No. 26-1305

In the United States Court of Appeals for the Fourth Circuit

JOHN STANA AND 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.

AMICUS CURIAE BRIEF
OF THE U.S. ACTING SECRETARY OF LABOR
IN SUPPORT OF DEFENDANTS-APPELLEES AND AFFIRMANCE

On Appeal from the United States District Court
for the Eastern District of North Carolina,
Case No. 5:24-cv-00105-D-RN (Hon. James C. Dever, III)

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IDENTITY & INTEREST OF AMICUS CURIAE[1]

As the United States officer with chief authority over Title I of the Employee Retirement Income Security Act ("ERISA"), the Secretary of Labor must "assur[e] the . . . uniformity of enforcement of . . . the ERISA statutes." *See Sec'y of Lab. v. Fitzsimmons*, 805 F.2d 682, 693 (7th Cir. 1986) (en banc). This duty includes clarifying "standards of conduct, responsibility, and obligation for fiduciaries of employee benefit plans." 29 U.S.C. § 1001(b). The fiduciary-centered issue in this case—one of dozens percolating through the courts—lives in the heartland of those standards in which clarity, uniformity, and consistency must prevail. For that reason, the Acting Secretary offers the following to aid the Court.

INTRODUCTION & SUMMARY OF ARGUMENT

This case, the most recent of its ilk to reach a circuit court,[2] concerns a superficially mundane question: if a participant in an ERISA-governed retirement

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[1] The Acting Secretary files this brief under Federal Rule of Appellate Procedure 29(a)(2), which provides that a United States officer "may file an amicus brief without the consent of the parties or leave of court."

[2] Courts have rejected at least twenty-five similar cases, though at least six have survived motions to dismiss. *Compare Cain v. Siemens Corp.*, No. CV 24-8730, 2025 WL 2172684, at *6 (D.N.J. July 31, 2025) (dismissing claim), *appeal docketed*, No. 25-2564 (3d Cir. 2025); *Barragan v. Honeywell Int'l Inc.*, No. 24CV4529 (EP) (JRA), 2025 WL 2383652, at *4–5 (D.N.J. Aug. 18, 2025), *appeal docketed*, No. 25-2609 (3d Cir. 2025) (same); *Hutchins v. HP Inc.*, 767 F. Supp. 3d 912, 922–28 (N.D. Cal. 2025), *appeal docketed*, No. 25-826 (9th Cir. 2025) (same); *Wright v. JPMorgan Chase & Co.*, No. 25-cv-00525, 2025 WL 1683642 (C.D. Cal. June 13, 2025), *appeal docketed*, No. 25-4235 (9th Cir. 2025) (same) *with Rodriguez v. Intuit Inc.*, 744 F. Supp. 3d 935, 948–49 (N.D. Cal. 2024) (denying motion to

plan "forfeits" matching contributions from his employer (typically by separating from the employer before those contributions vest), what happens to that money? For many plans (as here), the plan documents provide the answer. And in many cases (as here), the plan administrator has options under the plan documents—for instance, allocating those funds to future employer contributions, or using those funds to offset the costs of administering the plan.

Allowing employers to create options like this is a crucial feature of ERISA. Because "Congress did not require employers to establish benefit plans in the first place," *Conkright v. Frommert*, 559 U.S. 506, 516 (2010) (citing *Lockheed Corp. v. Spink*, 517 U.S. 882, 887 (1996)), the American worker benefits the most when employers have an incentive to provide for their employees' golden years. And because "ERISA represents a 'careful balancing' between ensuring fair and prompt enforcement of rights under a plan and the encouragement of the creation of such plans,'" *id.* at 517, part of this calibration includes the right of the plan's creator to establish alternatives for how to allocate forfeited funds. When an employer creates a plan, ERISA law is blackletter: decisions about the form, design, structure, and—particularly relevant here—funding of a plan are unencumbered by fiduciary duties.

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dismiss); *McManus v. Clorox Co.*, No. 23-CV-05325, 2025 WL 732087, at *4–6 (N.D. Cal. Mar. 3, 2025) (same).

The other side of the ERISA balance is that once a plan is created, implementation must be done in accordance with the fiduciary duties of loyalty and prudence. These ensure that "employees . . . receive the benefits they had earned." *Conkright*, 559 U.S. at 516. Where they apply, ERISA-imposed fiduciary duties act as a shield to protect worker retirement assets earned over the course of long careers.

Unfortunately, private-party ERISA litigants (or, more specifically, private-party ERISA litigators) are now trying to contort these well-intentioned shields into cynical swords that often hurt the American worker. Here, Defendants SAS Institute, Inc., its board of directors, and its retirement committee (collectively, "SAS") (1) opted (in its non-fiduciary capacity) to create a retirement plan for their employees, and (2) decided (likewise, in their non-fiduciary capacities) to give flexibility to the plan administrator to either defray certain administrative fees of its participants or offset SAS's contribution costs. Nevertheless, Plaintiffs John Stana and Randall Wagner insist that ERISA's fiduciary duties *command* plan administrators to virtually *always* exercise that discretion to defray employee administrative fees. All this, even though Plaintiffs have not alleged (and cannot allege) that any choice made by SAS imperiled even one cent of the contributions to which they are entitled under the Plan documents.

The district court rightly rejected this crabbed application of ERISA-imposed fiduciary duties. So too have most of the other courts that have addressed similar theories in similar cases nationwide.[3] And although this particular theory has been repeatedly rejected in multiple courts, the Acting Secretary nonetheless believes that the extensive damage it could inflict, if further permitted, warrants submitting his views here.

As the Court deliberates, the Acting Secretary respectfully offers two principles.

First, ERISA's fiduciary duties require plans like SAS's to be *administered* prudently and loyally. In other words, the *process* is what matters; so long as the *means* SAS employs demonstrate that it runs its plan with the loyalty required of a fiduciary, the *ends* on which it settles matter far less. This is especially true given the Supreme Court's focus on "'the circumstances . . . prevailing' at the time a fiduciary acts" to discern any breach. *Fifth Third Bancorp v. Dudenhoeffer*, 573 U.S. 409, 425 (2014) (quoting 29 U.S.C. § 1104(a)(1)(B)).

Because every fiduciary decision is "necessarily . . . context specific," *id.*, ERISA abhors per se, results-based theories of liability. Such theories are anathema to the principle that ERISA is a law of process. Plaintiffs' allegations, if allowed to proceed beyond a Rule 12(b)(6) challenge, would upset Congress's deliberate balance.

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[3] *See supra* n.2.

Second, Plaintiffs' theory will accomplish little more than making employers like SAS think twice before giving their fiduciaries the option to use forfeited money to benefit their plan participants—or worse. ERISA does not obligate employers to create retirement plans at all, much less a plan with any specified level of benefits. For this reason, incentivizing plan creation and protecting settlor flexibility is in the American worker's best interest. Because it would be detrimental to retroactively deprive a plan administrator of the unambiguous plan terms crafted by a non-fiduciary, Plaintiffs' theory is counterproductive. This Court should dispose of it expeditiously.

For these reasons and those that follow, the Acting Secretary respectfully requests that the Court affirm the district court's dismissal of Plaintiffs' complaint.

BACKGROUND

A. At its core, the issue is simple. Plaintiffs ask the Court to blend two different decisions into one: (1) how to form and fund a retirement plan and (2) how to allocate a plan's funds *after* the plan is formed and funded. Fiduciary duties govern the latter.[4] As a "settlor" decision, in contrast, fiduciary duties do not apply to the former.[5] The difference matters.

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[4] *See Hughes Aircraft Co. v. Jacobson*, 525 U.S. 432, 444 (1999) (fiduciary duties "consist[] of such actions as the administration of the plan's assets.").

[5] *See Coulter v. Morgan Stanley & Co. Inc.*, 753 F.3d 361, 367 (2d Cir. 2014) ("'Settlor' functions . . . include conduct such as establishing, funding, amending, or terminating a plan."); *Hunter v. Caliber Sys., Inc.*, 220 F.3d 702, 718 (6th Cir. 2000)

A settlor is an entity, usually an employer, that makes the initial, discretionary decision to create a retirement plan. When it does, the decisions it makes about the form, design, structure, and—particularly relevant here—funding of the plan are "settlor decisions." And as settlor decisions, they (assuming compliance with ERISA's rudiments) can be resolved any way the settlor wishes. *Hughes Aircraft Co. v. Jacobson*, 525 U.S. 432, 444 (1999). This makes sense: because "[n]othing in ERISA requires employers to establish employee benefits plans," the greater power to create the plan implies the lesser power to demarcate the benefits that the plan will provide. *Spink*, 517 U.S. at 887.

After plan creation, fiduciary duties apply to actions taken to administer it. Specifically, ERISA provides that a person who "exercises any discretionary authority or discretionary control respecting management of such plan or exercises any authority or control respecting management or disposition of its assets" is a fiduciary. 29 U.S.C. § 1002(21)(A)(i). When exercising that discretion, a 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," 29 U.S.C. § 1104(a)(1)(B), and "solely in the interest of the participants

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("[E]mployers who are also plan sponsors wear two hats: one as a fiduciary in administering or managing the plan for the benefit of participants and the other as employer in performing settlor functions such as establishing, funding, amending, and terminating the trust.") (internal citations omitted).

and beneficiaries" of that plan, *id.* § 1104(a)(1). These are, respectively, the fiduciary duties of prudence and loyalty.

Whether and when an employer acts as a fiduciary is an important threshold question. An ERISA fiduciary "may wear different hats," acting as a plan fiduciary in some contexts and as the plan sponsor in others. *Pegram v. Herdrich*, 530 U.S. 211, 225 (2000). "Where, as here, a plaintiff challenges the decision of a fiduciary wearing two hats, as a threshold matter a court must determine when the fiduciary has taken off [its] 'settlor/sponsor hat' and put on [its] 'fiduciary hat'" for the conduct at issue. *Dimou v. Thermo Fisher Sci. Inc.*, No. 23-CV-1732, 2024 WL 4508450, at *7 (S.D. Cal. Sept. 19, 2024) (quoting *Acosta v. Brain*, 910 F.3d 502, 518 (9th Cir. 2018)) (noting the importance of the "threshold 'two-hats' inquiry").

Of particular relevance, for a plan sponsor "whether to cover [plan] expenses is a question of plan design, not of administration." *Loomis v. Exelon Corp.*, 658 F.3d 667, 671 (7th Cir. 2011), *abrogated on other grounds by Hughes v. Nw. Univ.*, 63 F.4th 615 (7th Cir. 2023). For this reason, it is a settlor decision. *See Hughes Aircraft Co.*, 525 U.S. at 442; *Spink*, 517 U.S. at 890. The question of when and if forfeited plan funds can be used to cover plan expenses is likewise a question of plan design to which no fiduciary duties attach. And for years, both Congress and the

U.S. Department of the Treasury have allowed employers to use forfeited unvested contributions to defray their own future contributions.[6]

B. Plaintiffs John Stana and Randall Wagner were once Defendant SAS's employees and participants in the SAS Retirement Plan (the "Plan"), a defined-contribution,[7] individual-account plan the company created and administered.[8] JA0550–0551 (Second Am. Compl. ¶¶ 22–23, 44–46). The Plan is funded by participants' wage withholdings and SAS's matching contributions. JA0551–0552 (Second Am. Compl. ¶¶ 47–53). Both participants' wage withholdings and SAS's matching contributions pay the costs and expenses of administering the plan. Specifically, plan administrative costs are paid from the money that the Plan holds in trust for the participants, unless SAS elects to use another funding source. JA0583 (Second Am. Compl. ¶ 147), JA0698.

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[6] Use of Forfeitures in Qualified Retirement Plans, 88 Fed. Reg. 12282 (proposed Feb. 27, 2023).

[7] "[I]n a defined-contribution plan, such as a 401(k) plan, the retirees' benefits are typically tied to the value of their accounts, and the benefits can turn on the plan fiduciaries' particular investment decisions." *Thole v. U. S. Bank N.A.*, 590 U.S. 538, 540 (2020). "In a defined-benefit plan," in contrast, "retirees receive a fixed payment each month, and the payments do not fluctuate with the value of the plan or because of the plan fiduciaries' good or bad investment decisions." *Id.*

[8] SAS's plan administrator is the company's Retirement Committee. JA0147. As mentioned above, this brief refers to both the employer and the Committee as "SAS."

Under the Plan's cliff vesting schedule, a participant becomes fully vested in SAS's matching contributions only if they remain employed by SAS for five years. JA0553 (Second Am. Compl. ¶ 55). More specifically, plan participants become twenty-five percent vested after two years of service, fifty percent vested after three, seventy-five percent after four, and fully vested after five. JA0553 (Second Am. Compl. ¶ 55). If a participant leaves the company before then, the participant forfeits the balance of SAS's unvested matching contributions in the participant's Plan account. JA0553 (Second Am. Compl. ¶ 56).

The issue, and this case's gravamen, is what happens to those funds if an SAS employee forfeits them. The Plan's documents answer that question: forfeitures will be used first to "reinstate previously forfeited account balances of former [plan] Participants." JA0675. For any remaining funds, SAS has discretion as plan administrator to either "reduce the Employer Contribution for the Plan Year following the Plan Year in which such Forfeiture occurs" or "pay the expenses of the Plan." JA0676. The latter would necessarily mean that plan participants pay less. Between 2018 through 2023, SAS mostly elected to use forfeited, unvested employer contributions to reduce its future matching contributions—though notably not in 2022, when it allocated $222,320 in forfeitures toward plan expenses. JA0584–0585 (Second Am. Compl. ¶¶ 159–60).

C. In response, Plaintiffs sued. Purporting to represent a class, their operative complaint alleges breach of the fiduciary duty of loyalty, breach of the fiduciary duty of prudence, and prohibited transaction claims.[9] JA0585–0591 (Second Am. Compl. ¶¶ 163–92).

Plaintiffs claimed that "[u]sing the forfeitures to reduce [matching] contributions is always in the best interest of SAS because that option would decrease its own contribution costs." JA0583 (Second Am. Compl. ¶ 151). Conversely, they argued that, "[a]bsent any risk that SAS would be unable to satisfy its contribution obligations, using forfeitures to pay Plan expenses would be in the participants' best interest because [it would] reduce or eliminate amounts otherwise charged to their accounts to cover such expenses." JA0583 (Second Am. Compl. ¶ 152). This would, in turn, increase Plan assets. And in their view, because ERISA's duty of loyalty always requires plan fiduciaries to act in plan participants' best interest when making plan-asset decisions, Plaintiffs contended that it was fiduciary duty-bound to *always* pay the administrative costs unless the plan was on the verge of imminent fiscal insolvency. JA0584–0585, 0587–0588 (Second Am. Compl. ¶¶ 153–59, 161, 171–79).

[9] The Acting Secretary opines only on the duty of loyalty claim about forfeitures.

The district court granted SAS's motion to dismiss. Noting that "[m]ost courts have rejected duty of loyalty claims concerning forfeitures," JA0017, the district court held that ERISA's duty of loyalty "does not require that [SAS] offer more than" what its plan documents required, JA0019. The district court also emphasized that allocating forfeitures to SAS's matching contributions "provide[d] a benefit to Plan participants through the contributions that participants receive," and was therefore consistent with SAS's duty of loyalty. JA0019–0020.

ARGUMENT

I. PLAINTIFFS' PER SE, ENDS-OVER-MEANS THEORY IS INCONSISTENT WITH ERISA.

Plaintiffs' theory is meritless. Once it has paid former plan participants' previously forfeited account balances, SAS's Plan documents give it the option to allocate the remaining forfeitures to either (1) offset what it owes the plan or (2) pay administrative costs that would otherwise be spread among the plan's participants. According to Plaintiffs, ERISA's fiduciary duty of loyalty requires that SAS *always* choose the latter unless the Plan cannot pay participants' matching contributions. In other words, Plaintiffs contend that ERISA's duty of loyalty *de facto* amends SAS's Plan documents to create a requirement at odds with the flexibility contemplated by the Plan documents and—critically—that ERISA does not require. They further argue that merely alleging that SAS declined to always and uniformly provide them with this extra-contractual benefit should defeat Rule 12(b)(6) dismissal.

The district court was eminently correct to hold that Plaintiffs' theory would impose liability beyond ERISA's requirements. To be clear: "ERISA's principal function [is] to 'protect *contractually defined benefits*.'" *US Airways, Inc. v. McCutchen*, 569 U.S. 88, 100 (2013) (quoting *Massachusetts Mut. Life Ins. Co. v. Russell*, 473 U.S. 134, 148 (1985)) (emphasis added). And Plaintiffs never "allege[d] that they received less than what the Plan promised." JA0019. The case must end on that basis alone.

The main contractual "benefits" that Plaintiffs enjoy are the SAS-contributed matching funds that are fully accessible after five years with the company and their own contributions held in trust—neither of which SAS's forfeiture decisions imperiled. And per the unambiguous terms of the Plan documents, Plaintiffs have no contractual right whatsoever to demand that SAS always and uniformly cover administrative expenses that would otherwise be spread among the plan participants. Because such cost coverage is unmistakably *not* a "contractually defined benefit[]" under SAS's Plan, ERISA does not demand that SAS provide it.

Plaintiffs' trouble is their confusion about the interplay between the settlor and fiduciary decisions that intersect here. ERISA's fiduciary duties do attach to the fiduciary's decision of how to allocate forfeited money under the terms of the SAS Plan, but the question of whether the fiduciary *breached* those duties requires evaluating the context in which the fiduciary made the decision. *See, e.g.*, *Fifth Third*

Bancorp, 573 U.S. at 425 ("Because the content of the duty of prudence turns on "the circumstances . . . prevailing" at the time the fiduciary acts, the appropriate inquiry will necessarily be context specific) (quoting 29 U.S.C. § 1104(a)(1)(B)). And the context here is that SAS, acting in its non-fiduciary, settlor authority, created a retirement plan that *did not* entitle Plaintiffs to have their cost burden reduced any time another SAS employee forfeited his unvested matching contributions.

To the best of the Acting Secretary's knowledge, no court in any jurisdiction has blessed the use of fiduciary duties to create a contractual entitlement where none exists. But that is precisely Plaintiffs' position. Plaintiffs simply disagree with how SAS used its forfeiture-allocation discretion, claiming that ERISA's duty of loyalty requires that SAS give them a still-greater write-off on their plan expenses. JA0583 (Second Am. Compl. ¶ 152). But their disagreement does not, and cannot, give rise to a plausible breach-of-loyalty claim.

Plaintiffs' broad pleading fails to recognize that the plan sponsor's ability to pay its matching contributions is not the sole consideration for allocating forfeitures. And for purposes of a Rule 12(b)(6) motion to dismiss, they must do more than simply gesture toward the decision SAS reached. Because they failed to do so, they have not nudged their allegations from speculative to plausible sufficient to have their case progress beyond the pleading stage.

II. If allowed to catch on, Plaintiffs' cynical theory of liability will perversely limit the flexibility of employers and disincentivize them from creating plans for their employees.

ERISA puts the American worker first. "Congress enacted ERISA to ensure that employees would receive the benefits they had earned." *Conkright*, 559 U.S. at 516. The Acting Secretary, ERISA's chief steward, takes tremendous pride in protecting American workers' benefits throughout the lifecycle of their employment.

American workers' interests reach their apex when their employers provide them with retirement plans. But "Congress did not require employers to establish benefit plans in the first place." *Id.* at 516–17 (citing *Spink*, 517 U.S. at 887). Because employers cannot be forced to offer their employees retirement plans, employees benefit the most when their employers are incentivized to do so with flexible plan design options.

Incentivization requires tradeoffs, and, accordingly, "ERISA represents a 'careful balancing' between ensuring fair and prompt enforcement of rights under a plan and the encouragement of the creation of such plans.'" *Id.* (quoting *Aetna Health Inc. v. Davila*, 542 U.S. 200, 215 (2004)). That was intentional; "Congress sought 'to create a system that is [not] so complex that administrative costs, or litigation expenses, unduly discourage employers from offering [ERISA] plans in the first place." *Id.* (quoting *Varity Corp. v. Howe*, 516 U.S. 489, 497 (1996)). And since ERISA took effect in 1974, it has served the purpose that Congress intended, all to the advantage of the American worker.

Plaintiffs' theory, which is being tested throughout the nation, threatens to limit the flexibility of employers and harm American workers. They have not alleged a loss or even a potential loss of *any* benefits to which they are actually entitled. They instead argue that the plan administrator declined to give them an offset of the administrative costs that they would otherwise have to pay.

On the other side of the ledger? If Plaintiffs' theory succeeded, it would likely mark the last time SAS, or, for that matter, any other employer watching these cases proceed, would include in its retirement plan an option to provide its employees with a similar potential offset. Ironically, Plaintiffs' own allegations illustrate the harm this would have on workers: during one year of the period about which they complain, SAS allocated $222,320 of forfeitures to expenses that plan participants would otherwise have to pay. JA0585 (Second Am. Compl. ¶ 159). Plaintiffs' theory would incentivize plan sponsors to abrogate the discretion that led to reduction. Worse still, corporations like SAS both large and small may eventually decide that the press of ever-increasing, business-disrupting litigation constitutes a real impediment to the flexibility they need to provide their employees with retirement plans at all. Either way, the American worker loses.

CONCLUSION

This case deserves a swift end. To cultivate an ERISA landscape with the fertile soil that sustains both employer and worker, the weeds must be pulled. For all these reasons, the Acting Secretary respectfully requests that this Court affirm the district court's dismissal.

July 24, 2026

Respectfully submitted,

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/s/ Edward M. Wenger
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July 24, 2026

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I HEREBY CERTIFY that, on this 24th day of July, 2026, a true copy of the Amicus Curiae Brief of the Acting U.S. Secretary of Labor in Support of the Defendants-Appellees and Affirmance was filed electronically with the Clerk of Court using the Court's CM/ECF system, which will send by email a notice of docketing activity to all registered Attorney Filers.

/s/ Edward M. Wenger
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July 24, 2026

UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

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