine how best to manage their plans. *Fine v. Semet*, 699 F.2d 1091, 1094 (11th Cir. 1983). The Court should reject Plaintiffs' efforts to unduly limit the options available to plan sponsors by imposing standards that have no basis in the text of either ERISA or the plan documents.

ARGUMENT

I. Plaintiffs' hindsight-based underperformance challenge is not cognizable under ERISA.

Plaintiffs point to the purported underperformance of the JPM TDFs (in relation to other options on the market) and ask this Court to infer that the Plan's fiduciaries must have had an imprudent investment-monitoring process. Plaintiffs' efforts to second guess fiduciary judgment using hindsight-based performance comparisons come nowhere near plausibly alleging a fiduciary breach.

A. Using inapt comparators in an attempt to plead by inference is inconsistent with ERISA and the heavy weight of authority.

In light of the discretion afforded to fiduciaries, claims for breach of fiduciary duty focus "on 'a fiduciary's conduct in arriving at an investment decision, not on its results.'" *Anderson v. Intel Corp. Inv. Policy Comm.*, 137 F.4th 1015, 1021 (9th Cir. 2025) (citation omitted), *cert. granted*, __ S. Ct. __, 2026 WL 120679 (2026). ERISA "requires prudence, not prescience." *Id.* As a result, "the proper question" in evaluating an ERISA claim "is not whether the investment results were unfavorable, but whether the fiduciary used appropriate methods to investigate the merits of the transaction." *Harris v. Amgen, Inc.*, 788 F.3d 916, 936 (9th Cir. 2015) (citation modified), *rev'd and remanded on other grounds by* 577 U.S. 308 (2016). In other words, fiduciaries are judged not for the outcome of their decisions but for the *process* by which those decisions were made. Whether any particular decision was prudent "cannot be measured in hindsight." *DiFelice v. U.S. Airways, Inc.*, 497 F.3d 410, 423-424 (4th Cir. 2007).

Although ERISA's fiduciary standards focus entirely on process, ERISA complaints asserting fiduciary-breach claims rarely focus on process. Instead, they ask the Court to infer an imprudent process based on circumstantial, outcome-focused allegations. This approach uses impermissible 20-20 hindsight to compare the fees or performance of the plan fiduciaries' decision against the fees or performance of a different option available on the market. *Anderson*, 137 F.4th at 1022.

This approach is on shaky footing from the get-go. By using outcomes as a proxy for process, plaintiffs attempt to peg their claims to a metric that courts have been clear is not determinative—and typically is not even probative. Because it is "the process" that "ultimately matters, not the results," *Matousek v. MidAm. Energy Co.*, 51 F.4th 274, 278 (8th Cir. 2022), plaintiffs should not be able to survive a motion to dismiss by using results as a stand-in for process allegations.

The hindsight-based approach is particularly problematic in the context of performance-based comparisons, as Plaintiffs rely on here. Anyone can cherry-pick historical data to make a fiduciary's choices look suboptimal given the near-infinite combination of comparator options and time periods. With the benefit of hindsight, one can always identify a better-performing fund during a hand-selected time period, just as one could always identify a worse-performing fund. But with hundreds of funds (and even dozens of TDFs) on the market, courts cannot infer that fiduciaries were acting imprudently simply because a particular TDF suite was purportedly outperformed by a handful of other TDF suites during a discrete time period. *See, e.g.*, *Forman v. TriHealth, Inc.*, 40 F.4th 443, 448-449 (6th Cir. 2022) ("[A] showing of imprudence cannot come down to simply pointing to a fund with better performance." (quotation marks omitted)).

Moreover, it is well-established that chasing performance (*i.e.*, switching investment strategies to pursue the fund performing well at the time) is a misguided investment approach "generally doomed to some kind of failure." Kate Stalter, *Chasing Performance Is a Quick Way to Disaster*, U.S. News (Feb. 8, 2017), https://bit.ly/3IhKn0R. As the Sixth Circuit has recognized, "[p]recipitously selling a well-constructed portfolio in response to disappointing short-term losses, as it happens, is one of the surest ways to frustrate the long-term growth of a retirement plan." *Smith v. CommonSpirit Health*, 37 F.4th 1160, 1166 (6th Cir. 2022).

Relying solely on one factor—performance—as a proxy for process also ignores fiduciaries' obligation to account for a full range of factors when selecting funds. As the Department of Labor ("DOL") has explained, "prudent fiduciaries must consider all relevant factors," including fees, "potential for higher return, lower financial risk, more services offered, or greater management flexibility." U.S. Br.

20, *Hughes v. Nw. Univ.*, No. 19-1401 (U.S. May 21, 2021), https://bit.ly/3Zf8C7I (citation omitted). DOL's guidance thus directs fiduciaries to account for those factors holistically when choosing and monitoring investments, including plan-specific considerations "such as participation in a traditional defined benefit pension plan offered by the employer, salary levels, turnover rates, contribution rates and withdrawal patterns." *See* U.S. Dep't of Labor, *Target Date Retirement Funds – Tips for ERISA Plan Fiduciaries* 2 (Feb. 2013), https://bit.ly/3imKQqY ("*TDF Tips*").

Indeed, with respect to TDFs in particular, DOL guidance advises fiduciaries engaging in periodic TDF reviews to consider "whether there have been any significant changes in the information fiduciaries considered when the option was selected or last reviewed." DOL, *TDF Tips* 2. For example, "if a TDF's investment strategy or management team changes significantly, or if the fund's manager is not effectively carrying out the fund's stated investment strategy, then it may be necessary to consider replacing the fund." *Id.* Or "if your plan's objectives in offering a TDF change, you should consider replacing the fund." *Id.* Noticeably absent from this guidance is any suggestion that fiduciaries should focus myopically on performance, much less *short-term* performance, and drop a TDF suite from the plan line-up based on recent underperformance compared to peers—particularly if the TDF suite is performing *precisely* as intended based on the suite's investment strategy. To infer a breach of ERISA's process-based fiduciary obligations based on this myopic focus would be impermissibly short-sighted.

B. Claims that attempt to plead imprudence from circumstantial outcome-based facts must include something more than allegations that are equally consistent with lawful behavior.

The use of impermissible hindsight and an improper focus on a single factor to the exclusion of all others should doom any attempt to plead by performance comparisons. At a minimum, however, plausibility requires that courts ensure the identified comparators are *actually* comparable. This "meaningful benchmark" requirement is critical to whether plaintiffs have pushed their allegations over the plausibility line. *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 560 (2007). Otherwise, a fiduciary's decision "could just as well" reflect an entirely rational, permissible decision—namely, that a fiduciary committee made a different choice because its weighing of all factors led it to a different fund. *See Hikma Pharms. USA Inc. v. Amarin Pharma, Inc.*, 146 S. Ct. 1391, 1399 (2026) (explaining plaintiffs' burden "to rule out obvious alternative explanations for the defendant's conduct" (quotations and alterations omitted)). Applying these principles, courts across the country require plaintiffs who attempt to plead by comparison to provide "a sound basis for comparison—a meaningful benchmark." *Meiners v. Wells Fargo & Co.*, 898 F.3d 820, 822 (8th Cir. 2018); *see also* Resp. Br. 24-28 (discussing the circuit consensus on this issue).

The meaningful benchmark requirement is all the more important given the range of investment options available for TDFs. Fiduciaries selecting a TDF have to consider a range of factors, including how to change a fund's asset allocation as a participant nears (or passes) retirement—referred to as the fund's "glide path." DOL, *TDF Tips* 1. Funds with "different glide paths … have different risk-return profiles." *Pizarro v. Home Depot, Inc.*, 111 F.4th 1165, 1180 (11th Cir. 2024). TDFs with a "to retirement" strategy "reduce[] the TDF's equity exposure over time to its most conservative point at the target" retirement date. *Id.* A TDF with a "through retirement" approach, on the other hand, "reduces equity exposure through the target date so it does not reach its most conservative points until years later." *Id.*

These strategies reflect different approaches to balancing risks: "A 'to' objective is focused on limiting the volatility or the variability of outcomes for the investor up to retirement, while a 'through' objective drives growth for participant balances for several years and then allows them to be converted into income through retirement." Amanda Umpierrez, *Evaluating 'To' vs. 'Through' Glide Paths*, PlanSponsor (Feb. 17, 2021). As DOL has explained, the choice between "to" versus "through" reflects different investment strategies and approaches to risk. DOL, *TDF Tips* 1. Accordingly, comparing the investment returns of a TDF with a "to retirement" strategy to those of a TDF with a "through retirement" strategy does not provide any meaningful information about the performance of the TDFs. Those

TDFs perform differently because they are different and are intended to perform differently. Thus, Plaintiffs' comparison here of the JPM TDFs, which use a "to" glide path, to four TDFs that all use "through" glide paths provides no insight regarding the performance of the JPM TDFs. JA0002-03.

For these same reasons, plaintiffs cannot end-run well-established pleading standards merely by pointing to generalized language in a plan's Investment Policy Statement ("IPS"). A plan IPS typically provides flexible guidance for plan fiduciaries to take into account in monitoring the plan line-up. Here, the IPS states that investment options will be selected with the goals of "outperform[ing] the investment option's *appropriate* benchmark and the median of its *appropriate* universe," and "provid[ing] returns comparable to returns for *similar* investment options," among other things. JA0148 (emphases added). The requirement of "appropriate" and "similar" comparisons does not impose any particular benchmark. Nor does it create an escape hatch that allows Plaintiffs to plead *relative* underperformance without providing a meaningful benchmark. At most, then, the IPS leaves Plaintiffs exactly where they started: unable to allege that the JPM TDFs underperformed compared to a meaningful benchmark. *See Grink v. Virtua Health, Inc.*, 812 F. Supp. 3d 434, 453 (D.N.J. 2025) (plaintiffs "fail[ed] to plausibly allege imprudence based on the IPS" where the allegations were merely "based on after-the-fact evaluation of underperforming assets that are dependent upon comparison to other investment opportunities"); *supra* pp. 4-8.

II. Plaintiffs' forfeiture claim is not plausible.

The Court should also reject Plaintiffs' effort to require employers to offer a purported benefit (highly subsidized plan expenses) that is untethered from both the statute and the Plan documents.

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

Retirement plans may operate *exactly* in the way that Plaintiffs fault Defendants' 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 Plaintiffs' 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 fiduciary would act "under the circumstances then prevailing."

1. The Treasury Department's long-standing view of forfeitures validates Defendants' approach here.

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.*, DOL, *History of EBSA and ERISA*, https://bit.ly/45UrBeC. 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 the vesting provisions at issue here. *See* Reorganization Plan No. 4 of 1978, 5 U.S.C. App. 1, 92 Stat. 3790 (transferring relevant authority to 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). In particular, Defendants' Plan—like all tax-advantaged retirement plans—must comply with provisions in the Tax Code, both to ensure 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 particular plan to be treated as a "qualified" retirement plan—among other things, assets in the plan's trust must 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 Plaintiffs' claim for breach of the duty of loyalty. JA0017.

For more than 60 years, Treasury Department regulations and guidance have expressly authorized using forfeitures to reduce employer contributions, at least for certain types of plans. Before ERISA's enactment, a Treasury Department regulation *required* qualified pension plans (*i.e.*, defined-benefit plans) to expressly provide 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 Defendants' Plan—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). And notably, § 401(a) includes the "exclusive benefit" requirement that mirrors ERISA.

Informal guidance from both DOL and the Treasury Department has only bolstered this understanding over the past fifty 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." DOL 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.*

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*").[2] It is unbelievable that precisely the same conduct that is entirely permissible under governing law could nevertheless result in a breach of fiduciary duty. This conclusion is especially difficult to accept when prudence is assessed on "the circumstances then prevailing." 29 U.S.C. § 1104(a)(1)(B).

Plaintiffs' theory also ignores how inextricably intertwined ERISA is with the Tax Code. In particular, Plaintiffs fail to explain how there could be meaningful daylight between when assets in a trust are "used 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 forfeitures to reduce employer contributions is consistent with acting for "the exclusive benefit of" employees, then it makes no sense for that same act to run afoul of ERISA's analogous "exclusive purpose" provision.

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[2] 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.

2. 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 "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 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.'" *CFTC 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 clarify 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.

3. Plaintiffs' theory would flip longstanding practice on its head.

The consistent understanding of Congress and the Treasury Department, including the Treasury Department's proposed clarifying regulation, explicitly authorizes the very practice that Plaintiffs challenge. Accordingly, to accept Plaintiffs' theory that ERISA's fiduciary provisions prohibit using forfeitures to reduce employer contributions 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)).

The district court properly rejected Plaintiffs' approach as implausible based on its statutory analysis, in line with the overwhelming majority of district courts tasked with resolving the recent wave of forfeiture actions. JA0017-20; *see, e.g.*, *Madrigal v. Kaiser Found. Health Plan, Inc.*, 2025 WL 1299002, at *4-7 (C.D. Cal. May 2, 2025); *see also Jacob v. RTX Corp.*, 817 F. Supp. 3d 341, 349-354 (E.D. Va. 2026), *appeal pending*, No. 26-1127 (4th Cir.); *Tillery v. WakeMed Health & Hosps.*, 819 F. Supp. 3d 442, 448-459 (E.D.N.C. 2026). This Court should do the same.

B. Plaintiffs' fiduciary-breach claims fail as a matter of law for two independent reasons.

For two separate reasons, Plaintiffs' claims fail as a matter of law out of the gate. First, Plaintiffs' 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 Defendants' approach to forfeitures. Second, Plaintiffs' theory is implausible because nothing in ERISA requires plan participants to receive *more* than their plan promised when—as Plaintiffs acknowledge here—ERISA does not itself prohibit the use of forfeitures to offset employer contributions.

1. Plaintiffs' claims fail under ERISA § 514(d) because the conduct Plaintiffs challenge is consistent with Treasury Regulations.

Plaintiffs' 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). Under this provision, it is "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 when a defendant complied with other federal laws. 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 held that they can authorize such a return so long as it is permitted by the Bankruptcy Code. *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" § 514(d)).

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)." DOL 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 Plaintiffs invoke here. *See* 29 U.S.C. § 1104(a)(1).[3]

Applying these principles here, § 514(d) protects Defendants' 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. 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. 13-14. Plaintiffs' 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

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

consistently applied 26 C.F.R. § 1.401-7(a) in the context of defined-contribution plans. *See supra*, pp. 13-14. "The language of § [514](d) could be no clearer: *nothing* in ERISA should be interpreted to impact other federal law." *Pulaski Highway*, 41 B.R. at 309. In this exact context, then, Plaintiffs' theory would contravene the 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.

2. Plaintiffs' claims are implausible under ERISA.

Plaintiffs' theory is infirm for an entirely separate reason. At bottom, Plaintiffs' complaint is that Defendants 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 ERISA does not require employers to offer a retirement plan, let alone to maximize pecuniary benefits for any plan they do offer. *Wright v. Or. Metallurgical Corp.*, 360 F.3d 1090, 1100 (9th Cir. 2004). Rather, employers "are generally free under ERISA, for any reason at any time, to adopt, modify, or terminate" employee benefit plans. *Lockheed Corp. v. Spink*, 517 U.S. 882, 890 (1996) (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).

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. McCutchen*, 569 U.S. 88, 100-101 (2013) (citations omitted) (identifying "ERISA's principal function" as the "protect[ion]" of contractual benefits). Thus, where a plaintiff objects to the level of benefits received, the basis for liability must derive from the plan documents, rather than general principles of fiduciary liability. *See Wright*, 360 F.3d at 1100.

Applying these principles here, Plaintiffs' claim has no legal basis. Plaintiffs do not—and could not—argue that Defendants violated the terms of the Plan by using forfeitures to cover some of Defendants' employer contributions. Nor do Plaintiffs argue that ERISA categorically prohibits the use of forfeitures to offset employer contributions. Rather, Plaintiffs' theory is that, even though the Plan administrator *could* use forfeitures to offset contributions under the Plan, and even though the Plan document informed Plan participants of precisely that, ERISA nevertheless precluded the Plan administrator from doing so.

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 dictates how much an employer is obligated to contribute and how much it will cover in plan expenses—and those decisions cannot give rise to liability under ERISA. Plaintiffs would presumably agree that they could not raise a cognizable claim that Defendants violated a fiduciary duty by declining to pay a specific percentage of administrative expenses, but Plaintiffs' theory seeks to accomplish precisely that: payment of administrative expenses by the employer (via forfeited employer contributions), rather than by Plan participants. Plaintiffs should not be able to use forfeitures as an end-run to accomplish indirectly what they 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").

DOL agrees. DOL has recently and repeatedly made clear in two separate Ninth Circuit appeals 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.[4] 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, as the district court correctly recognized, JA0020, where a plaintiff has "no allegation" that he received "less than

[4] DOL has filed *amicus* briefs taking the same position in *Barragan v. Honeywell Int'l Inc.*, No. 25-2609 (3d Cir.), *Cain v. Siemens Corp.*, No. 25-2564 (3d Cir.), and *Wright v. JPMorgan Chase & Co.*, No. 25-4235 (9th Cir.).

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. *Hutchins*, No. 25-826, ECF No. 24 at 17-18.

Finally, Plaintiffs' approach to the Plan documents undermines their own position. Under Plaintiffs' theory, this would be a different case if the Plan had directed the Plan administrator to use forfeitures *only* to offset employer contributions. In other words, the Plan administrator could have treated forfeitures in *precisely the same way* if Defendants had simply tweaked the Plan document to eliminate flexibility—but, once it provided the Plan administrator with options for allocating forfeitures, the administrator was in fact limited to just *one* option. That makes no sense, and further reveals a fundamental flaw in Plaintiffs' theory.

To start, this argument suggests that Plaintiffs' real objection 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 a 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 provides the contractual benefits it promised. *See Wright*, 360 F.3d at 1100. It would eviscerate the settlor function doctrine if an employer could nonetheless be sued for following the terms of the plan it put into place.

Moreover, the Court should view skeptically the notion that the Plan document, if written differently, could have displaced ERISA's fiduciary obligations. That theory 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 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…"). 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 Plaintiffs' 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 Plaintiffs now attempt to do, that Defendants have a fiduciary obligation to use contributions in a particular way *but* Defendants could 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 (and certainly not fiduciary misfeasance). For one thing, retirement plans governed by the Tax Code (which most private, employer-sponsored retirement plans are, *see supra*, pp. 12-13) have long understood that they cannot 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 best to use forfeitures can vary significantly from year to year in ways that cannot be predicted *ex ante*. Depending on how many employees leave in a given year before their benefits vest, what the current employer contribution levels are, when forfeitures arise, when employer contributions are made, the amount of administrative expenses, and when administrative expenses are due, it may make more or less sense to use forfeitures to fund administrative expenses over employer contributions or vice versa in any given 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. And at ERISA's enactment in 1974, when defined-benefit plans were the norm (and four years *before* Section 401(k) was even added to the Tax Code), most if not all administrative expenses were paid by the plan sponsor. 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.

C. Plaintiffs' 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—approximately 100 of whom have been sued thus far[5]—simply because they did not use whatever magic words Plaintiffs suggest could have enabled them to avoid a lawsuit. As the Supreme Court has explained, though, Congress knew when it enacted ERISA that if it adopted a system that was too inflexible or "complex," then "administrative costs, or litigation expenses, [would] unduly discourage employers from offering …

[5] *See* Jacklyn Wille, *ERISA Class Actions Soar in 2026 as New Legal Theories Emerge*, Bloomberg Law (April 13, 2026), https://bit.ly/4uZLafi.

benefit plans in the first place." *Varity Corp.*, 516 U.S. at 497; *see also supra*, p. 2. Plaintiffs' theory would have precisely that effect.

Nor will Plaintiffs' theory redound to the benefit of employees. According to Plaintiffs' 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. 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), Plaintiffs' theory would discourage employers from offering "match" contributions as incentives for remaining employed for a particular period of time.

In short, Plaintiffs' 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.

Respectfully submitted,

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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 6,412 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.

Dated: July 24, 2026

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CERTIFICATE OF SERVICE

I hereby certify that on July 24, 2026, I electronically filed the foregoing using the Court's CM/ECF system.

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