

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES - GENERAL

Case No. SACV 15-01507 JVS (JCGx) Date April 18, 2016

Title Pamela Carter, et al. v. San Pasqual Fiduciary Trust Co., et al.

Present: The Honorable James V. Selna

Karla J. Tunis

Deputy Clerk

Not Present

Court Reporter

Attorneys Present for Plaintiffs:

Not Present

Attorneys Present for Defendants:

Not Present

Proceedings: (IN CHAMBERS) **Order GRANTING IN PART and DENYING IN PART Defendants Fleet Card Fuels, William Davies, Richard Davies Fleet Card Fuels' Motion to Dismiss**

The Court, having been informed by all parties in this action that they submit on the tentative ruling previously issued, hereby GRANTS IN PART and DENIES IN PART Defendants Fleet Card Fuels, William Davies, Richard Davies Fleet Card Fuels' Motion to Dismiss. The Court makes these rulings in accordance with the tentative ruling as follows:

Defendants Fleet Card Fuels, William Davies, and Richard Davies (collectively, "Defendants") filed a motion to dismiss the second amended complaint filed by Plaintiffs Pamela Carter, Deborah Martin, Christine Morales, Stanley Caraker, Stanley Nicks, Michaela Vecht, Bert Schorling, Jeanette Breiten, Raymond Bachar, Katherine Mitchell, Stephanie Castro, Bruce Hinsley, and Arlene Pounds on behalf of themselves and all others similarly situated (collectively, "Plaintiffs"). Docket No. 44. The Plaintiffs filed an opposition. Defendants filed a reply. Docket No. 51.

For the following reasons, the Court **grants in part** and **denies in part** the motion to dismiss.

1. Background

In November 2003, William and Richard Davies (collectively, "the Davies"), as officers and directors of Fleet Card Fuels, established the Fleet Card Fuels Employee Stock Ownership Plan ("Plan"), an employee-owner benefit plan that allowed participating employees to acquire stock in Fleet Card Fuels. Docket No. 41 ¶ 36. The

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Plan designated Fleet Card Fuels as the plan administrator and the Davies as the plan trustees. Id. ¶¶ 23-25. All three were also designated as named fiduciaries under the Plan. Id. Plaintiffs are former employees of Fleet Card Fuels who were vested participants in the Plan. Id. ¶¶ 9-21. Plaintiffs allege the following.

In September 2004, Defendants entered into a scheme with Strategic Equity Group, an investment advisor firm, to sell Fleet Card Fuels stock held by the Davies and WP Davies Oil, a closely-held company also owned by the Davies, to the Plan at fraudulently inflated prices. Id. ¶ 37. Under the scheme, Defendants would hire Strategic Equity Group to serve as an investment advisor to the Plan. Id. In turn, Strategic Equity Group would misrepresent and fail to disclose to Plan participants information regarding Fleet Card Fuels's financial condition and performance, account receivables, and commingled funds between the Davies, Fleet Card Fuels, and WP Davies Oil; fraudulently inflate Fleet Card Stock prices on the basis of these misrepresentations and non-disclosures; and then sell the stock to the Plan at fraudulently inflated prices. Id. The scheme was successful: through its various misrepresentations and non-disclosures, Strategic Equity Group fraudulently increased the value of Fleet Card Fuels stock to a peak value of \$16.92 per share on October 31, 2009. Id. ¶¶ 38-42. On the advice of Strategic Equity Group, the Plan then purchased Fleet Card Fuels stock at these inflated values: for example, in May 2010, after Strategic Equity Group completed its annual stock valuations for the 2009 fiscal year, the Plan agreed to purchase from Davies and WP Davies Oil 23,651 Fleet Card Fuels shares for approximately \$400,000.00 at \$16.92 per share. Id. ¶ 42.

In addition to their scheme to sell Fleet Card Fuels stock to the Plan at fraudulently inflated prices, Defendants also engaged in two self-interested transactions to benefit Davies and WP Davies Oil at the expense of Fleet Card Fuels: the Catching settlement and the Flyers Energy, LLC redemption agreement.

The Catching settlement. In December 2010, former truck drivers for Nikolaus Tank Lines, Inc. ("Nikolaus"), a subsidiary to WP Davies Oil owned by the Davies, filed a putative class action lawsuit in Los Angeles Superior Court against Nikolaus ("Catching"), alleging violation of California wage and hour law. Id. ¶ 44. In response to the lawsuit, the Davies attempted to sell Nikolaus to a competitor trucking company named H.F. Cox, Inc. Id. ¶ 45. The talks ended after the Davies and WP Davies Oil refused to indemnify H.F. Cox, Inc. for any liability arising out of Catching. Id. ¶ 45.

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In May 2011, after attempts to sell Nikolaus to H.F. Cox, Inc. ended, the Davies closed Nikolaus and directed Nikolaus to liquidate its assets at below-market rates. *Id.* ¶¶ 46-47. The liquidation of Nikolaus generated over \$1.1 million in cash. *Id.* ¶ 47. The Davies then directed Nikolaus to use its liquidation proceeds to repay outstanding cash loans of approximately \$450,000.00 to Fleet Card Fuels and \$80,000.00 to WP Davies Oil. *Id.* ¶ 50. By July 2011, only \$3,000.00 remained in Nikolaus's commercial checking account. *Id.* ¶ 49.

In October 2011, the putative class in *Catching* amended its complaint to add a cause of action for fraudulent conveyance against Fleet Card Fuels on the basis of Nikolaus's \$450,000.00 loan payment to Fleet Card Fuels. *Id.* ¶ 50. In May 2012, the Davies entered into a settlement agreement to settle *Catching* on behalf of both Nikolaus and Fleet Card Fuels. Under the agreement, Nikolaus and Fleet Card Fuels agreed to pay \$1.5 million in settlement awards to a putative class consisting solely of truck drivers formerly employed by Nikolaus. *Id.* ¶ 63. The Davies also directed Fleet Card Fuels to pay legal fees incurred in *Catching* equal to approximately \$500,000.00. *Id.* ¶ 65. By shifting the defense costs and settlement obligations for *Catching* from Nikolaus to Fleet Card Fuels, the Davies depleted Fleet Card Fuels's assets and caused the value of Fleet Card Fuels stock held by the Plan to fall 90%. *Id.* ¶ 66.

The redemption agreement. Sometime thereafter, the Davies sold Fleet Card Fuels to Flyers Energy, LLC. Under the sale agreement, Flyers Energy, LLC agreed to pay the Davies \$1.6 million for non-compete agreements and WP Davies Oil \$1.5 million for consulting services. *Id.* ¶ 90. As part of the sale, Flyers Energy, LLC also agreed to enter into a 20-year lease agreement with WP Davies Oil for gas stations previously leased to Fleet Card Fuels. *Id.* ¶ 62. The leases are worth approximately \$40 million. *Id.* In September 2012, to facilitate the sale of Fleet Card Fuels to Flyers Energy, LLC, the San Pasqual Fiduciary Trust Company, hired by Defendants to provide trust services to the Plan, entered into a redemption agreement with Fleet Card Fuels on behalf of the Plan, under which Fleet Card Fuels agreed to purchase 216,175 shares held by the Plan for \$600,000.00 at a value of \$2.78 per share. *Id.* ¶ 92. This number was significantly lower than the peak \$16.92 per share valuations on October 31, 2009. *Id.*

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On the basis of these allegations, Plaintiffs filed a putative class action complaint against Defendants and others¹ on behalf of themselves and other vested Plan participants alleging: (1) breach of fiduciary duty in violation of the federal Employee Retirement Income Security Act (“ERISA”), 29 U.S.C. § 1001 *et seq.*; (2) engaging in prohibited transactions in violation of ERISA; (3) co-fiduciary liability in violation of ERISA; (4) breach of fiduciary duty in violation of state law; and (5) aiding and abetting breach of fiduciary duty in violation of state law. *Id.* ¶¶ 106-207. The Defendants now move to dismiss the complaint in its entirety for failure to state a claim under Federal Rule of Civil Procedure 12(b)(6). *See* Docket No. 44.

2. Legal Standard

Under Rule 12(b)(6), a defendant may move to dismiss for failure to state a claim upon which relief can be granted. Fed. R. Civ. P. 12(b)(6). To overcome a motion to dismiss under Rule 12(b)(6), a plaintiff must allege “enough facts to state a claim to relief that is plausible on its face.” *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007). A claim has “facial plausibility” if the plaintiff pleads facts that “allow[] the court to draw the reasonable inference that the defendant is liable for the misconduct alleged.” *Iqbal*, 556 U.S. at 678.

In resolving a 12(b)(6) motion under *Iqbal* and *Twombly*, the Court must follow a two-pronged approach. First, the Court must accept all well-pleaded factual allegations as true. *Iqbal*, 556 U.S. at 678. Second, and assuming the well-pleaded factual allegations are true, the Court must “determine whether they plausibly give rise to an entitlement to relief.” *Id.* at 679. This determination is “context-specific,” requiring the Court to draw on its experience and common sense. *Id.* There is no plausibility, however, “where the well-pleaded facts do not permit the court to infer more than the mere possibility of misconduct.” *Id.*

3. Analysis

3.1. Plaintiffs’ federal law claims under ERISA are dismissed in part.

¹ Plaintiffs have also sued the San Pasqual Fiduciary Trust Company and Strategic Equity Group, among others. *See generally* Docket No. 41. Plaintiffs’ claims against these defendants are not subject to this motion to dismiss.

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3.1.1. Fiduciary status

Congress enacted ERISA to establish minimum standards for the operation and administration of employee benefit plans. 29 U.S.C. § 1001(a). To that end, ERISA requires ERISA plans to vest the “authority to control and manage the operation and administration of the plan” in named fiduciaries. *Id.* § 1102(a). ERISA in turn imposes “standards of conduct, responsibility, and obligation” on the named fiduciaries. *Id.* § 1001(b). These standards, responsibilities, and obligations include the fiduciary duties of prudence, loyalty, and disinterestedness. *Id.* §§ 1104(a), 1106(b)(1).

As a threshold matter, to state a claim for breach of fiduciary duty, co-fiduciary liability, or participation in a prohibited transaction in violation of ERISA, the plaintiff must first allege that the defendant was acting as an ERISA fiduciary when committing the alleged ERISA violation. *Pegram v. Herdrich*, 530 U.S. 211, 226 (2000); *see also* 29 U.S.C. §§ 1109 (breach of fiduciary duty), 1106(a) (prohibited transactions), 1195(a) (co-fiduciary liability). An individual can become an ERISA fiduciary in two ways. First, the individual may be named as a fiduciary under the terms of an ERISA plan. 29 U.S.C. § 1102(a)(2). If so, the scope of the individual’s responsibilities as a named fiduciary may be limited by the plan instrument. *DeFazio v. Hollister, Inc.*, 854 F. Supp. 2d 770, 801 (E.D. Cal. 2012), *aff’d sub nom. DeFazio v. Hollister Employee Share Ownership Trust*, 612 F. App’x 439 (9th Cir. 2015) (citing authorities). Second, the individual can acquire functional fiduciary status by (1) exercising discretionary authority or control over management of an ERISA plan or disposition of its assets; (2) rendering investment advice for a fee or other compensation; or (3) exercising discretionary authority in the administration of the plan. 29 U.S.C. § 1002(21)(A). Whether the individual is a functional fiduciary is a factual question, *Steen v. John Hancock Mut. Life Ins. Co.*, 106 F.3d 904, 913 (9th Cir. 1997), that focuses on the individual’s action, authority, control, and discretion, *Parker v. Bain*, 68 F.3d 1131, 1139 (9th Cir. 1995).

Plaintiffs allege three breaches that form the bases of their claims for breach of fiduciary duty, co-fiduciary liability, and participation in a prohibited transaction: (1) Defendants settled *Catching* with Fleet Card Fuels assets to avoid personal liability to the Davies and WP Davies Oil; (2) Defendants entered into non-compete agreements and consulting agreements to personally benefit the Davies and WP Davies Oil when selling Fleet Card Fuels assets to Flyers Energy, LLC; and (3) Defendants entered into lease

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agreements to benefit WP Davies Oil when selling Fleet Card Fuels assets to Flyers Energy, LLC. Docket No. 48 at 15-18.² In their motion to dismiss, Defendants argue that they were not acting as ERISA fiduciaries when committing these alleged breaches because these acts were business decisions taken in their capacities as an employer and officers and directors of Fleet Card Fuels. Docket No. 44 at 17-20.

Whether an ERISA fiduciary acts in its fiduciary or business capacity “depends upon the nature of the function performed.” Beck v. Pace Int’l Union, 551 U.S. 96, 101 (2007). Typically, an individual that has both fiduciary and business functions does not act as an ERISA fiduciary just because its business decisions affect the value of an ERISA plan’s assets. Johnson v. Couturier, 572 F.3d 1067, 1077 (9th Cir. 2009). This includes employee stock ownership plans whose assets include the employer’s stock. Johnson, 572 F.3d at 1077.

However, in the Ninth Circuit, an individual that has both fiduciary and business functions is liable for breach of fiduciary duty under ERISA for business decisions affecting the value of plan assets when the individual could directly profit from the business decisions. Id. (“[A]n ESOP fiduciary also serves as a corporate director or officer, imposing ERISA duties on business decisions from which that individual could directly profit does not to us seem an unworkable rule.”). As the Ninth Circuit explains, this rule is necessary to protect plan participants from “obvious self-dealing” by ERISA fiduciaries and to preserve ERISA fiduciary duties as “the highest known to law.” Id. (quoting Howard v. Shay, 100 F.3d 1484, 1488 (9th Cir. 1996) (internal quotation omitted)). However, the rule is also sufficiently narrowly tailored so as not to interfere with “day-to-day corporate decisions shielded by the business judgment rule.” Id.

On their face, the alleged breaches described above are business decisions related to the settling of a putative class action and the sale of company stock in the context of a corporate acquisition. However, Plaintiffs have adequately alleged that Defendants were acting as fiduciaries under Johnson: Plaintiffs allege that (1) at all relevant times, Defendants were either named or functional fiduciaries regarding the operation and

² Plaintiffs also allege that Defendants breached their fiduciary duties by failing to disclose certain financial information to Plan participants and failing to monitor the San Pasqual Fiduciary Trust Company and other Defendants. See Docket No. 44 at 16-25. The Court discusses these allegations separately in Section 3.1.2 below.

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administration of the Plan and its assets, including Fleet Card Fuels stock, Docket No. 41 ¶¶ 23-25, 75-79; (2) Defendants' alleged breaches decreased the value of Fleet Card Fuels stock, e.g., *id.* ¶¶ 66, and (3) Defendants' alleged breaches could directly profit Fleet Card Fuels and the Davies (either personally or through WP Davies Oil). These profits included: (1) the Davies and WP Davies Oil (as the parent company to Nikolaus) avoided liability in Catching; (2) the Davies and WP Davies Oil's entered into beneficial consulting, non-compete, and lease agreements with Flyers Energy, LLC valued at over \$40 million dollars; and (3) Fleet Card Fuels redeemed stock held by the Plan for below-market prices. In the Ninth Circuit under Johnson, these allegations are sufficient to allege fiduciary status.

3.1.2. Failure to monitor and failure to disclose

In addition to the three breaches discussed above, Plaintiffs also allege that Defendants breached their fiduciary duties under ERISA by (4) failing to disclose to Plan participants information regarding Fleet Card Fuels's financial condition and performance, account receivables, funds commingled between the Davies and WP Davies Oil, and potential liability in Catching; (5) failing to monitor San Pasqual Fiduciary Trust Company, which resulted in San Pasqual's (a) failure to investigate Fleet Card Fuels's potential liability in Catching, (b) failure to identify the conflict of interest in the non-compete and consulting agreements with Flyers Energy, LLC, (c) failure to hire an independent appraiser to determine the value of Fleet Card Fuels stock held by the Plan, and (d) failure to obtain independent bids for Fleet Card Fuels stock held by the Plan; and (6) failing to monitor other Defendants' performance of their fiduciary duties under the Plan. Docket No. 41 ¶¶ 122-32.³ Defendants seek to dismiss these claims for failure to allege violation of the duty to disclose and the duty to monitor under ERISA. Docket No. 44 at 20-22. The Court takes each argument in turn.

Duty to disclose. ERISA contains explicit disclosure requirements that require ERISA fiduciaries to provide plan participants with certain information regarding plan administration. 29 U.S.C. §§ 1021-31. In the Ninth Circuit, ERISA fiduciaries also have a general duty to disclose information regarding plan administration to plan participants.

³ Unlike the breaches discussed above, none of these breaches is a business decision. Rather, these alleged breaches implicate Defendants' administrative responsibilities as ERISA fiduciaries in their operation and administration of the Plan.

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Cal. Ironworkers Field Pension Trust v. Loomis Sayles & Co., 259 F.3d 1036, 1045 (9th Cir. 2001). Defendants move to dismiss Plaintiffs' claim for failure to disclose on two grounds: (1) Plaintiffs have not alleged that Defendants failed to satisfy "specific disclosure requirements" under ERISA and (2) Plaintiffs have not alleged that they "made a written request" for information from Defendants. Docket No. 44 at 21-22. However, Defendants identify no binding authorities (and the Court has found none) holding that claims for failure to disclose must be tied to an explicit ERISA reporting requirement or that plan participants must make a written request on plan fiduciaries to trigger the duty to disclose. But see Cal. Ironworkers, 259 F.3d at 1045 (acknowledging the "general duty to disclose facts material to investment issues" under ERISA); Nunez v. Monterey Peninsula Eng'g, 867 F. Supp. 895, 910 (N.D. Cal. 1994) ("The Ninth Circuit has ruled, though, that these explicit disclosure requirements are not necessarily exhaustive."). The Court therefore denies Defendants' motion to dismiss Plaintiffs' ERISA claims for failure to disclose.

Duty to monitor. ERISA fiduciaries have a duty to monitor the performance of their appointees. 29 C.F.R. § 2509.75-8 FR-17. To state a claim for failure to monitor under ERISA, the plaintiff must allege that the defendant "failed to review the performance of its appointees at reasonable intervals in such a manner as may be reasonably expected to ensure compliance with the terms of the plan and statutory standards." In re Calpine Corp., 2005 WL 1431506, at *6 (N.D. Cal. Mar. 31, 2005) (citing 29 C.F.R. § 2509.75-8 FR-17). "No single procedure will be appropriate in all cases; the procedure adopted may vary in accordance with the nature of the plan and other facts and circumstances relevant to the choice of the procedure." 29 C.F.R. § 2509.75-8 FR-17. Here, Plaintiffs allege no facts regarding whether, when, and to what extent Defendants monitored either the San Pasqual Fiduciary Trust or other Defendants. See Docket No. 41 ¶¶ 120, 123, 126. The Court therefore dismisses Plaintiffs' ERISA claim for failure to monitor. The Court grants Plaintiffs leave to amend these claims, however.

3.1.3. Prohibited transactions

Plaintiffs' second cause of action alleges that Defendants engaged in "prohibited transactions" in violation of 29 U.S.C. § 1106. Docket No. 41 ¶¶ 136-148. Section 1106 broadly prohibits two kinds of transactions: transactions between a plan and a party-in-interest, and transactions between a plan and a plan fiduciary. See 29 U.S.C. § 1106.

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Specifically, section 1106(a) prohibits plan fiduciaries from causing the plan to enter into any transaction with a party-in-interest if the plan fiduciary knows that the transaction directly or indirectly transfers assets from the plan to the party-in-interest. *Id.* Section 1106(b) similarly prohibits self-dealing by the plan fiduciary regarding plan assets. 29 U.S.C. § 1106(b). Defendants move to dismiss this claim on two grounds: (1) Plaintiffs do not allege violation of section 1106(a) because Plaintiffs do not identify any party-in-interest, plan fiduciary, or plan assets at issue in the alleged prohibited transactions, and (2) Plaintiffs do not allege violation of section 1106(b) because Plaintiffs do not allege any transactions involving lending or the investment of Plan assets. Docket No. 44 at 22-24.⁴ Both arguments fail.

First, as to section 1106(a), Plaintiffs identify the parties-in-interest, the plan fiduciary, and the plan assets at issue in the alleged prohibited transaction: Plaintiffs have alleged that Fleet Card Fuels and the Davies caused the Plan to enter into a transaction with Fleet Card Fuels to redeem Fuel Card Fuels stock held by the Plan at \$2.78 per share, and this transaction directly transferred Plan assets to Fuel Card Fuels and indirectly transferred Plan assets to the Davies. Docket No. 41 ¶ 143. These allegations are sufficient to allege a prohibited transaction in violation of section 1106(a).

Second, as to section 1106(b), there are no authorities holding that section 1106(b) is limited to transactions involving lending or the investment of plan assets. Rather, the plain language of section 1106(b) broadly prohibits any self-dealing between the plan and plan fiduciary. *See, e.g.*, 29 U.S.C. § 1106(b)(1) (“A fiduciary with respect to a plan shall not deal with the assets of the plan in his own interest or for his own account.”). The redemption agreement between Fleet Card Fuels, the Davies, and the Plan therefore falls under section 1106(b). The authorities cited by Defendants establish only that self-dealing could include transactions involving lending and the investment of plan assets, and not that only these kinds of transactions constitute prohibited self-dealing under 1106(b). *See, e.g., Raff v. Belstock*, 933 F. Supp. 909, 915-16 (N.D. Cal. 1996) (“Transactions between a plan and a fiduciary are prohibited by 29 U.S.C. section 1106(b). Prohibited transactions include loans from a plan to a fiduciary.”).

⁴ In their reply, Defendants argue for the first time that Plaintiffs fail to allege that Defendants failed to secure “adequate consideration” for the sale of Plan assets. Docket No. 51 at 12-14. The Court declines to consider arguments raised for the first time in a reply.

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3.1.4. Co-fiduciary liability

Plaintiffs' third cause of action alleges "co-fiduciary liability" against Defendants in violation of 29 U.S.C. § 1105(a). Docket No. 41 ¶¶ 149-53. Under ERISA, a co-fiduciary is liable for breach by another fiduciary in three circumstances: (1) the fiduciary knowingly participated in a breach by another fiduciary; (2) the fiduciary's breach enabled another fiduciary to breach; or (3) the fiduciary failed to make reasonable efforts to remedy a breach by another fiduciary. 29 U.S.C. § 1105(a). As summarized in Section 1 above, Plaintiffs have alleged extensive facts that Fleet Card Fuels and the Davies knowingly participated in each other's alleged breaches, enabled each other to breach, and/or failed to take reasonable efforts to remedy each other's alleged breaches. The Court therefore denies Defendants' motion to dismiss the third cause of action for co-fiduciary liability.

3.2. Plaintiffs' state law claims for breach of fiduciary duty are subject to conflict preemption.

In addition to the three federal claims under ERISA, Plaintiffs allege two state law claims against Defendants: (1) breach of fiduciary duty in violation of California law and (2) aiding and abetting breach of fiduciary duty in violation of California law. Docket No. 41 ¶¶ 154-207. Defendants argue that both state law claims are subject to "conflict preemption" under ERISA. Docket No. 44 at 25-26. The Court agrees.

ERISA provides for the comprehensive federal regulation of employee benefit plans. Metropolitan Life Ins. Co. v. Parker, 436 F.3d 1109, 1111 (9th Cir. 2006). To that end, ERISA includes two preemption provisions that defeat certain state law claims: "complete preemption" under § 502(a) of ERISA and "conflict preemption" under ERISA § 514(a). ERISA's conflict preemption provisions provide that ERISA "shall supersede any and all State laws insofar as they may . . . relate to any employee benefit plan." 29 U.S.C. § 1144(a) (emphasis added). For purposes of ERISA preemption, a state law claim "relate[s] to" an ERISA plan if the claim either makes "reference to" or holds a "connection with" an ERISA plan. Cal. Div. of Lab. Standards Enf't v. Dillingham Constr., N.A., Inc., 519 U.S. 316, 324 (1997). Plaintiffs' state law claims are subject to conflict preemption under the "connection with" prong.

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“[T]he Supreme Court has not provided a succinct definition of, or analytical framework for, evaluating” conflict preemption under the “connection with” prong. Paulsen v. CNF Inc., 559 F.3d 1061, 1082 (9th Cir. 2009). To determine whether a state law claim holds a “connection with” an ERISA plan, the Ninth Circuit uses a “relationship test.” Id. at 1082-1083. The “relationship test” asks whether the plaintiff’s state law claim intrudes on an ERISA-regulated relationship. Id. When applying the relationship test, “[t]he key to distinguishing between what ERISA preempts and what it does not lies . . . in recognizing that the statute comprehensively regulates certain relationships: for instance, the relationship between plan and plan member, between plan and employer, between employer and employee (to the extent an employee benefit plan is involved), and between plan and trustee.” Gen. Am. Life Ins. Co. v. Castonguay, 984 F.2d 1518, 1521 (9th Cir. 1993).

Here, Plaintiffs (in their capacity as Plan participants) are suing Fleet Card Fuels (in its capacity as Plan administrator) and the Davies (in their capacity as Plan trustees) for their alleged breaches of fiduciary duty in violation of California law. Accordingly, the duties giving rise to Plaintiffs’ state law claims for breach of fiduciary duty run from plan sponsor and plan trustees to plan participants. These relationships are ERISA-regulated relationships. Castonguay, 984 F.2d at 1521. Plaintiffs’ state law claims are therefore subject to conflict preemption under the “connection with” prong. The Court dismisses these claims with prejudice.

4. Conclusion

For the reasons stated above, the Court **grants** the motion to dismiss as follows:

- (1) The Court **dismisses without prejudice** Plaintiffs’ first cause of action for breach of fiduciary duty under ERISA based on Defendants’ alleged breach of the duty to monitor; and
- (2) The Court **dismisses with prejudice** Plaintiffs’ fifth cause of action for breach of fiduciary duty in violation of state law and sixth cause of action for aiding and abetting breach of fiduciary duties in violation of state law against Defendants.

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The Court otherwise **denies** the motion to dismiss. Plaintiffs shall file an amended complaint within 30 days.

IT IS SO ORDERED.

Initials of Preparer

_____: ____
kjt