

Full docket text for document 56:

District Judge Angel Kelley: ELECTRONIC ORDER entered.

Defendants’ [27] motion to dismiss is **DENIED**. As a threshold matter, Plaintiffs have standing to pursue their claims. Defendants argue that Plaintiffs cannot challenge funds in which they did not invest. [Dkt. 28 at 19]. That argument has been rejected by several courts. See, e.g., Velazquez v. Mass. Fin. Servs. Co., 320 F. Supp. 3d 252, 257 (D. Mass. 2018). Here, Plaintiffs allege that they invested in four specific target date funds and Defendants’ actions as to those funds (and others) affected the Plan as a whole, including recordkeeping fees. [See Dkt. 1 at ¶¶ 5-6]. That is sufficient to establish Article III standing at this juncture. Defendants also argue that Plaintiffs lack standing because they do not allege that the funds in which they did invest underperformed any of the comparator funds during the period Plaintiffs held those investments. [Dkt. 28 at 20]. Such an allegation is not required to establish standing here. Plaintiffs’ allegations that they each “maintained an investment through the Plan” in specific target date funds “[d]uring the Class Period” that were “subject to the excessive recordkeeping and administrative costs alleged below” [Dkt. 1 at ¶¶ 1, 9-12] were sufficient to claim an “injury in fact, as they allege that they personally paid excessive fees in connection with their own investments,” In re Biogen, Inc. ERISA Litig., No. 21-CV-11325-DJC, 2021 WL 3116331, at *4 (D. Mass. July 22, 2021).

Viewed “as a whole,” Plaintiffs’ complaint states a plausible claim of breach of fiduciary duties. See García-Catalán v. United States, 734 F.3d 100, 103 (1st Cir. 2013); see also Sellers v. Trus. of Coll., -- F. Supp. 3d --, No. 22-CV-10912-WGY, 2022 WL 17968685, at *1 (D. Mass. Dec. 27, 2022). The duty of prudence requires ERISA 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). The duty of loyalty requires ERISA fiduciaries to “discharge [their] duties with respect to a plan solely in the interest of the participants and beneficiaries.” 29 U.S.C. § 1104(a)(1)(A). There is a “continuing duty to monitor trust investments and remove imprudent ones.” Tibble v. Edison Int’l, 575 U.S. 523, 529 (2015).

Plaintiffs allege several facts in support of their claim that Defendants breached their fiduciary duties by offering actively-managed target date funds (the “Active Suite”) as investment options. Plaintiffs compare the Active Suite to passively-managed target date funds (the “Index Suite”) offered by the same company and to other similarly-sized, actively-managed target date funds offered by various companies, such as by providing data on annualized returns. [Dkt. 1 at ¶¶ 60-82]. Plaintiffs also allege that Defendants “never undertook a review of the performance of the funds comprising” the Active Suite and that several of the funds “lacked a sufficient performance history to enable fiduciaries to perform a meaningful analysis.” [Id. at ¶¶ 69-70]; see Turner v. Schneider Elec. Holdings, Inc., 530 F. Supp. 3d 127, 133-34 (D. Mass. 2021) (denying motion to dismiss where the plaintiffs alleged, in part, that “the funds had insufficient performance histories upon which they could be evaluated”). Plaintiffs further claim that Defendants failed to offer available, lower-cost share classes for many of the Plan’s funds. [Dkt. 1 at ¶¶ 84-85]; see Sellers, 2022 WL 17968685, at *13 (denying a motion to dismiss where the plaintiffs included “non-speculative allegations that cheaper share classes were available”); Brown v. Mitre Corp., No. 22-CV-10976-DJC, 2023 WL 2383772, at *7 (D. Mass. Mar. 6, 2023); see also Davis v. Salesforce.com, Inc., No. 21-15867, 2022 WL 1055557, at *1 (9th Cir. Apr. 8, 2022) (holding that allegations that “‘more expensive share classes chosen by [the] [d]efendants were the same in every respect other than price [as] their less expensive counterparts’. . . plausibly suggest that defendants acted imprudently by failing to switch to lower-cost alternatives”).

Plaintiffs buttress their claims of underperformance by describing various articles that were critical of the Active Suite and by noting net outflows from the Active Suite to other investments. [Dkt. 1 at ¶¶ 74 & n.13, 75-76]; see In re Biogen, 2021 WL 3116331, at *6. Plaintiffs also allege Defendants allowed recordkeeping and administrative fees “that far exceeded the reasonable market rate,” listing the average per person fees paid by seven other “similarly sized” and “comparable” defined contribution plans. [Dkt. 1 at ¶¶ 52, 54-56]; see Brown, 2023 WL 2383772, at *3-5. “Taking into account the totality of the circumstances,” Plaintiffs have pleaded “sufficient factual allegations to state a plausible claim against [Defendants] for breach of the duty of prudence as a result of unreasonable fees and/or imprudent investment options.” Sellers, 2022 WL 17968685, at *14.

Even if there are alternative, reasonable explanations for Defendants’ conduct, at this stage of the litigation, the facts alleged “provide a sound basis for comparison—a meaningful benchmark”—suggesting that the Active Suite underperformed and that the Plan was needlessly more expensive than similar plans, which supports a plausible claim that the Defendants’ actions breached their fiduciary duties. See Davis v. Washington Univ. St. Louis, 960 F.3d 478, 484 (8th Cir. 2022). Because the remaining claims are derivative of the breach-of-fiduciary-duty claim, they also survive dismissal. [See Dkt. 28 at 18 n.21]; see also Kruger v. Novant Health, Inc., 131 F. Supp. 3d 470, 474-80 (M.D.N.C. 2015) (denying a motion to dismiss where the allegations of the defendants’ breach of the duty of loyalty were tied to allegations of their breach of the duty of prudence).

(Pacho, Arnold)
