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ATTORNEYS FOR PLAINTIFFS AND THE
PROPOSED CLASS

**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

Chad Rocke and Christopher Collins,
individually, as representatives of the
class, and on behalf of the Allianz Asset
Management of America, L.P. 401(k)
Savings and Retirement Plan,

Plaintiffs,

v.

Allianz Asset Management of America,
L.P., Administrative Plan Committee of
the Allianz Asset Management of
America, L.P. 401(k) Savings and
Retirement Plan, Retirement Plan
Committee of the Allianz Asset
Management of America, L.P. 401(k)
Savings and Retirement Plan, and John
Does 1–30,

Defendants.

Case No.

**CLASS ACTION COMPLAINT
FOR DAMAGES, INJUNCTIVE
RELIEF, AND RESTITUTION**

- (1) Breach of Fiduciary Duties
under ERISA (29 U.S.C. §
1104)**
(2) Failure to Monitor Fiduciaries

NATURE OF THE CASE

1. Plaintiffs Chad Rocke and Christopher Collins (“Plaintiffs”), individually and as representatives of the Class described herein, and on behalf of the Allianz Asset Management of America, L.P. 401(k) Savings and Retirement Plan (“Plan”), bring this action under the Employee Retirement Income Security Act of 1974, as amended, 29 U.S.C. § 1001, *et seq.* (“ERISA”) against Allianz Asset Management of America, L.P. (“Allianz”), the Administrative Plan Committee of the Allianz Asset Management of America, L.P. 401(k) Savings and Retirement Plan (“Administrative Committee”), the Retirement Plan Committee of the Allianz Asset Management of America, L.P. 401(k) Savings and Retirement Plan (“Retirement Committee”) (collectively, the “Committees”), and John Does 1–30 (collectively, “Defendants”). As described herein, Defendants have breached their fiduciary duties and engaged in unlawful self-dealing with respect to the Plan in violation of ERISA, to the detriment of the Plan and its participants. Plaintiffs bring this action to remedy this unlawful conduct, to recover losses to the Plan, and to obtain other appropriate relief as provided by ERISA.

PRELIMINARY STATEMENT

2. As of December 2021, Americans had approximately \$11 trillion in assets invested in defined contribution plans, such as 401(k) and 403(b) plans.¹ Defined contribution plans have largely replaced defined benefit plans—or pension plans—that were predominant in previous generations.² Only around 11% of non-union U.S. workers in the private sector participate in a defined benefit plan.³ By

¹ See INVESTMENT COMPANY INSTITUTE, *Retirement Assets Total \$394 Trillion in Fourth Quarter 2021* (Mar. 28, 2022), https://www.ici.org/statistical-report/ret_21_q4.

² See Bankrate, *Pensions Decline as 401(k) Plan Multiply*, at 4 (July 24, 2014), <http://www.bankrate.com/finance/retirement/pensions-decline-as-401-k-plans-multiply-1.aspx>.

³ See Congressional Research Service, *Worker Participation in Employer-Sponsored Pensions: Data in Brief*, at 4 (last updated Nov. 23, 2021), <https://fas.org/sgp/crs/misc/R43439.pdf>.















1 participants and beneficiaries. A decision to make an investment may not be
 2 influenced by non-economic factors unless the investment, when judged *solely* on the
 3 basis of its economic value to the plan, would be equal or superior to alternative
 4 investments available to the plan.” U.S. Dep’t of Labor ERISA Adv. Op. 88-16A,
 5 1988 WL 222716, at *3 (Dec. 19, 1988) (emphasis added). “Breaches of the
 6 unwavering duty of loyalty occur when a fiduciary deviates from that single-minded
 7 devotion, placing its interests ... above that of plan participants or beneficiaries.”
 8 *Vellali*, 308 F. Supp. 3d at 688 (quotation omitted).

9 **DUTY OF PRUDENCE**

10 30. ERISA also “imposes a ‘prudent person’ standard by which to measure
 11 fiduciaries’ investment decisions and disposition of assets.” *Fifth Third Bancorp v.*
 12 *Dudenhoeffer*, 134 S. Ct. 2459, 2467 (2014) (quotation omitted). “[A] fiduciary’s
 13 conduct at all times must be reasonably supported in concept and must be
 14 implemented with proper care, skill, and caution.” *Sweda*, 923 F.3d at 333 (quotation
 15 omitted). “[I]f there is indeed a ‘hallmark’ of fiduciary activity identified in the
 16 statute, it is prudence.” *Id.*

17 31. The duty of prudence includes “a continuing duty to monitor [plan]
 18 investments and remove imprudent ones” that exists “separate and apart from the
 19 [fiduciary’s] duty to exercise prudence in selecting investments.” *Tibble v. Edison*
 20 *Int’l*, 135 S. Ct. 1823, 1828 (2015); *see also Vellali*, 308 F. Supp. 3d at 683
 21 (“Fiduciaries have a continuing duty ... to monitor investments and remove
 22 imprudent ones.” (quotation omitted)). If an investment is imprudent, the plan
 23 fiduciary “must dispose of it within a reasonable time.” *Tibble*, 135 S. Ct. at 1828
 24 (quotation omitted).

25 32. The duty of prudence necessarily entails consideration of investment
 26 costs. *See Sweda*, 923 F.3d at 328-29 (“Fiduciaries must ... consider a plan’s power
 27 ... to obtain favorable investment products, particularly when those products are
 28 substantially identical—other than their lower cost—to products the trustee has



**INVESTMENT OPTIONS IN DEFINED CONTRIBUTION PLANS:
TARGET DATE FUNDS**

34. A common 401(k) menu option is a target date fund. These options provide exposure to a variety of asset classes, primarily equity and fixed income securities, with an investment mix that changes to become more conservative as the fund's target date approaches. Target date funds are generally offered as a suite of funds with target dates staggered 5 to 10 years apart, allowing the participant to choose the target date that aligns with their estimated retirement date. Target date funds typically use a "fund of funds" structure, meaning that each fund invests in other pooled investment vehicles in proportions determined by the manager of the funds.

35. Target date funds are associated with the "set it and forget it" approach to investing by 401(k) plan participants. Participants who invest in a target date fund typically do not expect to change their selection over time. Instead, participants rely on the investment manager to rebalance the fund and implement a sound investment strategy for their account over their retirement saving horizon.

36. Defined contribution plans have increasingly relied on target date funds to provide participants with diversified investment options. In 2006, only 32% of 401(k) plans offered target date funds, but that number has increased to 86% as of 2019.⁹ Likewise, the share of defined contribution plan assets invested in target date funds increased from 3% to 27% during the same time period.¹⁰

37. In 2013, the "increasingly popular" decision by fiduciaries to offer target date funds caused the U.S. Department of Labor, the federal agency tasked with enforcing ERISA, to issue "guidance to assist plan fiduciaries in selecting and monitoring TDFs."¹¹ The DOL found that target date funds are "attractive investment

⁹ INVESTMENT COMPANY INSTITUTE, *The BrightScope/ICI Defined Contribution Plan Profile: A Close Look at 401(k) Plans, 2019* (Sept. 2022), <https://www.ici.org/system/files/2022-09/22-ppr-dcplan-profile-401k.pdf>.

¹⁰ *Id.*

¹¹ See Dep't of Labor, *Target Date Retirement Funds – Tips for ERISA Plan*

options for employees who do not want to actively manage their retirement savings.” However, the DOL also found that “considerable differences” exist between target date fund providers in a highly competitive marketplace. Thus, the DOL emphasized the “important” role fiduciaries play in selecting a target date product for their plans.¹²

INDEX FUNDS

38. Another common 401(k) menu option is an index fund, which is a type of mutual fund with a portfolio designed to track the components of a financial market index. An index fund provides broad market exposure and has a passive investment strategy, which results in low expense ratios.

39. Offering index funds in 401(k) plans is “nearly universal.” In 2019, 94.8% of all 401(k) plans offered at least one index fund. In the same year, 99.2% of 401(k) plans with more than \$1 billion in assets offered at least one index fund.¹³

CAPITAL PRESERVATION OPTIONS

40. Another common 401(k) menu offering is a low-risk, liquid option designed for capital preservation. Indeed, for plans like the Plan that allow participants to make frequent changes to their investments, offering an “income producing, low risk, liquid” option is necessary to satisfy the requirements of ERISA § 404(c). *See* 29 C.F.R. § 2550.404c-1(b)(2)(ii)(C)(ii).

41. Several types of investment products offer capital preservation. Money market funds are mutual funds that invest only in very short-term debt securities, with the goal of minimizing liquidity risk and maintaining a stable asset value. Another common capital preservation product in 401(k) plans is a stable value fund. Stable value funds invest in longer duration debt securities than money market funds, as well as other assets, and therefore offer higher income potential. To protect against loss,

¹² *Fiduciaries* (Feb. 2013), available at <https://www.dol.gov/sites/dolgov/files/EBSA/about-ebsa/our-activities/resource-center/factsheets/target-date-retirement-funds.pdf>

¹³ *See id.*

¹³ INVESTMENT COMPANY INSTITUTE, *The BrightScope/ICI Defined Contribution Plan Profile: A Close Look at 401(k) Plans, 2019* (Sept. 2022), <https://www.ici.org/system/files/2022-09/22-ppr-dcplan-profile-401k.pdf>.

1 an investor's principal is covered by a contract with an insurer, which helps smooth
 2 out investment losses and gains to achieve stability and liquidity similar to money
 3 market funds.

4 42. Money market funds and guaranteed investment contracts are ubiquitous
 5 in large 401(k) plans. Specifically, in 2019, 78% of 401(k) plans with more than \$1
 6 billion in assets offered a money market fund in their lineup.¹⁴ In that same year,
 7 76.2% of 401(k) plans with more than \$1 billion in assets offered a guaranteed
 8 investment contract in their lineup.¹⁵

9 **DEFENDANTS' VIOLATIONS OF ERISA**

10 **I. DEFENDANTS' PROCESS FOR SELECTING AND MONITORING INVESTMENTS** 11 **WAS IMPRUDENT AND TAINTED BY SELF-INTEREST**

12 43. Although using proprietary options is not a *per se* breach of the duty of
 13 prudence or loyalty, a fiduciary's process for selecting and monitoring proprietary
 14 investments is subject to the same duties of loyalty and prudence that apply to the
 15 selection and monitoring of other investments. Based on Defendants' decision to
 16 maintain an all-proprietary lineup in lieu of *any* less expensive and otherwise superior
 17 nonproprietary alternatives, it is reasonable to infer that Defendants' process for
 18 selecting and monitoring the Allianz Funds was imprudent and disloyal.

19 **A. Defendants Fail to Perform a Thorough, Objective Analysis of the** 20 **Plan's Proprietary Funds**

21 44. In 2015, two plaintiffs, on behalf of themselves and as representatives of
 22 a Rule 23 class, as well as on behalf of the Plan, filed an ERISA action in the U.S.
 23 District Court for the Central District of California. Compl., *Urakhchin, et al. v.*
 24 *Allianz Asset Mgmt. of Am., L.P., et al.*, No. 8:15-cv-01614-JVS-JCG (C.D. Cal. Oct.
 25 15, 2015). The lawsuit alleged that the Plan's fiduciaries imprudently managed the
 26 Plan's investments and maintained a Plan lineup consisting exclusively of funds

27 ¹⁴ See *id.*

28 ¹⁵ See *id.*

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