It IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF IOWA
CENTRAL DIVISION

FREDERICK ROZO, individually and on behalf of all others similarly situated, Plaintiff, vs. PRINCIPAL LIFE INSURANCE COMPANY, Defendant.	No. 4:14-CV-000463-JAJ-CFB **ORDER**

This case arises from Plaintiff Frederick Rozo's three-count first amended complaint, filed October 15, 2015, alleging that Defendant Principal Life Insurance breached its fiduciary duty of loyalty under the Employee Retirement Income Security Act ("ERISA") sections 502(a)(2) and 502(a)(3) (29 U.S.C. §§ 1132(a)(2), (3)) and engaged in ERISA-prohibited transactions, or, in the alternative, that Defendant engaged in ERISA-prohibited transactions as a party in interest. [Dkt. No. 67 (This complaint was amended after one of the original defendants was dismissed.)] On November 22, 2016, Plaintiff filed a Motion to Certify Class and requested oral argument. [Dkt. No. 101] On January 6, 2017, Defendant resisted. [Dkt. No. 108] On February 3, 2017, Plaintiff replied. [Dkt. No. 116] The Court held a motion hearing on April 27, 2017. [Dkt. 123] The parties dispute whether Plaintiff's proposed class meets the class certification criteria pursuant to Federal Rule of Civil Procedure Rule 23(a), 23(b)(1), and 23(b)(3). For the reasons that follow, Plaintiff's motion to certify class is **GRANTED**.

I. BACKGROUND

A. Plaintiff and the Proposed Class

Plaintiff Frederick Rozo ("Rozo") and the proposed class members are or were retirement plan participants who invested in Defendant Principal Life Insurance Company's ("Principal") Principal Fixed Income Option ("PFIO") plan. Plan participants' ERISA plans entered into a contract ("Contract") with Principal. The terms of the Contract were uniform and did not vary

among the proposed class members. Rozo defines the proposed class as, "all participants in and beneficiaries of defined contribution employee pension benefit plans within the meaning of ERISA § 3(2)(A), 29 U.S.C. § 1002(2)(A), who had funds invested in the PFIO contract CGF01 from six years before the filing of this action until the time of trial." Rozo was invested in the PFIO through his employer-sponsored 401(k) plan from 2008 through 2013. Other members of the class participated through 401(a) and 457 plans (in addition to 401(k) plans).

Plan participants contributed funds to the PFIO, which Principal invested in fixed-income securities, mostly bonds. [1] These investments produced a return; Principal retained some of the return and distributed some to participants. Under the Contract, Principal determined plan participants' return on investment in the PFIO every six months using a Composite Credit Rate ("CCR"). The amount retained by Principal after paying the CCR to plan participants and paying its actual expenses is called the "margin." On average, the margin here was 2.69%. Rozo alleges, on behalf of himself and a proposed class of similarly situated individuals, that: (1) Principal's discretionary control of the CCR renders it a functional fiduciary over participants' plan assets; and (2) Principal violated ERISA by retaining compensation (the margin) it was not entitled to as a fiduciary. Rozo argues that this case is well-suited for class-wise resolution because the CCR and the process for setting the CCR were uniform across the class; thus, all members of the proposed class would recover in direct proportion to their investments in the PFIO. Principal's arguments against certification are detailed below.

B. Principal's Management of the PFIO

Each CCR applies to the PFIO for designated six-month "deposit period." Principal calculates the CCR using a complex process, but the resulting CCR is uniform across all plan participants. As described in the Contract, every six months Principal creates a Guaranteed Interest Fund ("GIF") to receive new PFIO deposits as well as interest earned on prior deposits to previous GIFs. Before opening the new GIF, Principal designates a Guaranteed Interest Rate ("GIR") for that GIF. Principal then calculates the CCR as an asset-weighted average of the GIRs in the existing GIFs. In calculating the CCR, the weight given to the GIR for each GIF is based on the volume of assets in the GIF. However, the assets in any GIF are not limited to plan participant contributions: the "roll-forward" provision of the Contract states that after the initial six-month

[1] While the Contract does not explicitly guarantee plan participants will not lose their principal, Principal states: (1) that such a guarantee is implicit in the Contract; and (2) it would have closed the PFIO to new deposits rather than allow a negative rate of return.

deposit period for a GIF, a portion of each GIF and the earned interest from it is rolled forward into the newest GIF.[2] Given that the CCR is the asset-weighted average of the GIRs for all the GIFs, the most recent GIF is likely have the most influence on the CCR. By setting the most recent GIR, Principal is able to control the CCR.

At least once every six months, a group of Principal employees known as the "pricing team" hold a "pricing meeting" for the PFIO. This group sets the GIR for the newest GIF (and thereby sets the CCR for the upcoming deposit period as well). First, Principal Global Investments ("PGI"), expresses the expected return or yield on the investments underlying the PFIO in basis points (for example, 100 basis points as 1%). Principal calls this "Segment 130." Second, Principal subtracts "deducts," which are discretionary and also expressed in basis points, from the expected yield amount. The deducts are designed to generate the desired profit for Principal, cover its risk on the PFIO, and pay any associated expenses. Once the deducts are subtracted, the remaining amount is the GIR: Estimated Returns – Deducts = GIR (as expressed in basis points). During the class period, the CCR went down all but one time when the pricing team set a new, lower GIR. Plaintiffs argue that Principal's deducts allowed Defendant to retain an unreasonable amount that should have been returned to the plan participants through a higher CCR. Plaintiff estimates Principal's gross investment income based on the PFIO assets through using the gross rate of return on Segment 130 and the CCR paid to plan participants. Principal's spread earned on the PFIO averaged 169 basis points from 2009 to 2015 and remained steady. Principal's deducts also remained steady from 2009 to 2015, averaging 267 basis points. The CCR, on the other hand, has decreased over the same time period such that plan participants share of the gross yield on the PFIO has gone from 62% to 43%, while Principal's share has gone from 38% to 57%. Plaintiff argues that Principal has abused its discretionary ability to set deducts and disproportionately placed the burden of a steadily declining yield on the PFIO assets on plan participants.

Defendant Principal notes that there are at least 12 separate deduct pricing decisions made by the pricing team every six months. Further, there are additional deducts that were reviewed monthly. Each of these decisions involved data, personnel, assumptions, and actuarial judgment that were not necessarily uniform across the class period. Principal argues that in order to ascertain

[2] This is not a set percentage, but during the class period, approximately 5% of each GIF has rolled forward. *See* Dkt. No. 102, Ex. 2 at PLIC0000055; *see also* Dkt. No. 102, Ex. 8 at 244:6-248:2.

a "reasonable" level of cost and profit, each of these decisions would have to be reexamined and analyzed, resulting in an unmanageable series of mini-trials for each plan participant.

II. ANALYSIS

A. Standing

Principal challenges Rozo's standing to sue, and, therefore, his ability to serve as a class representative. Standing is a threshold question, an "irreducible constitutional minimum," consisting of three elements. *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560–61 (1992). First, a plaintiff "must have suffered an 'injury in fact.'" *Id*. Such an injury is "an invasion of a legally protected interest which is (a) concrete and particularized[,] and (b) actual or imminent, not conjectural or hypothetical." *Id*. (internal citations and quotation marks omitted). Second, "there must be a causal connection between the injury and the conduct complained of"—in short, the injury must be attributable to the defendant's actions rather than those of a third party. *Id*. (internal citations and quotation marks omitted). Finally, "it must be likely, as opposed to merely speculative, that the injury will be redressed" by a decision in the plaintiff's favor. *Id*. (internal citations and quotation marks omitted). Principal argues that Rozo lacks standing to pursue injunctive or equitable relief because he sold his interest in the PFIO Guaranteed Contract in 2013. If Rozo lacks standing to bring an individual claim, he is not an adequate class representative.

The cases cited by Principal are not analogous to the facts or legal posture here. The Court finds that Rozo has standing to sue on the claims in the first amended complaint. First, if Rozo's claims are true, then he has suffered an actual, concrete, particularized injury in the form of receiving less money than he was entitled to from Principal during the time in which he was a participant in the PFIO. Second, there is a direct causal connection between Rozo's alleged injury and Principal's alleged conduct. Finally, if Rozo wins his case, there is no doubt that his injury would be redressed. Rozo has stand ing to sue individually and on behalf of the proposed class of similarly situated individuals. The Court recognizes that Rozo lacks standing to pursue future injunctive relief because he is no longer a plan participant.

B. Class Actions: Federal Rule of Civil Procedure 23(a)

Class actions are defined by Federal Rule of Civil Procedure 23. Plaintiff "has the burden of showing that the class should be certified and that the requirements of Rule 23 are met."

Coleman v. Watt, 40 F.2d 255, 259 (8th Cir. 1994) (citing *Smith v. Merch. and Farmers Bank of W. Helena, Ark.*, 574 F.2d 982, 983 (8th Cir. 1978)). The Court must conduct a "rigorous analysis" of whether the requirements of Rule 23 have been met. *Gen. Tel. Co. of Sw. v. Falcon*, 457 U.S. 147, 155 (1982). Rule 23(a) sets forth the four prerequisites for any class action:

1. The class is so numerous that joinder of all members is impracticable;
2. There are questions of law or fact common to the class;
3. The claims or defenses of the representative parties are typical of the claims or defenses of the class; and
4. The representative parties will fairly and adequately protect the interests of the class.

FED. R. CIV. P. 23(a). Requirements two, three, and four are referred to as commonality, typicality, and adequate representation, respectively. A class is appropriate for certification when its claims "depend upon a common contention of such a nature that it is capable of classwide resolution—which means that determination of its truth or falsity will resolve an issue that is central to the validity of each one of the claims in one stroke." *Wal-Mart Stores, Inc. v. Dukes*, 131 S. Ct. 2541, 2551 (2011).

Defendant argues that Plaintiff's proposed class fails under Rule 23 because Rozo is not an adequate or typical class representative as he lacks standing, credibility, and a basic understanding of the case. The Court has held that Rozo has standing. Defendant does not challenge the proposed class as to requirement one.

The Court holds that Rozo's proposed class meets the requirements of Rule 23(a). First, the proposed class is so numerous that joinder of all members is impracticable. As of late March 2016, 40,999 ERISA plan participants had invested in the PFIO during the class period. This satisfies Rule 23(a)(1)'s requirement that the class is so numerous as to make joinder impracticable and that the class is "ascertainable" "by reference to objective criteria" (here, Principal's records of enrollment in the PFIO). *See Sandusky Wellness Ctr., LLC v. Medtox Scientific, Inc.*, 821 F.3d 992, 996–97 (8th Cir. 2016) (quoting *Rikos v. Procter & Gamble Co.*, 799 F.3d 497, 525 (6th Cir. 2015)). Second, questions of law and fact are common to the entire class. The PFIO is a single pool of assets governed by a Contract with standardized terms; those terms, including the CCR, were applied uniformly across the proposed class. When Principal made pricing decisions, it applied those decisions to the PFIO group as a whole—not to tens of thousands of plan participants on a person-by-person basis. Because of this, questions of law and fact are common throughout the proposed class, and Rule 23(a)(2) is satisfied. Further, the disputed question of whether

Principal was a fiduciary is most efficiently answered on a classwide basis because the PFIO funds were invested and managed on a portfolio basis and the CCR is uniform.

Third, Rozo's claims are typical of those of the proposed class. As a PFIO investor from late 2008 through late 2013, his account was subject to management under the terms of the Contract. The return on his investment was dependent on the CCR and Principal's management of the PFIO. Regardless of Principal's claims that he lacks credibility and knowledge of PFIO details, Rozo was a plan participant and experienced the same alleged injury as all other members of the proposed class. Rule 23(a)(3) is satisfied. Finally, Rozo is an adequate class representative. His interests are common to the other members of the class, and he has demonstrated his intent to vigorously prosecute class interests through his participation in this suit (producing documents, cooperating with counsel, attending depositions, and responding to interrogatories). *See In re Target Corporation Customer Data Security Breach Litigation*, 847 F.3d 608, 613 (8th Cir. 2017) (citing *Paxton v. Union Nat'l Bank*, 688 F.3d 552, 562–63 (8th Cir. 1982)). Rule 23(a)(4) is satisfied.

In addition to satisfying the requirements of Rule 23(a), Plaintiff must demonstrate that the proposed class falls within one of categories established by Federal Rule of Civil Procedure 23(b). Here, Rozo argues class certification is appropriate under Rule 23(b)(1) or, alternatively, Rule 23(b)(3).[3]

C. Class Actions: Federal Rule of Civil Procedure 23(b)(1)

Rule 23(b)(1) allows a class action to be maintained if Rule 23(a) is satisfied, and:

1. prosecuting separate actions by or against individual class members would create a risk of:

[3] Rule 23(b)(3) allows a class action to be maintained if Rule 23(a) is satisfied, and:

> 3. the court finds that the questions of law or fact common to class members predominate over any questions affecting only individual members, and that a class action is superior to other available methods for fairly and efficiently adjudicating the controversy. The matters pertinent to these findings include:
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> a. The class members' interests in individually controlling the prosecution or defense of separate actions;
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> b. the extent and nature of any litigation concerning the controversy already begun by or against class members;
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> c. the desirability or undesirability of concentrating the litigation of the claims in the particular forum; and
>
> d. the likely difficulties in managing a class action.

FED. R. CIV. P. 23(b)(3). Because the Court certifies Rozo's class under Rule 23(b)(1), the Court will not analyze the parties arguments under Rule 23(b)(3).

> A. inconsistent or varying adjudications with respect to individual class members that would establish incompatible standards of conduct for the party opposing the class; or
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> B. adjudications with respect to individual class members that, as a practical matter, would be dispositive of the interests of the other members not parties to the individual adjudications or would substantially impair or impede their ability to protect their interests.

Rule 23(b)(1). "Most ERISA class action cases are certified under Rule 23(b)(1)," and Rozo argues that certification under 23(b)(1)(A) is most appropriate here. *In re First American Corp. ERISA Litigation*, 258 F.R.D. 610, 620 (C.D. California 2009). Numerous courts have held that due to "the derivative nature of ERISA §502(a)(2) claims, breach of fiduciary duty claims brought under § 502(a)(2) are paradigmatic examples of claims appropriate for certification as a Rule 23(b)(1) class." *In re Schering Plough Corp. ERISA Litigation*, 589 F.3d 585, 604 (3rd Cir. 2009) (collecting cases). Rule 23(b)(1) provides two options for class certification. FED. R. CIV. P. 23(b)(1)(A), (B); *but see First American*, 258 F.R.D. at 622 (explaining that the Ninth Circuit precludes certification under Rule 23(b)(1)(A) if plaintiffs seek monetary relief; there is no corresponding Eighth Circuit or Supreme Court preclusion). "Rule 23(b)(1)(A) considers possible prejudice to a defendant, while 23(b)(1)(B) looks to prejudice to the proposed class members." *Kanawi v. Bechtel Corp.*, 254 F.R.D. 102, 122 (N.D. California 2008). Principal makes two concise objections to certification of this class under Rule 23(b)(1): (1) the presence of individualized issues precludes any concern on inconsistent judgments; and (2) Plaintiff cannot present a formulaic damages model. Both arguments center on Rule 23(b)(1)(A).

Certification under 23(b)(1)(A) presumes that the class shares common issues for which a uniform resolution will ensure consistency, making it axiomatic that the presence of individualized issues would preclude certification under 23(b)(1)(A). For example, in *Hylaszek v. Aetna Life Insurance Company*, the proposed class members had been denied medical benefits on medical necessity grounds, but there was no common medical condition among them. *Hylaszek v. Aetna Life Insurance Company*, 1998 WL 381064, at *6 (N.D. Ill. July 1, 1998). Given the individualized and dissimilar nature of the proposed class members' medical situations, multiple adjudications could not create inconsistent or varying results or establish incompatible standards of conduct for the defendants. Therefore, the court did not certify the class under Rule 23(b)(1)(A).

Hylaszek, however, involves a wholly distinct factual situation from this case. The instant proposed class does not possess the individualized issues that would preclude certification under Rule 23(b)(1)(A). Here, the core of the case is Principal's management and administration of the PFIO plan (possibly as a fiduciary), which was governed by a uniform Contract including standardized terms that were applied to all plan participants. The only variation among class members is the amount and timing of their investments in the PFIO—their claims and the proof required to demonstrate those claims are identical across the class. If the class is not certified, and adjudication proceeds on an individual basis, there is a very real risk of inconsistent judgments regarding Principal's fiduciary status and its compliance with ERISA standards, as well as the amount of money to which plan participants are entitled. *See Shanehchian v. Macy's, Inc.*, 2011 WL 883659, at *9 (S.D. Ohio Mar. 10, 2011) ("[B]ecause the fiduciary duties are at issue in this case are owed to the [p]lans, thousands of separate individual actions could result in differing standards of duty, and thus, differing standards of conduct with respect to [d]efendants and the [p]lans, which would be an untenable outcome."); *see also In re Beacon Assocs. Litig.*, 282 F.R.D. 315, 342 (S.D.N.Y. 2012) (stating "individual actions [in an ERISA breach of fiduciary duty case] would pose a serious risk of disposing of the interests of non-parties."). The Court is not persuaded by Principal's argument that individual issues in the proposed class preclude certification under Rule 23(b)(1)(A).

Principal further objects to certification under Rule 23(b)(1)(A), arguing Rozo cannot present a formulaic damages model. The Court is not persuaded by Principal's argument. First, Rozo presents a straightforward summary of his proposed method of classwide damages calculation: (1) identify the Segment 130 spread; (2) identify an estimate of the reasonable costs over the Class Period; (3) calculate the total amount of improper fees using this formula: Gross Margin – Reasonable Fees – CCR = Damages; and (4) award each class member a pro-rata share of the total amount of improper fees based on his or her share of the total ERISA plan assets in the PFIO.[4] Principal, in essence, argues that step 2 of the damages calculation requires an untenable number of difficult-to-quantify assessments of "reasonableness" that then must be individually applied to each class member so as to pose an insurmountable obstacle to formulaic damages calculation. This case does require the Court to analyze numerous pricing decisions and

[4] The Court recognizes that Rozo's formula for calculating damages is highly simplistic and lacks precision, but it is formulaic.

make multiple assessments of reasonableness, but Principal overstates the complexity, impossibility, and individuality of this task. It is within the Court's ability to perform. Once the required assessments are made, the resulting figures can be plugged into Rozo's proposed formula to find the correct damages amount for each class member.

Second, the language Principal quotes from *Johnson* requires a more nuanced application than Principal asserts. *See Johnson v. Meriter Health Services Employee Retirement Plan*, 702 F.3d 364 (7th Cir. 2012). In *Johnson*, the court considered an ERISA class certification under Rule 23(b)(2) in light of the Supreme Court's holdings in *Wal-Mart v. Dukes*. *Id*. at 372. In *Wal-Mart*, the Supreme Court held that actions for monetary relief under 23(b)(1) or 23(b)(2) may not be maintained unless the monetary relief is "incidental to the injunctive or declaratory relief." *Wal-Mart, Inc., v. Dukes*, 131 S.Ct. 2541, 2557 (2011). In the ERISA context, relief is "incidental" if "the calculation of monetary relief will be mechanical, formulaic, a task not for a trier of fact but for a computer program." *Johnson*, 702 F.3d at 372. If the relief is incidental, the class may be certified under 23(b)(1) or 23(b)(2), but if not, the class must be certified under 23(b)(3) or not at all. *Laurent v. Pricewaterhousecoopers, LLP*, 2014 WL 2893303 (S.D.N.Y. 2014).

The court in *Laurent* further explained that if the calculating the damages amount "requires the Court to engage in an individualized inquiry, the monetary relief" is not incidental. *Id*. at *2. This does not, however, mean that the Court may not engage in any other calculations or analysis in arriving at the values to be used in final damages formula. *See id.* at *3 (certifying class under 23(b)(2) despite the need for the court's analysis prior to calculating damages). The question, rather, is whether the damages can be calculated, once the necessary values are identified, by "laying each class member's [investment] records . . . alongside the text of the reformed plan and computing the [class member's] entitlement." *Id*. at *2. This is similar to the methods used in non-ERISA class actions where an expert-crafted average time for donning and doffing protective gear is applied to the entire class based on employment records of time worked, resulting in a pro-rata share of the damages award across the class. *See, e.g.*, *Tyson Foods, Inc. v. Bouaphakeo*, 136 S.Ct. 1036, 1047 (2016).

The remaining case cited by Principal, *Pennsylvania Chiropractice Ass'n v. Blue Cross Blue Shield Assn'n*, is factually distinct from the matter at hand. In that case, certification was denied because computing the damages would require, "not simply identifying patient visits for

which reimbursement was denied, but also examining whether the particular class member had received payment for that particular visit from the patient"—in short, a highly individualized analysis. *Pennsylvania Chiropractice Ass'n v. Blue Cross Blue Shield Assn'n*, 2011 WL 6819081 at 15 (N.D. Illinois December 28, 2011). Here, the Principal managed and administered the PFIO funds on a portfolio basis as governed by the Contract, which uniformly applied to all class members.

The Court finds that Rozo's proposed class meets the requirements for class certification under Rule 23(b)(1)(A).

III. CONCLUSION

Plaintiff has met the requirements for class certification under Rules 23(a) and 23(b)(1). The Court finds that: (1) the class is so numerous that joinder of all members is impracticable; (2) there are questions of law or fact common to the class; (3) the claims of the representative party are typical of the claims of the class; and (4) Rozo will fairly and adequately represent the interests of the class. FED. R. CIV. P. 23(a). The Court further finds that separate actions by individual plaintiffs would create a risk of inconsistent or varying adjudications with respect to individual class members that would establish incompatible standards of conduct for Principal. FED. R. CIV. P. 23(b)(1)(A).

Upon the foregoing,

IT IS ORDERED that Plaintiff's motion to certify class is **GRANTED**.

DATED this 12th day of May, 2017.

JOHN A. JARVEY, Chief Judge
UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF IOWA