UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK
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WILLIAM LORUSSO, MARGARET GURLIDES, LINDA MORIARTY, RICHARD SEABURG, GARY LEONARD, CAROL VORPERIAN, NICHOLAS CAMPAGNOLA, JEROLD SCHERER, DENISE BEVILACQUA, and KAREN CERVANTES, on behalf of themselves and all others similarly situated,

Plaintiffs,

-against-

NORTHWELL HEALTH PENSION PLAN, NORTH SHORE UNIVERSITY HOSPITAL, NORTHWELL HEALTH, INC., PENSION COMMITTEE, and PENSION COMMITTEES 1-10 (SAME NAMES BEING FICTITIOUS),

Defendants.
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REPORT AND RECOMMENDATION
CV 24–2785 (JS)(AYS)

SHIELDS, Magistrate Judge,

Plaintiffs William Lorusso, Margaret Gurlides, Linda Moriarty, Richard Seaburg, Gary Leonard, Carol Vorperian, Nicholas Campagnola, Jerold Scherer, Denise Bevilacqua, and Karen Cervantes ("Plaintiffs"), commenced this action against Northwell Health Pension Plan ("NHPP"), North Shore University Hospital, Northwell Health, Inc.("NSUH"), and Pension Committee (collectively "Defendants"), asserting putative class-wide claims under the Employee Retirement Income Security Act of 1974 ("ERISA") challenging disclosures relating to the January 1, 1999, conversion of North Shore University Hospital's traditional defined

benefit plan to a cash balance plan and related 403 (b) defined contribution plan (the "1999 conversion").

Presently before this Court, upon referral by the Honorable Joanna Seybert for Report and Recommendation, (see Electronic Order dated 10/09/2025), is Defendants' motion to dismiss the Complaint pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure. (See Docket Entry ("DE") [38].) As discussed below, this Court respectfully recommends that Defendants' motion be granted.

BACKGROUND

I. Documents Considered

As is required in the context of this motion to dismiss, the factual allegations in the Amended Complaint, though disputed by the Defendants, are accepted to be true for purposes of this motion, and all reasonable inferences are drawn there from in favor of the Plaintiffs.

While facts to consider in the context of a Rule 12 motion to dismiss are generally limited to those set forth in the pleadings, a court may consider matters outside of the pleadings under certain circumstances. Specifically, in the context of a Rule 12(b)(6) motion, a court may consider: (1) documents attached to the Complaint as exhibits or incorporated by reference therein; (2) matters of which judicial notice may be taken; or (3) documents upon the terms and effects of which the Complaint "relies heavily" and which are, thus, rendered "integral" to the Complaint." Chambers v. Time Warner, Inc., 282 F.3d 147, 152-153 (2d Cir. 2002); see Int'l Audiotext Network, Inc. v. Am. Tel. and Tel. Co., 62 F.3d 69, 72 (2d Cir. 1995). Moreover. "[a] court may take judicial notice of documents filed in another court not for the truth of the matters asserted in the other litigation, but rather to establish the fact of such litigation and related filings." Glob. Network Commc'ns, Inc. v. City of New York, 458 F.3d 150, 157 (2d Cir. 2006)

(quoting Int'l Star Class Yacht Racing Ass'n Tommy Hilfiger U.S.A., Inc., 146 F.3d 66, 70 (2d Cir. 1998)).

The Court turns now to discuss the facts set forth in Plaintiffs' Amended Complaint, construed in their favor.

II. Facts

A. Background

1. The Conversion Disclosures

Plaintiffs are current and former participants in the Northwell Health Pension Plan or one of its predecessor plans prior to and after January 1, 1999. (Am. Compl., DE [30], ¶¶ 23-62, 80.) On January 1, 1999, North Shore University Hospital's Plaintiff Plan was converted into a cash balance plan. (Id. ¶¶ 80, 117.)

In a letter dated December 16, 1998, pension plan participants were notified of the forthcoming conversion and that due to the conversion, "accruals under the North Shore University Hospital Pension Plan will stop as of January 1, 1999." (Am. Compl. ¶¶ 312-13.) In a January 6, 1999 letter, participants were informed that "your accrual benefits under the Plan's current formula stops as of December 31, 1998," and that eligible participants had been automatically enrolled in the cash balance plan. (Id. ¶¶ 320-21.)

A December 1999 disclosure provided additional detailed information regarding the conversion. Specifically, participants received an SPD, which included an Appendix describing the conversion's impact on participants' benefits. This disclosure, attached as Exhibit A to Plaintiffs' original Complaint, (Am. Compl. ¶¶ 323, 326; Compl., Ex. A, DE [1-6]), explained that certain participants would receive "Transition Credits" if they met particular age and service requirements and were susceptible to a "shortfall":

> Transition Credits are designed to provide additional benefits to certain participants who might otherwise experience a shortfall in their normal retirement benefits as compared with those benefits they would have received under the former NSUH Pension Plan, had it continued, Transition Credits are calculated under a single set of assumptions regarding future interest and salary rate increases, which might be different from actual experience. Therefore, these credits do not provide a guarantee that benefits under the current Retirement Program will meet or exceed those which the former NSUH Pension Plan would have provided.

(Compl., Ex. A § A.2.(A).) And for participants not eligible for Transition Credits, the disclosure likewise confirmed that there was no guarantee that benefits under the new program would meet or exceed the prior formula:

> [T]he fact that a participant is not eligible for Transition Credits, is also not a guarantee that the benefits provided under the current retirement Program will meet or exceeded those that the participant might have received under the former NSUH Pension Plan formula, had it continued.

(Id.) The disclosure also explained the interest rate and salary increase assumptions used to calculate Transition Credits. (Id. § A.2.(B).) The SPD also explained the assumptions regarding the 403(b) Plan that were used to calculate Transition Credits. (Id. § A.2; § A.2(B).) The disclosures notified participants that while Transition Credit percentages would "range from 0% to 14% with an average of about 3%," participants receiving higher Transition Credit percentages are "likely to be closer to age 65 with a shorter period of time to make up for any difference in retirement benefits." (Id. § A.2(B).)

The SPD also stated that pre-conversion accrued benefits would continue to function as a "minimum benefit" for participants following conversion to the cash balance plan:

> Minimum benefit for former NSUH Pension Plan Participants
>
> If you were a participant in the former NSUH Pension Plan, your minimum benefit under any form of payment under the Cash Balance Plan will be the value of your December 31, 1998 accrued benefit under the former NSUH Pension Plan including the value of any early retirement subsidies for which you may be eligible at the time you commence payment of your benefits.

(Compl., Ex. A § E.)

2. "Wear Away"

In order to illustrate the potential impact of the conversion on a participant enrolled in the pension plan in 1999, the 1999 SPD utilized a hypothetical individual, "Joan." (Compl., Ex. A § A.1., A.2.(C).) Plaintiffs allege that wear away "is precisely what occurred here to Named Plaintiffs and the members of the proposed Class and can be demonstrated by reference to the hypothetical individual, Joan, referenced in the SPD, as well as named Plaintiff Jerold Scherer." (Am. Compl. ¶ 175.) Plaintiffs allege that "in 1999, Joan would almost certainly have been subject to" wear away. (Id. ¶¶ 206, 208.) Plaintiffs also calculate the alleged wear away for Plaintiff Jerold Scherer using information from the 1999 SPD. (Id. ¶¶ 289-309.)

Plaintiffs allege that there are three reasons why a participant's opening account balance would fall short of providing the full benefit to which a participant was already entitled as of December 31, 1998: (i) utilization of a 6% interest rate assumption to calculate Transition Credits when interest rates were likely to fall below 6%; (ii) discounting benefits from age 65 rather than an earlier age; and (iii) utilization of a particular conversion factor to represent the probability of survival. (Am. Compl. ¶¶ 211-218.) Plaintiffs allege that, based on information disclosed to participants in the 1999 SPD, "the Opening Account Balance was very likely to be insufficient to provide the Protected Benefit, and, as Joan illustrates, potentially falling well short of providing the Protected Benefit to which Joan was entitled." (Id. ¶ 219; ¶¶ 289-309.)

3. Benefit Statements

Plaintiffs allege that Class Members received quarterly benefit statements following the conversion. (Am. Compl. ¶ 80.) Plaintiffs claim that these statements were insufficient because

they failed to reflect participants' "total benefits accrued" because the statements reflected only the value of their post-conversion cash balance account. (Id. ¶¶ 401-06.)

B. Procedural History

Plaintiffs commenced this action on April 15, 2024. (See generally Compl.) On April 23, 2024, Plaintiffs filed a motion to certify class. (DE [6].) On May 24, 2024, Defendants filed a motion to stay Plaintiffs' motion for class certification. (DE [23].) On May 31, 2024, the District Court granted Defendants' motion to hold Plaintiffs' class certification motion in abeyance in light of Defendants' anticipated filing of a dispositive motion. (See Electronic Order dated 05/31/2024.) Defendants then filed a pre-motion letter requesting leave to move to dismiss. (DE [25].) On August 2, 2024, the District Court waived its pre-motion conference requirement and issued a briefing schedule for Defendants' motion to dismiss. (See Electronic Order dated 08/02/2024.) On September 18, 2024, Plaintiffs requested an extension of time to amend the complaint as of right. (DE [28].) The motion was granted by the undersigned. (See Order dated 09/20/2024.)

On October 11, 2024, Plaintiffs filed the Amended Complaint. (DE [30].) Defendants once again filed a pre-motion letter requesting leave to move to dismiss. (DE [31], [32].) The District Court waived its pre-motion conference requirement and issued a briefing schedule for Defendants' motion to dismiss. (See Electronic Order dated 12/19/2024.) The instant motion was filed on April 15, 2025. (DE [38].) On October 9, 2025, the motion was referred to the undersigned for a Report and Recommendation. (See Order Referring Motion dated 10/09/2025.)

III. The Motion to Dismiss

Defendants seek dismissal of the Complaint pursuant to rule 12(b)(6) of the Federal Rules of Civil Procedure.

Plaintiffs allege seven causes of action: (1) Violation of 29 U.S.C. § 1054(h) through failure to provide adequate notice; (2) Violation of 29 U.S.C.§ 1054(h) through failure of notice to be timely; (3) Violation of 29 U.S.C. § 1022 through failure to disclose wear-away; (4) Violation of 29 U.S.C. § 1025(a)(1)(B) through failure to reflect the value of the Minimum Benefit on the quarterly benefit statements; (5) Violation of 29 U.S.C. § 1022 through false and misleading disclosure regarding the impact of the Amendment on the ultimate benefit payable from the Plan; (6) Violation of 29 U.S.C § 1022 through false and misleading disclosure regarding the impact of the Amendment on the ultimate benefit payable, when combined with the 403(b) Plan; and (7) Violation of 29 U.S.C. § 1104(a).

Defendants argue that Plaintiffs' claims fail as a matter of law because Plaintiffs admit they received disclosures advising them about the conversion to a cash balance plan and potential consequences for plan participants.

Defendants also assert that the Section 105 claim for alleged failure to provide participants' total benefits accrued in certain benefit statements because Section 105 claims are only cognizable as "penalty claims" under 29 U.S.C. §§ 1132(c), and Plaintiffs do not assert their claim as such a penalty claim. Defendants further argue that Plaintiffs fail to plead fact in support of this claim and do not allege that they personally (as opposed to unnamed "Class Members"), received any insufficient benefit statements.

Defendants also contend that the statutes of limitations have expired for Plaintiffs' claims. Defendants argue that Plaintiffs admit that participants received the SPD detailing the conversion in December 1999, which is when the statute of limitations accrued under applicable law. Defendants maintain that Plaintiffs have failed to plead facts sufficient to toll any limitations period.

Finally, Defendants argue that the Amended Complaint fails because it relies on conclusory and generic "group pleading" against Defendants without specifying alleged wrongdoing committed by each named Defendant.

The Court now turns to the merits of the motion.

DISCUSSION

I. Legal Principles: Standards Applicable on Motions to Dismiss

A. Rule 12(b)(6)

To survive a Rule 12(b)(6) motion to dismiss, a complaint must contain "sufficient factual matter, accepted as true, to 'state a claim to relief that is plausible on its face.'" Ashcroft v. Iqbal, 556 U.S. 662, 678-79 (2009) (quoting, Bell Atlantic Corp. v. Twombly, 550 U.S. 544, 570 (2007)); see also Arista Records, LLC v. Doe 3, 604 F.3d 110, 119–20 (2d Cir. 2010). Facial plausibility is established by pleading sufficient factual content to allow a court to reasonably infer the defendant's liability. Twombly, 550 U.S. at 556. "Threadbare recitals of the elements of a cause of action, supported by mere conclusory statements, do not suffice." Id. at 555. Nor is a pleading that offers nothing more than "labels and conclusions" or "a formulaic recitation of the elements of a cause of action," sufficient. Iqbal, 556 U.S. at 678 (2009) (quoting Twombly, 550 U.S. at 555).

With these standards in mind, the Court turns to assess the viability of Plaintiffs' claims.

II. Failure to State a Claim

A. The Disclosures

Plaintiffs allege that the provided disclosures were not sufficient to convey to the average participants that the conversion could substantially reduce their benefits. Defendants disagree and argue that the disclosures provided timely and adequate notice.

i. Claims I and II

In 1999, 29 U.S.C. § 1054(h)(1)(A) provided that a plan:

> may not be amended so as to provide for a significant reduction in the rate of the future benefit accrual, unless, after adoption of the plan amendment and not less than 15 days before the effective date of the plan amendment, the plan administrator provides a written notice, setting forth the plan amendment and its effective date, to ... each participant in the plan....

Treasury regulations at the time state that notice need not "explain how the individual benefit of each participant . . . will be affected by the amendment." 26 C.F.R. § 1.411(d)-6T (1997) (Q&A 1-10). In 2001 and 2003, ERISA and the regulations were amended to require additional disclosures. Congress amended § 1054(h) in 2001 to require that the notice "allow . . . individuals to understand the effect of the plan amendment," Pub, L. No. 107-16, 115 Stat. 38 (June 7, 2001), and the regulations were revised in 2003 to require inclusion of "a description of the benefit or allocation formula" both "prior to the amendment" and "under the plan as amended," as well as "sufficient information for each applicable individual to determine the approximate magnitude of the expected reduction for that individual." 68 Fed. Reg. 17277-02, 17285 (Apr. 9, 2003) (codified at 26 C.F.R. § 54.4980F-1 (Q&A-11)).

Here, in a letter dated December 16, 1998 – fifteen days prior to the January 1, 1999 conversion – participants were notified that due to the conversion, "accruals under the North Shore University Hospital Pension Plan will stop as of January 1, 1999." (Am. Compl. ¶¶ 312-13; see also Am. Compl. ¶¶ 320-21.)

While not controlling, but on point, in Register v. PNC Financial Services Group, Inc., the Third Circuit affirmed Rule 12 dismissal in a case involving the conversion of a pension plan to a cash balance plan in 1999. 477 F. 3d 56 (3d Cir. 2007). The plaintiffs asserted Section 204(h) claims challenging the pre-conversion disclosures, but the Third Circuit ruled that at the

time "all that was required" was a statement of the "plan amendment and the effective date," not a discussion of "how the individual benefit of each participant . . . will be affected by the amendment." 477 F.3d at 73.

Here, as in Register, Defendants satisfied the section 1054(h) notice requirements applicable at the time of the conversion. The December 16, 1998 letter informed participants of the conversion and the effective date. That was all that was required at the time. Therefore, Plaintiffs were provided the proper notice as required at the time. As such, it is respectfully recommended that Plaintiffs' Section 204(h) notice claims be dismissed for failure to state a claim.

ii. Claims III and V-VII

Plaintiffs' Section 102 SPD claims (Claims III, V-VI) and Section 404(a) fiduciary duty claim (Claim VII) contend that the disclosures did not sufficiently disclose the potential consequences of wear-away and the ultimate benefit payable to participants through an SPD or other disclosure.

a. Section 102

Plaintiffs argue that the Defendants' violated ERISA § 102, 29 U.S.C. § 1022, by failing to provide SPDs that sufficiently disclosed wear-away to participants and by allegedly misleading participants as to the ultimate benefit payable. Section 102 "requires covered employee benefit plans to furnish summary plan descriptions ... of a plan's terms to participants." Cooper v. Ruane Cunniff & Goldfarb Inc., 990 F.3d 173, 177 (2d Cir. 2021). The SPDs need to be "sufficiently accurate and comprehensive to reasonably apprise such participants and beneficiaries of their rights and obligations under the plan." Id. (quoting 29 U.S.C. § 1022(a)). For example, the disclosures must describe circumstances that might result in the loss of benefits,

and "[t]he advantages and disadvantages of the plan[,] ... without either exaggerating the benefits or minimizing the limitations." 29 C.F.R. § 2520.102-2(b). SPDs must be "written in a manner calculated to be understood by the average plan participant." 29 U.S.C. § 1022(a).

Here, the 1999 SPD disclosure described how opening account balances would be created, who was eligible for Transition Credits and why, and how those credits would be calculated.

> Transition Credits are designed to provide additional benefits to certain participants who might otherwise experience a shortfall in their normal retirement benefits as compared with those benefits they would have received under the former NSUH Pension Plan, had it continued, Transition Credits are calculated under a single set of assumptions regarding future interest and salary rate increases, which might be different from actual experience. Therefore, these credits do not provide a guarantee that benefits under the current Retirement Program will meet or exceed those which the former NSUH Pension Plan would have provided.

(Compl., Ex. A § A.2.(A).) And for participants not eligible for Transition Credits, the disclosure likewise confirmed that there was no guarantee that benefits under the new program would meet or exceed the prior formula:

> [T]he fact that a participant is not eligible for Transition Credits, is also not a guarantee that the benefits provided under the current retirement Program will meet or exceeded those that the participant might have received under the former NSUH Pension Plan formula, had it continued.

(Id.) The disclosure also explained the interest rate and salary increase assumptions used to calculate Transition Credits. (Id. § A.2.(B).) The SPD also explained the assumptions regarding the 403(b) Plan that were used to calculate Transition Credits. (Id. § A.2; § A.2(B).) The disclosures notified participants that while Transition Credit percentages would "range from 0% to 14% with an average of about 3%," participants receiving higher Transition Credit percentages are "likely to be closer to age 65 with a shorter period of time to make up for any difference in retirement benefits." (Id. § A.2(B).)

The SPD also stated that pre-conversion accrued benefits would continue to function as a "minimum benefit" for participants following conversion to the cash balance plan:

> Minimum benefit for former NSUH Pension Plan Participants
>
> If you were a participant in the former NSUH Pension Plan, your minimum benefit under any form of payment under the Cash Balance Plan will be the value of your December 31, 1998 accrued benefit under the former NSUH Pension Plan including the value of any early retirement subsidies for which you may be eligible at the time you commence payment of your benefits.

(Compl., Ex. A § E.)

In Pessin v. JPMorgan Chase U.S. Benefits Exec., the Second Circuit reviewed materially similar disclosures, at the motion to dismiss stage, and affirmed that a SPD satisfies Section 102 where it "explain[s] the plan's transition to a cash balance formula and its potential consequences on plan participants," even if "the term 'wear-away' [is] not explicitly used. 112 F.4th 129, 137 (2d Cir. 2024). Although the Pessin plaintiffs argued the disclosures were deceptive and misleading and failed to apprise an average plan participant of the possibility of "wear away", the Second Circuit disagreed, finding that the SPDs disclosed the possibility of wear away by advising that "when plan participants terminated their employment , , , their [pre-conversion accrued] frozen benefit would continue to act as a minimum benefit that they would receive if it exceeded the cash balance benefit. Id.; see also Pessin v. JPMorgan Chase US Benefits Exec., No. 22-cv-2436, 2022 WL 17551993 at *5 (S.D.N.Y. Dec. 9, 2022), aff'd in relevant part, 112 F.4th 129 (reasoning that using the term "minimum benefit" implies that the calculation under the cash balance formula could be lower than the pre-conversion accrued benefits because if the cash balance formula were always higher than pre-conversion accrued benefits, there would be "no reason to promise" the pre-conversion benefits as a minimum benefit).

Like Pessin, the disclosure at issue put participants on notice of potential wear away. Simply put, the 1999 SPD set forth that the value of their pre-conversion benefits may be greater than the value of their post-conversion benefits for some period of time and, to account for this issue, participants' accrued pre-conversion benefits would function as a continuing minimum benefit after the conversion.

In Pessin, the Second Circuit noted that the SPDs identified interest rates and early retirement benefits as two potential explanations for why a plan participant's final average pay benefit might be greater than their cash balance benefit, noting that the disclosure "was sufficient to put someone in Pesin's position on notice that they might receive the minimum benefit rather than the cash balance benefit." Pessin, 112 F.4th at 138. Similarly, the disclosures here advised that due to stated actuarial assumptions regarding future interest and salary rate increases and assumed retirement age, there was "not a guarantee" that the benefits earned under the cash balance plan would meet or exceed those that the participant might have received under the pre-conversion pension plan formula, had it continued. (Compl. Ex. A § A.2.(A).) The SPD also explains that the "minimum benefit" will include the "value of any early retirement subsidies for which you may be eligible," and that the "Opening Account Balance" was based on "assuming that you retire at age 65." (Id. §§ E, A.1.) Here, as in Pessin, the disclosures were sufficient.

Plaintiffs cite Cigna Corp. v. Amara, 563 U.S. 421 (2011) and Osberg v. Foot Locker, Inc., 862 F.3d 198 (2d Cir. 2017) to support their arguments. However, Pessin makes clear that Amara and Osberg hold that SPDs violate ERISA where they affirmatively mislead participants to believe they are better off under the cash balance plan and will receive both their cash balance accounts and their final average pay benefits. 112 F.4th at 139-40 (distinguishing Osberg on grounds that defendant Foot Locker intentionally misled participants to believe "they would

receive their frozen traditional benefit plus their cash balance accounts," and Amara on grounds that defendant Cigna intentionally "prevented [participants] from learning the amount of their traditional defined benefits"). In Amara, defendant Cigna "intentionally withheld details that would provide employees with a direct comparison of their benefits" under the two benefits calculations including "specifically instruct[in]g its benefits department and consulting company not to provide comparisons." 775 F.3d at 530. Here, the Amended Complaint is devoid of any such allegations. Accordingly, the disclosures at issue complied with requirements set forth in Section 102.

b. Section 404(a)

ERISA § 404(a) provides that "a fiduciary shall discharge his duties with respect to a plan solely in the interest of the participants and beneficiaries and ... 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). ERISA's fiduciary duties of loyalty and prudence are "the highest duties known to law." Rothstein v. Am. Int'l Grp., Inc., 837 F.3d 195, 208 (2d Cir. 2016) (citation, emphasis, and quotation marks omitted). "When a plan administrator affirmatively misrepresents the terms of a plan or fails to provide information when it knows that its failure to do so might cause harm, the plan administrator has breached its fiduciary duty to individual plan participants and beneficiaries." Devlin v. Empire Blue Cross & Blue Shield, 274 F.3d 76, 88 (2d Cir. 2001) (citation and quotation marks omitted). Thus, a plan administrator's failure to sufficiently explain the consequences of wear-away can qualify as a breach of fiduciary duty. See, e.g., Osberg v. Foot Locker, Inc., 138 F. Supp. 3d 517, 555 (S.D.N.Y. 2015), aff'd, 862 F.3d 198 (2d Cir. 2017).

Plaintiffs' claim hinges on whether the SPDs sufficiently disclosed the potential for wear-away and the ultimate benefit payable to plan participants. In the instant case, they did. While the relevant disclosures do not use the term "wear-away", they alerted participants to how the transition to a cash balance formula worked. The 1999 SPD explained that the value of their pre-conversion benefits may be greater than the value of their post-conversion benefits for some period of time and, to account for this issue, participants' accrued pre-conversion benefits would function as a continuing minimum benefit after the conversion.

Here, as in Pessin, describing the prior calculation as a "minimum benefit" was not inaccurate, nor was it deceptive or misleading. 112 f.4th at 137. Using the term "minimum benefit" implies that the calculation under the cash balance formula could be lower than the calculation under the final average pay formula. If the cash balance formula were always higher than the final average pay formula, there would be no reason to promise the final average pay calculation as a minimum benefit. Instead, the 1999 SPD suggested that the cash balance calculation may be lower than the final average pay calculation. Because of this possibility, these SPD promised participants that they would always have access to the minimum benefit calculated under the final average pay formula. Id.

Similarly, as in Pessin, the disclosures here advised that due to stated actuarial assumptions regarding future interest and salary rate increases and assumed retirement age, there was "not a guarantee" that the benefits earned under the cash balance plan would meet or exceed those that the participant might have received under the pre-conversion pension plan formula, had it continued. (Compl. Ex. A § A.2.(A).) The SPD also explains that the "minimum benefit" will include the "value of any early retirement subsidies for which you may be eligible," and that the "Opening Account Balance" was based on "assuming that you retire at age 65." (Id. §§ E,

A.1.) As the Second Circuit held in Pessin, the "SPD explained that interest rates and early retirement benefits are two potential explanations for why a plan participant's final average pay benefit might be greater than their cash balance benefit. This was sufficient to put someone in Pessin's position on notice that they might receive the minimum benefit rather than the cash balance benefit." 112 F.4th 138. The same can be said here. The disclosures were sufficient to put participants on notice that they might receive the minimum benefit rather than the cash balance benefit.

Accordingly, Plaintiffs' ERISA § 404(a) claim fails.

iii. Claim IV

Lastly, Plaintiffs' fourth cause of action against Defendants is brought under § 105 based on the alleged failure to provide pension benefit statements listing the participants' total accrued benefits. Section 105 provides in relevant part:

> The administrator of a defined benefit plan . . . shall furnish a pension benefit statement –
>
> (i) at least once every 3 years to each participant . . . who is employed by the employer maintaining the plan at the time the statement is to be furnished, and
>
> (ii) to a participant or beneficiary upon written request.

29 U.S.C. § 1025(a)(1)(B)(i). It also explains that the pension benefit statement "shall indicate . . . the total benefits accrued." Id. § 1025(a)(2)(A)(i).

Here, Plaintiffs allege that Defendants provided participants with "quarterly Cash Balance Account statements, but the statement contained only the Cash Balance Account . . . ." (Am. Compl. ¶ 401.) Plaintiffs contend that this violated §105 because the "benefit that the [participant] was entitled to receive was the greater of the value of the Protected Benefit or the

Cash Balance Account, thus, the quarterly statements consistently failed to provide [participants] with their 'total benefits accrued.'" (Id. ¶ 402.)

In Pessin, upon reviewing a similar claim brought under § 105, the Second Circuit held that "as we find no case that offers a definitive or contextual interpretation of 'total benefits accrued' for purposes of ERISA. We therefore interpret 'total benefits accrued' consistent with its ordinary meaning." 112 F.4th at 141. The Second Circuit determined that under a plain reading of "total benefits accrued," Pessin had stated a claim. Id.

In Pessin, the plaintiff alleged

> that the account statements he received contained only the benefit he had accrued under the cash balance formula and that this violated § 105(a) because the amount accrued under the cash balance formula was not the benefit he was entitled to receive. Rather, according to the Amended Complaint, from 2003 to 2019 his "total benefit[ ] accrued" was the amount he was entitled to under the frozen final average pay formula. And yet that amount never appeared on his account statements.

Pessin, 112 F.4th at 141. Here, while Plaintiffs generally allege the same claim – that the quarterly statements failed to provide the "total benefits accrued" – unlike in Pessin, Plaintiffs have failed to allege that the amount accrued under the cash balance formula was not the benefit Plaintiffs were entitled to receive. Plaintiffs' claim fails because Plaintiffs never allege that they themselves received deficient statements, or even how they were deficient. Rather, Plaintiffs conclusory state that the amount accrued under the cash balance formulas was not the benefit class members were entitled to receive. Plaintiffs fail to provide any facts to support such a conclusion. While it is plausible to conceive that this was the case for some participants, Plaintiffs fail to allege that this was the case for Plaintiffs themselves. Therefore, at this juncture, this pleading defect is fatal to Plaintiffs' § 105 claim.

Accordingly, this Court recommends that Plaintiffs' fourth cause of action be dismissed for failure to state a claim upon which relief can be granted.

B. Timeliness of the Claims

For ERISA claims that involve fiduciary responsibilities, the relevant statute of limitations is statutorily prescribed and the claims must be brought within the earlier of (1) six years from the date of the "last action which constituted a part of the breach or violation, or [ ] in the case of an omission the latest date on which the fiduciary could have cured the breach or violation," or (2) three years after "the earliest date on which the plaintiff had actual knowledge of the breach or violation." 29 U.S.C. § 1113. There is an exception to this statute of limitations in the case of fraud or concealment, where an ERISA claim will be timely unless commenced "later than six years after the date of discovery of such breach or violation." Id.; see also Caputo v. Pfizer, Inc., 267 F.3d 181, 189 (2d Cir. 2001) ("[T]he 'fraud or concealment' provision does not 'toll' the otherwise applicable six-or-three-year statute of limitations ... rather, it prescribes a separate statute of limitations of six years from the date of discovery."). The Second Circuit has held that the ERISA statute of limitations provisions require "strict adherence." Carey v. Int'l Bhd. of Elec. Workers Local 363 Pension Plan, 201 F.3d 44, 47 (2d Cir. 1999) (discussing reasons for a statute of limitations in an ERISA case).

To qualify for tolling under the fraud or concealment exception, a complaint must allege that a fiduciary either "(1) breached its duty by making a knowing misrepresentation or omission of a material fact to induce an employee/beneficiary to act to his detriment; or (2) engaged in acts to hinder the discovery of a breach of fiduciary duty." In re Express Scripts/Anthem ERISA Litigation, 285 F. Supp. 3d at 674–75 (quoting Janese v. Fay, 692 F.3d 221, 227 (2d Cir. 2012)); see also, Caputo, 267 F.3d at 190 (same). A plaintiff must plead fraudulent allegations "with

particularity," specifying the "time, place, speaker, and content of the alleged misrepresentations," explaining "how the misrepresentations were fraudulent," and describing the events giving rise to a "strong inference" that a defendant had an intent to defraud, knowledge of the falsity of the statements, or a reckless disregard for the truth. Janese, 692 F. 3d at 228 (quoting Caputo, 267 F.3d at 191). To allege concealment, a plaintiff must plead facts giving rise to a duty to disclose the relevant information. See DePasquale v. DePasquale, No. 12-CV-2564, 2013 WL 789209, at *12 (E.D.N.Y. March 1, 2013), aff'd 568 F. App'x 55 (2d Cir. 2014).

Because ERISA does not provide a statute of limitations for plaintiff's claims that do not involve fiduciary responsibilities, this Court must adopt the most closely analogous New York State statute of limitations for those claims. See Miles v. N.Y. State Teamsters Conf. Pension and Ret. Fund Emp. Pension Benefit Plan, 698 F.2d 593, 598 (2d Cir. 1983). Federal courts thus look to the most closely analogous statute of limitations under state law. See Osberg v. Foot Locker, Inc., 656 F. Supp. 2d 361, 369-70 (S.D.N.Y. 2009) ("Osberg I") (noting in case with a 29 U.S.C. § 1022 claim that "ERISA provides no statute of limitations for civil enforcement actions other than breach of fiduciary duty claims"), aff'd in part and vacated in part on other grounds, 555 F. App'x 77 (2d Cir. 2014). Because claims under ERISA present questions of federal law, federal courts look to federal common law to determine when the claim accrued. Guilbert v. Gardner, 480 F.3d 140, 148-149 (2d Cir. 2007).

For some time, courts applied New York's six-year breach of contract period to claims relating to summary plan descriptions under 29 U.S.C. § 1022. However, the U.S. Supreme Court and Second Circuit have since clarified that New York's three-year limitations period applies. In Osberg I, the court initially determined that a six-year limitations period applies to

disclosure claims because "the judicially inferred statute of limitations for ERISA actions in New York State is six years, based on the statute of limitations for contract actions." 656 F. Supp. 2d at 370 (citing Slupinski v. First Unum Life Ins. Co., 554 F.3d 38, 55 (2d Cir. 2009)). Two years later, the Supreme Court held that a summary plan description is not a contract. CIGNA Corp. v. Amara, 563 U.S. 421 (2011). The Osberg court therefore held in a later decision that the appropriate limitations period for disclosure claims is actually three years. Osberg, 907 F. Supp. 2d at 533 ("Amara has now clarified that [a summary plan description] is not a contract—its terms are not subject to enforcement," so the most similar New York statute of limitations is not the six-year period governing contract claims but the three-year period governing statutory violations); Amara, 563 U.S. at 436.

i. Claims I and II

Plaintiffs' Section 204(h) claims, alleging Defendants failed to provide adequate and timely notice of the 1999 conversion are time barred. Section 204(h) claims are subject to a six-year statute of limitations. See Hirt v. Equitable Ret. Plan for Emps., Managers & Agents, 285 F. App'x 802, 803-804 (2d Cir. 2008); Pirro v. National Grid, 590 F. App'x 19, 21 (2d Cir. 2014) (finding statute of limitations applicable to plaintiffs' 204(h) claim is six years under both "the most nearly analogous state limitations statute" in New York and the six-year limitations period set forth in ERISA section 413). At the latest, the statute of limitations on Plaintiffs' claims began to run when they received the pre-conversion notice in December 1998 and more notices in 1999. Plaintiffs agree that they received a letter dated December 16, 1998 notifying them of the conversion. Even assuming arguendo that the 1998 notice was insufficient – which this Court has already determined was not – when "a plan participant had received insufficient notice of a plan amendment . . . a subsequent SPD providing additional information unequivocally

repudiates any misunderstanding and notice claims begin to accrue upon a subsequent disclosure." Hirt, 285 F. App'x at 803-04. Here, Plaintiffs received a lengthy SPD in December 1999. Therefore, the latest statute of limitations on Plaintiffs' Section 204(h) notice claims could have expired, was six years later, in December 2005.

Plaintiffs argue that the Amended Complaint is replete with instances alleging Defendants mislead and falsely concealed that the Amendment would significantly reduce the rate of benefit accrual. However, as this Court has already discussed, (see supra), Plaintiffs have failed to plausibly allege such. Therefore, as the original complaint in this case was filed in 2024, Plaintiffs' notice claims are untimely

ii. Claims III, V-VI, and VII

Plaintiffs' Section 102 SPD claims (Claims III, V-VI), which are governed by a three-year statute of limitations, see Osberg, 907 F. Supp. 2d at 533, and Section 404(a) fiduciary duty claim (Claim VII), which is subject to ERISA six-year statute of limitations from when the fiduciary breach occurred, 29 U.S.C. § 1113, are also untimely.

Plaintiffs admit that they received notice of the conversion in 1998 and 1999. Plaintiffs allege that wear away and the ultimate benefit payable were not disclosed and that Defendants misled them via the disclosures. However, Plaintiffs claim that the SPD contained a hypothetical individual that "in 1999, Joan would almost certainly have been subject to" wear away. (Am. Compl. ¶ 206.) Plaintiffs then calculate alleged wear away for Plaintiff Jerold Scherer using information from the 1999 SPD. (Id. ¶ 289-309.) Hence, Plaintiffs had the information necessary to assert these claims in December 1999, when they received the SPD, as the claims contained in the Amended Complaint are calculated using the information from the 1999 SPD.

Further, as discussed supra, disclosures may fulfill ERISA disclosure obligations by explaining a conversion's transition process and its potential consequences to participants. See Pessin, 112 F.4th at 140. Here, the 1999 SPD advised participants of a possible "shortfall" in benefits, and that despite the provision of Transition Credits, here was "no guarantee that the post-conversion benefits would meet or exceed those that the former plan would have provided. (Compl. Ex. A § A.2.(A).)

Finally, Plaintiffs have failed to meet the heightened pleading standard required when alleging fraud or concealment, namely specifying the "time, place, speaker, and content of the alleged misrepresentations," explaining "how the misrepresentations were fraudulent," and describing the events giving rise to a "strong inference" that a defendant had an intent to defraud, knowledge of the falsity of the statements, or a reckless disregard for the truth. Janese, 692 F. 3d at 228. Plaintiffs' boilerplate allegations that the potential for "wear away" was concealed in "misleading statements," (Am. Compl. ¶¶ 361, 383-84, 397, 423, 426), are insufficient to satisfy Plaintiffs' heightened pleading burden for such claims. Thus, there is no basis for tolling Plaintiffs' claims due to fraud or concealment.

iii. Claim IV

Plaintiff's fourth cause of action, challenging the sufficiency of the benefit statements, is likewise untimely. The section 105 claim is not fiduciary in nature, thus, this Court must adopt the most closely analogous New York State statute of limitations for those claims. See Miles, 698 F.2d at 598; Osberg I, 656 F. Supp. 2d at 369-70 Because such claims seek penalties for the asserted violation, they are "punitive in nature (rather than remedial)" and should therefore be brought pursuant to 29 U.S.C. § 1132(c). See Brown v. Rawlings Fin. Services, LLC, 868 F.3d 126, 127, 129 (2d Cir. 2017). However, the Amended Complaint does not bring the claim

pursuant to 29 U.S.C. § 1132(c), § 1132(c) is not found anywhere in the Amended Complaint. (Am. Compl. ¶¶ 399-407.) Therefore, at its core, Plaintiffs' Section 105 claim seeks a penalty. As such, it borrows the state statute of limitations that is most closely analogous. Here, that statute is N.Y. C.P.L.R. 215(4), which applies to "an action to enforce a penalty or forfeiture created by statute." N.Y. C.P.L.R. 215(4) provides that such an action "shall be commenced within one year."

The Court notes that Plaintiffs do not propose a different state statute of limitations, rather, Plaintiffs argue that if construed under the one-year statute, the claim is timely. This Court disagrees.

Plaintiffs contend that the statements they received only provided information on their cash balance account benefits, but not their minimum pre-conversion accrued benefit. (Am. Compl. ¶¶ 401-06.) However, Plaintiffs admit that they were on notice that their benefit statement allegedly failed to include information on their pre-conversion minimum benefits upon receipt of the statements.

Further, the Amended Complaint does not allege that Plaintiffs received deficient benefit statements within the one-year limitations period prior to filing their October 11, 2024 Amended Complaint, (which for the first time asserted a Section 105 claim), or any specific allegations regarding when they received quarterly statements. (Am. Compl. ¶¶ 399-406.)

Plaintiffs argue that even applying the one-year statute of limitations, their claim is preserved by the relation back doctrine. Rule 15(c)(1) of the Federal Rules of Civil Procedure permits the statute of limitations to relate back to the original pleading where the amendment "asserts a claim or defense that arose out of the conduct, transaction, or occurrence set out – or attempted to be set out – in the original pleading." Leber v. Citigroup 401(K) Plan. Inv. Comm.,

129 F. Supp. 3d 4, 17 (S.D.N.Y. 2015) (quoting Fed. R. Civ. P. 15(c)(1)(B)). This Court disagrees.

Plaintiffs' original complaint was filed April 15, 2024. The relation back doctrine applies only where the newly added claim "arose out of" conduct that "set out – or attempted to be set out – in the original pleading." Fed. R. Civ. P. 15(c)(1)(B). The original complaint challenged only the 1998 and 1999 disclosures and made no mention of benefit statements. The facts underlying the benefit statement claim were not alleged in the original complaint. Thus, the relation back doctrine is not appropriate here. Leber, 129 F. Supp 3d at 19 (declining to apply the relation-back doctrine where "[n]one of the facts concerning any misconduct related to the [new claim] was alleged in the original complaint").

Accordingly, Plaintiffs' fourth cause of action is untimely.

CONCLUSION

For the foregoing reasons, this Court respectfully recommends that Defendants' motion to dismiss, found at docket entry No. 38 herein, be granted.

OBJECTIONS

A copy of this Report and Recommendation is being provided to all counsel via ECF. Any written objections to this Report and Recommendation must be filed with the Clerk of the Court within fourteen (14) days of filing of this report. 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 6(a), 72(b). Any requests for an extension of time for filing objections must be directed to the District Judge assigned to this action prior to the expiration of the fourteen (14) day period for filing objections. Failure to file objections within fourteen (14) days may preclude further review of this report and recommendation either by the District Court or Court of Appeals. Thomas v. Arn, 474 U.S. 140, 145 (1985) ("[A] party shall file objections with the district court or else waive

right to appeal."); Caidor v. Onondaga Cnty., 517 F.3d 601, 604 (2d Cir. 2008) ("[F]ailure to object timely to a magistrate's report operates as a waiver of any further judicial review of the magistrate's decision").

Dated: Central Islip, New York
February 18, 2026

/s/ Anne Y. Shields
Anne Y. Shields
United States Magistrate Judge