

1 UNITED STATES DISTRICT COURT
2 DISTRICT OF NEVADA

3 Danny Wanek et al.,

4 Plaintiffs

5 v.

6 Russell Investments Trust Company, et al.,

7 Defendants

Case No. 2:21-cv-00961-CDS-BNW

**Order Regarding Defendants' Motions for
Summary Judgment and Motions to Seal**

[ECF Nos. 198, 200, 234, 236]

9 Participants of a 401(k) plan bring this suit against the plan's fiduciaries for alleged
10 breaches of their fiduciary duties under the Employee Retirement Income Security Act
11 ("ERISA"). Defendant Caesars Holdings, Inc.¹ sponsors the 401(k) plan, the Caesars
12 Entertainment Corporation Savings & Retirement Plan ("Plan"), for its eligible employees.
13 Caesars Holdings formed the Plan Investment Committee and the 401(k) Plan Committee
14 (collectively, the "Caesars defendants") to oversee the Plan's investments. The Committee hired
15 defendant Russell Investments Trusts Company as the Plan's investment manager.

16 Plaintiffs Danny Wanek, Juan Duarte, and Rick Ruberton, as representatives of the
17 certified class of participants and beneficiaries of the Plan, sue Russell and the Caesars
18 defendants for alleged breaches of fiduciary duties under ERISA arising from Russell's role as the
19 Plan's investment manager. Fifth. am. compl., ECF No. 175. Russell and the Caesars defendants
20 both move for summary judgment, arguing that the plaintiffs fail to raise a triable issue of fact.
21 Caesars' mot. summ. j., ECF No. 198; Russell's mot. summ. j., ECF No. 200.² Russell also moves
22 to seal documents filed in connection with the summary judgment motions. Russell's mot. seal,
23 ECF Nos. 234, 236. For the reasons stated herein, I hereby grant the Caesars defendants' motion
24 for summary judgment and deny Russell's motion for summary judgment. I also grant Russell's

25 ¹ Caesars Holdings, Inc. was formerly known as Caesars Entertainment Corporation prior to late 2020,
26 when Eldorado Resorts, Inc. purchased Caesars and reorganized the company. The parties variously refer
to Caesars Holdings, Inc., and Caesars Entertainment Corporation, but both are the same entity.

² The motions for summary judgment are fully briefed. See Opp'n, ECF Nos. 205, 207; Replies, ECF Nos.
212, 213.

1 motions to seal documents filed in support of the Caesars defendants' motion for summary
 2 judgment and in support of the plaintiffs' respective responses to the defendants' motions for
 3 summary judgment.

4 I. Background

5 A. The Parties

6 1. *Plaintiffs*

7 The plaintiffs are Plan participants. ECF No. 175 at 3.³ Plaintiffs Danny Wanek and Juan
 8 Duarte are current participants—Wanek since 2007, and Duarte since 1994. *Id.* Plaintiff Rick
 9 Ruberton participated in the Plan from at least 2016 to 2021. *Id.* Each of their accounts were
 10 transferred to Russell's age-based funds after Russell assumed control of the Plan in 2017. *Id.*
 11 They bring this suit on behalf of a certified class of individuals, which includes all participants
 12 and beneficiaries of the Plan at any time from August 1, 2017, through December 17, 2021 ("class
 13 period"), excluding any employees of Caesars with responsibility for the Plan's investment or
 14 administrative functions. Order, ECF No. 195.

15 2. *Caesars defendants*

16 Caesars Holdings, Inc. is a holding company with global entertainment, gaming, and
 17 hospitality operations. ECF No. 175 at ¶ 15. It also sponsors the Plan, which holds the retirement
 18 savings of over 40,000 current and former Caesars employees. The Plan, Caesars' Ex. 1, ECF No.
 19 198-4 at 3–8; Investment Committee Charter, Caesars' Ex. 2, ECF No. 198-5. Caesars appoints an
 20 Investment Committee⁴ to serve as the fiduciary responsible for managing the Plan. ECF No.
 21 198-5 at 2. The Committee has the sole discretionary authority to manage the investment of Plan
 22 assets. *Id.* The Committee may also choose to delegate this authority to an ERISA § 3(38)
 23 investment manager. *Id.*

25 ³ Unless otherwise noted, citation to the complaint is to provide background information and does not
 26 serve as a finding of fact.

⁴ During the class period, Caesars dissolved the Plan Investment Committee and created the 401(k) Plan Committee to assume its investment duties. ECF No. 198-5.

3. *Defendant Russell*

The Investment Committee delegated its investment duties to Russell in 2016. 11/14/2016 Meeting Mins., Caesars' Ex. 19, ECF No. 198-22. Russell is a non-depository trust company that provides trust and investment management services through commingled multi-manager funds, principally to qualified ERISA and governmental plans. RFP Resp., Caesars' Ex. 12, ECF No. 198-15 at 4. It offers "fiduciary outsourcing" to defined contribution retirement plans. *Id.* at 5. During the class period, Russell served as the ERISA § 3(38) investment manager and fiduciary of the Plan. ECF No. 198-22; Investment Management Agreement, Caesars' Ex. 16, ECF No. 198-19.

B. The Plan

The Plan is an ERISA § 404(c) plan, meaning that participants may choose between investment options made available by the Plan's fiduciaries. ECF No. 198-4; 29 C.F.R. § 2550.404c-1(a)(1), (e)(4). The Plan is also an "employee pension benefit plan" under 29 U.S.C. § 1002(2)(A) and a defined contribution or "individual account" plan under 29 U.S.C. § 1002(34). ECF No. 175 at ¶ 20; Russell's answer, ECF No. 176 at ¶ 20; Caesars' answer, ECF No. 181 at ¶ 20. A defined contribution plan gives participants retirement benefits not exceeding the value of their individual investment accounts—a limitation determined by "the market performance of employee and employer contributions, less expenses." *Tibble v. Edison Int'l*, 575 U.S. 523, 525 (2015).

Caesars is a fiduciary of the Plan because it appoints and removes Investment Committee members. *See* ECF No. 198-4. The authority to appoint and remove other fiduciaries constitutes "discretionary authority or discretionary control respecting management of [a] plan" and confers fiduciary status under ERISA. 29 U.S.C. § 1002(21)(A). The Plan Investment Committee and 401(k) Plan Committee are fiduciaries because they respectively had and have authority to select and remove investments for the Plan, as well as to outsource their investment duties to an "investment manager" under ERISA § 3(38). *Id.*; ECF No. 198-4. Authority to select and remove investments constitutes "any authority or control respecting management or disposition of

1 assets” and confers fiduciary status under ERISA. 29 U.S.C. § 1002(21)(A). Also, authority to
2 appoint and remove investment managers under ERISA § 3(38) constitutes “discretionary
3 authority or discretionary control respecting management of [a] plan” and likewise confers
4 fiduciary status under ERISA. *Id.*

5 C. The Undisputed Facts

6 In January 2016, the Plan Investment Committee retained a consultant, Tejera &
7 Associates, to run a request for proposal (“RFP”) to select and hire an investment manager for
8 the Plan. Tejera Statement, Caesars’ Ex. 6, ECF No. 198-9. Tejera & Associates is an independent
9 consultancy that helps sponsors of retirement plans and institutional funds select providers for
10 managing their investments. Tejera Letter, Caesars’ Ex. 7, ECF No. 198-10. Together the
11 Committee and Tejera selected candidates to receive the RFP and Information Request. *See* RFP
12 Candidate Profiles, Caesars’ Ex. 9, ECF No. 198-12; RFP Information Request, Caesars’ Ex. 8,
13 ECF No. 198-11. In the Information Request, Caesars expressed interest in white label funds,
14 target date funds (“TDFs”), and stable value funds. ECF No. 198-11 at 6.

15 Russell was one of five candidates selected. Tejera’s Evaluation Report, Caesars’ Ex. 10,
16 ECF No. 198-13 at 4. In response to the RFP, Russell detailed qualifications such as its rank in
17 the top-five largest consultants globally based on assets under management, its 35 years of
18 experience managing multi-manager portfolios, its recognition as the fourth-largest defined
19 contribution custom TDF manager. ECF No. 198-15 at 3, 5, 15. It also described Russell’s
20 protocol for managing potential conflicts of interest. *Id.* at 9.

21 After receiving the candidates’ responses, Tejera made a Proposal Evaluation Report for
22 the Committee. ECF No. 198-13. The report ranked Russell as one of the top-three candidates,
23 observing that Russell has “offered discretionary services since 1980” but that its “experience
24 with DC plans is weaker with only 2 over \$1B in assets.” *Id.* at 7, 18.

1 Russell moved forward as one of three finalists for the role. *See id.* at 7. In its final
2 presentation, Russell proposed including TDFs with a more conservative glidepath near
3 retirement compared to the State Street funds currently in the Plan. Presentation, Russell's Ex.
4 14, ECF No. 200-16 at 9. It also switched from passive management to a blend of active and
5 passive. *Id.* at 15.

6 In November 2016, the Committee reviewed and approved Russell's proposal to serve as
7 the ERISA § 3(38) Plan investment manager. ECF No. 198-22. A month later, Caesars and
8 Russell executed an Investment Management Agreement ("IMA"). ECF No. 198-19. Under the
9 agreement, Russell would provide delegated investment management services for the Plan in
10 exchange for a service fee based on overall Plan assets under management ("AUM"). *Id.* at 4-7,
11 16-17. This "cost plus" fee arrangement was product-agnostic: Russell would receive the same
12 fee regardless of whether it selected Russell funds for the Plan. *Id.* at 16-17. As part of its services,
13 Russell would also provide quarterly performance reports to the Investment Committee. *Id.* at 13.

14 In August 2017, Russell assumed control of the Plan's investment menu and transferred
15 the Plan's assets to the selected menu. 11/17/2017 Meeting Mins., Caesars' Ex. 17, ECF No. 198-20;
16 11/17/2017 Meeting Presentation, Caesars' Ex. 18, ECF No. 198-21 at 5. Russell's investment menu
17 for the Plan included Russell "Lifecycle" TDFs and white labeled asset class funds. Presentation,
18 Caesars' Ex. 11, ECF No. 200-13 at 5, 7-12.

19 The nine asset class funds Russell selected for the Plan were the Enhanced Index U.S.
20 Equity Fund, Russell Investments 1000 Index Fund, Small Cap Fund, International Markets
21 Fund, International Index Fund, Real Asset Fund, Multi-Manager Bond Fund, Fixed Income II
22 Fund, and Short Term Investment Fund. *Id.* The Russell TDFs served as the Plan's default
23 investment alternative. *Id.*; Russell's Resp. Caesars RFP, Russell's Ex. 19, ECF No. 200-21 at 12.

24 TDFs are designed to invest more conservatively as participants near the target date. US
25 DOL, Russell's Ex. 6, ECF No. 200-8 at 2. The shift in the TDF's asset allocation over time is
26

1 referred to as the TDF's "glide path." *Id.* The Russell TDFs expanded the Plan's previous TDF
 2 offering with retirement date increments of five years instead of ten years. ECF No. 198-20.

3 The Committee maintained an Investment Policy Statement ("IPS"), which Russell
 4 helped revise while serving as the Plan's investment manager. *Id.*; 2015 Investment Policy
 5 Statement, Caesars' Ex. 3, ECF No. 198-6; 2018 Investment Policy Statement, Caesars' Ex. 4, ECF
 6 No. 198-7; ECF No. 198-19 at 13; ECF No. 198-20; 05/07/2018 Meeting Minutes, Caesars' Ex. 32,
 7 ECF No. 198-35. Under the IPS, Russell would select investment options that covered "a
 8 risk/return spectrum of appropriate investment classes," accommodated participants' "varying
 9 degrees of investment sophistication and interest levels in managing their accounts," and
 10 resulted in reasonable costs and expenses. ECF No. 198-7. The IPS charged the Committee with
 11 undertaking a "detailed review and assessment of Russell's performance" periodically. *Id.* at 8. It
 12 also stated that "the appropriate measurement period for evaluation [of performance] must be of
 13 sufficient length to cover economic and capital market cycles (i.e., historically five years or
 14 longer)." *Id.*

15 The Committee held quarterly meetings with Russell to review the Plan's performance.
 16 *See, e.g.*, Fourth Quarter 2018 Meeting Presentation, Caesars' Ex. 27, ECF No. 198-30; First
 17 Quarter 2019 Meeting Presentation, Caesars' Ex. 26, ECF No. 198-29; Fourth Quarter 2019
 18 Meeting Presentation, Caesars' Ex. 29, ECF No. 198-32; First Quarter 2021 Meeting
 19 Presentation, Caesars' Ex. 28, ECF No. 198-31. Before each quarterly meeting, Russell gave the
 20 Committee members quarterly reports for their review. Causey dep., Caesars' Ex. 39, ECF No.
 21 198-42 at 6-10. The reports explained market conditions and the performance of Plan
 22 investments. *See, e.g.*, 08/02/2018 Meeting Mins., Caesars' Ex. 25, ECF No. 198-28; 02/26/2020
 23 Meeting Mins., Caesars' Ex. 31, ECF No. 198-34; ECF No. 198-35.

24 D. The Litigation

25 The plaintiffs bring this ERISA class-action suit on behalf of a certified class of Plan
 26 participants and beneficiaries. ECF No. 195; ECF No. 175 at ¶ 65. They allege that Russell

1 breached its fiduciary duties of loyalty and prudence under ERISA by replacing the Plan's
2 investment options with inferior Russell funds. ECF No. 175 at ¶¶ 73–87. Russell's "self-serving
3 swap" was allegedly a "life preserver for its struggling funds" that "brought in \$1.4 billion in new
4 investment at a critical time when other plan sponsors were leaving Russell's funds." *Id.* at ¶ 1.

5 The swap allegedly cost Plan participants over \$100 million in lost investment earnings.
6 *Id.* at ¶¶ 1, 55. The Russell funds are alleged to have "often underperform[ed] the Plan's prior
7 funds by 2–3%/year and the S&P Target Date indexes by more than 1%/year" while accepting
8 similar or higher levels of risk. *Id.* at ¶ 56. Russell funds have allegedly missed Russell's own
9 internal benchmarks over that same timespan as well. *Id.* at ¶ 57. All the while, two more
10 fiduciaries representing six other plans pulled their investments from Russell's age-based funds
11 in 2018 and 2019, leaving the Plan with 74% of the reported assets in Russell's age-based funds at
12 the end of 2019. *Id.* at ¶ 60.

13 The plaintiffs also claim that the Caesar defendants breached their duty of prudence,
14 including failure to monitor appointed fiduciaries, for their engagement with Russell. ECF No.
15 175 at ¶¶ 80–87. In opposition, the Caesars defendants proffer evidence of their prudent process
16 for hiring and overseeing Russell. *See generally* ECF No. 198. The Investment Committee's meeting
17 minutes show that its members discussed the pros and cons of hiring Russell to manage the
18 Plan's assets before approving that decision. ECF No. 198-22. The pros that led to the approval
19 include Russell's low fees and simple choice of investments. ECF No. 198-42 at 11–21; Goldich
20 dep., Caesars' Ex. 40, 198-43 at 6–15; Hession dep., Caesars' Ex. 41, ECF No. 198-44 at 13–15.
21 Depositions reveal that the Committee members knew Russell had an asset-protective mindset
22 and that Russell target date funds ("TDFs") had a more conservative glide path near retirement.
23 ECF No. 198-42 at 18–20; ECF No. 198-44 at 12–15. Even so, Russell was expected—and
24 contractually obligated—to select investments in the Plan's best interest, even if that meant
25 selecting non-Russell funds. ECF No. 198-19 at 4–6; ECF No. 198-43 at 9–12; ECF No. 198-44 at
26 17–18; ECF No. 198-13 at 8.

1 The plaintiffs request, *inter alia*, declaratory relief, an order compelling the defendants to
2 remedy the financial losses sustained by the Plan, and permanent injunctive relief prohibiting
3 the defendants from further ERISA violations. ECF No. 175 at 25. Also, Russell moves to seal
4 documents filed in support of the Caesars defendants' motion for summary judgment and
5 documents filed in support of the plaintiffs' responses to the defendants' motions for summary
6 judgment. ECF Nos. 234, 236.

7 II. Legal Standard

8 A. Motion for summary judgment

9 Summary judgment is appropriate when the evidence, viewed in the light most favorable
10 to the nonmovant, indicates "no genuine dispute as to any material fact" and that "the movant is
11 entitled to judgment as a matter of law." Fed. R. Civ. P. 56(a). A fact is material if it "might affect
12 the outcome of the suit" based on the governing law, and a dispute is genuine "if the evidence is
13 such that a reasonable jury could return a verdict for the nonmoving party." *Anderson v. Liberty*
14 *Lobby, Inc.*, 477 U.S. 242, 248 (1986). A "mere disagreement or the bald assertion that a genuine
15 issue of material fact exists" is not enough to defeat summary judgment. *Harper v. Wallingford*, 877
16 F.2d 728, 731 (9th Cir. 1989).

17 Because the plaintiffs bear the burden of proof at trial, a moving defendant need only
18 point to an absence of evidence on an element of the plaintiffs' case. *Musick v. Burke*, 913 F.2d 1390,
19 1394 (9th Cir. 1990). The plaintiffs must then present "affirmative evidence" to raise a genuine
20 issue of material fact. *Galen v. Cnty. of L.A.*, 477 F.3d 652, 658 (9th Cir. 2007). The nonmoving party
21 "may not rely on denials in the pleadings but must produce specific evidence, through affidavits
22 or admissible discovery material, to show that the dispute exists," *Bhan v. NME Hosps., Inc.*, 929
23 F.2d 1404, 1409 (9th Cir. 1991). And it "must do more than simply show that there is some
24 metaphysical doubt." *Orr v. Bank of Am.*, 285 F.3d 764, 783 (9th Cir. 2002) (quoting *Matsushita Elec.*
25 *Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 586 (1986)).

B. ERISA statutory framework

ERISA protects “the interests of participants in employee benefit plans and their beneficiaries” by “establishing standards of conduct, responsibility, and obligation for fiduciaries of employee benefit plans.” 29 U.S.C. § 1001(b). The “crucible of congressional concern” in enacting ERISA “was misuse and mismanagement of plan assets by plan administrators.” *Mass. Mut. Life Ins. Co. v. Russell*, 473 U.S. 134, 140 n.8 (1985).

To this end, ERISA requires private pension plan assets to be held in trust for the exclusive benefit of plan participants and beneficiaries. 29 U.S.C. §§ 1102(a)(1), 1003(a). The authority to administer the plan must be vested in one or more named fiduciaries. *Id.* at § 1102(a)(1). The fiduciary need not be an independent party; the employer or plan sponsor may appoint its own “officer, employee, agent, or other representative” to serve in a fiduciary capacity. *Id.* at § 1108(c)(3).

ERISA imposes three general duties on pension plan fiduciaries: (1) discharge duties prudently, (2) diversify investments to minimize the risk of loss, and (3) act in the sole interest and for the exclusive benefit of the participants. 29 U.S.C. § 1104(a)(1); *Wright v. Or. Metallurgical Corp.*, 360 F.3d 1090, 1093–94 (9th Cir. 2004). These fiduciary duties are the “highest known to the law.” *Howard v. Shay*, 100 F.3d 1484, 1488 (9th Cir. 1996). And one way in which they are breached is when a fiduciary who is “responsible for plan investments under ERISA” fails to “follow the written statements of investment policy.” *Cal. Ironworkers Field Pension Tr. v. Loomis Sayles & Co.*, 259 F.3d 1036, 1042 (9th Cir. 2001).

III. Discussion

The plaintiffs claim that the defendants breached their fiduciary duties under ERISA. Specifically, they claim that Russell breached the duties of loyalty and prudence in selecting Russell funds over higher-performing funds for the Plan, and that the Caesars defendants breached their duty of prudence in hiring and retaining Russell as the Plan’s investment manager.

1 **A. Defendant Russell’s motion for summary judgment**

2 Russell filed a motion for summary judgment, arguing that the plaintiffs failed to raise
3 any triable issue of fact as to Russell’s loyalty and prudence under ERISA. ECF No. 200. But I
4 find that the evidence, viewed in the light most favorable to the plaintiffs, creates a genuine issue
5 of material fact as to whether Russell breached its duties of loyalty and prudence.

6 **1. Duty of Loyalty**

7 ERISA’s duty of loyalty requires fiduciaries to “discharge [their] duties with respect to a
8 plan solely in the interest of the participants and beneficiaries.” 29 U.S.C. § 1104(a)(1). The
9 “potential for a conflict of interest,” without more, does not amount to breach of this duty.
10 *Anderson v. Intel Corp. Inv. Pol’y Comm.*, 137 F.4th 1015, 1026 (9th Cir. 2025) (citation omitted). An
11 ERISA fiduciary may have conflicting interests—including “financial interests adverse to
12 beneficiaries”—so long as the fiduciary “wear[s] the fiduciary while making fiduciary decisions.”
13 *Id.* (quoting *Pegram v. Herdrich*, 530 U.S. 211, 225 (2000)).

14 The plaintiffs claim that Russell violated its duty of loyalty by prioritizing Russell funds’
15 AUM over the Plan’s best interest when selecting Plan investments. Russell responds that its
16 “cost plus” fee arrangement provided no compensation or financial benefit for selecting Russell
17 funds for the Plan. ECF No. 198 at ¶ 35; ECF No. 198-19 at 16–17. The arrangement calculated the
18 service fee based on total AUM, so Russell would be able to count the Plan’s assets as AUM
19 regardless of whether it selected Russell funds. ECF No. 198-19 at 16–17.

20 But the evidence indicates a genuine issue of material fact as to Russell’s reasons for
21 selecting Russell funds for the Plan’s investment menu. There is evidence suggesting that
22 Russell’s product-agnostic, “cost plus” fee arrangement with Caesars was a special deal that
23 Russell cut to secure the “much needed AUM” in the Russell funds. ECF No. 205-15. Indeed,
24 Russell acknowledged internally that “Caesars would be a huge DC win and we need AUM.”
25 April 19, 2016 Email chain, Pls.’ Ex. 29, ECF No. 205-31. This “need” for AUM was not lost in the
26 “cost plus” fee arrangement offered to Caesars—in fact, the deal itself was “dependent on the

1 active AUM and TDFs moving to Russell funds.” May 5, 2016 Email chain, Pls.’ Ex. 27, ECF No.
2 207-29 at 2. The value of this arrangement to Russell is elucidated by Russell’s own report,
3 which diagnosed “low AUM” as a key reason why other fiduciaries rejected Russell TDFs and
4 explained that increasing assets in Russell TDFs also increased new cash flow for Russell.
5 Product Objectives, Pls.’ Ex. 8, ECF No. 205-10.

6 The evidence also indicates a genuine issue of material fact as to Russell’s reasons for
7 retaining its own funds on the Plan’s investment menu during the class period. The record
8 shows that switching Plan assets out of Russell TDFs would mean losing over half—even 70
9 percent—of Russell TDF AUM. April 1, 2020 Email chain, Pls.’ Ex. 34, ECF No. 205-36. And
10 Russell’s portfolio managers predicted that Russell TDFs would “shrivel up and die” if Caesars
11 were to terminate Russell. August 18, 2021 Email chain, Pls.’ Ex. 9, ECF No. 205-11.

12 While both parties proffer evidence concerning Russell’s duty of loyalty, evaluation of
13 the competing arguments together with the evidence reveals there is a triable issue of fact as to
14 whether Russell violated its duty of loyalty as an ERISA § 3(38) investment manager. Russell’s
15 argument that there was no real conflict of interest thanks to its product-agnostic fee
16 arrangement with Caesars fails to adequately address the other incentives that purportedly
17 motivated Russell to select its own funds for the Plan. Because there is a genuine issue of
18 material fact as to Russell’s reasons for selecting and retaining Russell funds on the Plan’s
19 investment menu, I deny Russell’s motion for summary judgment on the duty of loyalty claim.

20 ***2. Duty of Prudence***

21 ERISA’s duty of prudence requires fiduciaries to discharge their duties “with the care,
22 skill, prudence, and diligence under the circumstances” as that of a prudent person acting in a
23 similar capacity and with similar familiarity of the matters. 29 U.S.C. § 1104(a)(1)(B). Courts
24 “evaluate[] prudence prospectively, based on the methods the fiduciaries employed, rather than
25 retrospectively, based on the results they achieved.” *Anderson*, 137 F.4th at 1021. This inquiry
26 turns on whether the fiduciary, “at the time they engaged in the challenged transactions,

1 employed the appropriate methods to investigate the merits of the investment and to structure
2 the investment.” *Id.*

3 In *Anderson*, the court rejected the plaintiff’s prudence claim against ERISA trustees
4 because the plaintiff failed to allege facts showing, directly or circumstantially, that the trustees
5 “employed unsound methods in making their investment decisions.” *Id.* at 1021. There, the
6 plaintiff asked the court to infer that the trustees used improper methods because they selected
7 private equity and hedge funds that underperformed “traditional assets like stocks and bonds.”
8 *Id.* at 1022. But the court declined to do so because the plaintiff’s comparators did not have
9 “similar objectives” to the selected funds and, in turn, could not “provide a sound basis for
10 comparison.” *Id.* at 1022–23.

11 Here, Russell argues that it fulfilled its duty of prudence as a matter of law because the
12 Russell funds were objectively prudent investments that Russell selected and monitored with
13 objectively prudent processes. *See* ECF No. 200 at 14–25. But unlike the circumstantial
14 allegations of unsound methods in *Anderson*, here there is direct evidence showing that Russell
15 employed unsound methods in deciding to include Russell funds on the Plan. Although Russell
16 was not contractually obligated to select Russell funds for the Plan, the record shows that
17 Russell funds were internally required to be included on the Plan’s investment menu. March 22,
18 2016 Email chain, Pls.’ Ex. 42, ECF No. 205-44. This internal requirement is consistent with the
19 reduced fees that Russell executives were willing to offer, “dependent on the active AUM and
20 TDFs moving to Russell funds.” ECF No. 207-29 at 2. The record also shows that Russell was
21 “unwilling” to serve as a DC plan fiduciary on non-Russell TDFs because “the economics don’t
22 support it.” May 24, 2018 Email chain, Pls.’ Ex. 44, ECF No. 205-46.

23 The parties disagree as to whether the Russell funds were objectively prudent
24 investments. The plaintiffs’ expert opines that “no reasonable fiduciary would choose to replace
25 the State Street TDFs with the Russell TDFs, and no reasonable fiduciary of a \$1.4 billion
26 retirement plan would select the Russell TDFs.” Stone report, Pls.’ Ex. 13 at 6. However, unlike

1 the comparators required in *Anderson*, comparing the performance of Russell funds with peer
2 funds is not necessary to determine whether Russell fulfilled its duty of competence as a matter
3 of law. Rather, the evidence of Russell's willingness (or lack thereof) to select non-Russell funds
4 for the Plan is sufficient to preclude summary judgment. That evidence suggests that Russell
5 potentially employed unsound methods in selecting Plan investments, which is material to the
6 duty of loyalty claim. Thus, when viewed in the light most favorable to the plaintiffs, the
7 evidence creates a genuine issue of material fact as to whether Russell breached its duty of
8 loyalty. Russell's motion for summary judgment is therefore denied.

9 **B. The Caesars defendants' motion for summary judgment**

10 The Caesars defendants argue that they are entitled to summary judgment because their
11 process for selecting, hiring, and monitoring Russell was prudent as a matter of law. *See* ECF No.
12 198 at 23–31. ERISA's duty of prudence requires fiduciaries to discharge their duties "with the
13 care, skill, prudence, and diligence under the circumstances" as that of a prudent person acting
14 in a similar capacity and with similar familiarity of the matters. 29 U.S.C. § 1104(a)(1)(B). Courts
15 applying this standard "must give due regard to the range of reasonable judgments a fiduciary
16 may make based on her experience and expertise" because "the circumstances facing an ERISA
17 fiduciary will implicate difficult tradeoffs." *Hughes v. Nw. Univ.*, 595 U.S. 170, 177 (2022).

18 The plaintiffs' imprudence claim against the Caesars defendants largely centers on the
19 performance of Russell TDFs. A prudent fiduciary of the plan, the plaintiffs argue, would neither
20 hire Russell nor retain its services in light of the underwhelming performance of Russell TDFs.
21 But that argument fails for three reasons.

22 First, the performance of Russell TDFs is not dispositive as to whether the Caesars
23 defendants exercised prudence in hiring Russell as the Plan's asset manager. *See Anderson*, 137
24 F.4th at 1021. The Caesars defendants exercised prudence in Russell's hiring by brining on
25 Tejera & Associates to assist with the RFP—a rigorous process designed to vet and select the
26 best investment manager for the Plan. ECF No. 198-42; ECF No. 198-10. With the help of Tejera,

1 the Committee selected lead candidates across the country to participate in the RPF, reviewed
2 the candidates' detailed responses, made thorough evaluations of the candidates, conducted
3 additional external due diligence of the candidates, screened for conflicts of interests, met the
4 finalists in person, negotiated lower fees, and discussed the pros and cons of each finalist. ECF
5 No. 198-13.

6 Second, the Committee outsourced its investment selection authority to Russell. ECF
7 No. 198-4. That is, the Committee's hiring of Russell was not necessarily a request for Russell
8 funds to appear on the Plan's investment menu. Rather, Russell was hired to manage Plan
9 investments in the Plan's best interest. ECF No. 198-43 at 9-12; ECF No. 198-44 at 17-18; ECF
10 No. 198-13 at 8. And if selecting Russell funds was not in the Plan's best interest, then Russell
11 was obligated to not do so. ECF No. 198-19 at 4-8; ECF No. 198-43 at 9-12; ECF No. 198-44 at
12 17-18; ECF No. 198-13 at 8.

13 Third, the Russell funds were only included on the Plan from 2017 to 2021—a period too
14 short to draw conclusions about their performance. *See* ECF No. 198-21; 2021 Caesars Form 550,
15 Russell's Ex. 38, ECF No. 198-41 at 4. The IPS stated "that the appropriate measurement period
16 for evaluation [of performance] must be of sufficient length to cover economic and capital
17 market cycles (i.e., historically five years or longer)." ECF No. 198-7. Since the Russell funds
18 were only on the Plan's investment menu for four years, it would have been premature for the
19 Caesars defendants to intervene and remove them. Further, Russell was hired to select
20 investment options for the Plan in the best interest of its participants. ECF No. 198-22; ECF No.
21 198-19 at 4-8. Requiring the Committee to quickly veto Russell's investment menu without a
22 meaningful opportunity to test its performance would defeat the purpose of delegating
23 investment selection authority. Because the Committee acted prudently in hiring Russell as the
24 Plan's investment manager, it was prudent for them to also trust Russell's initial investment
25 menu.

1 In addition to those arguments, the plaintiffs also contend that the Caesars defendants
 2 failed to appropriately monitor Russell. But the evidence shows that Russell made quarterly
 3 reports and met with the Committee on a quarterly basis to discuss those reports, which
 4 explained market conditions and the Plan's performance. *See, e.g.*, ECF No. 198-30; ECF No. 198-
 5 29; ECF No. 198-32; ECF No. 198-31. These quarterly meetings and reports aligned with protocol
 6 set forth in the IPA, which charged the Committee with undertaking a detailed review and
 7 assessment of Russell's performance periodically. ECF No. 198-7; ECF No. 198-28; ECF No. 198-
 8 34; ECF No. 198-35. It also aligned with the IMA's terms. ECF No. 198-19 at 13.

9 Thus, I find that the evidence indicates no genuine issue of material fact when viewed in
 10 the light most favorable to the plaintiffs. I therefore grant the Caesars defendants' motion for
 11 summary judgment.

12 C. Russell's motions to seal supporting documents

13 Russell moves to seal documents filed by the Caesars defendants in support of their
 14 summary judgment motion, as well as the documents filed by the plaintiffs in support of their
 15 opposition to the defendants' summary judgment motions. ECF Nos. 234, 236.

16 When ruling on a motion to seal, courts "start with a strong presumption in favor of
 17 access to court records." *Ctr. for Auto Safety v. Chrysler Grp., LLC*, 809 F.3d 1092, 1096 (9th Cir. 2016)
 18 (quoting *Kamakana v. City & Cnty. of Honolulu*, 447 F.3d 1172, 1178 (9th Cir. 2006)). The moving
 19 party bears the burden of overcoming the presumption under one of two standards: the
 20 "compelling reasons" standard or the "good cause standard." *Id.* at 1096–97. The compelling
 21 reason standard applies to records attached to a dispositive motion, while the good cause
 22 standard applies to records attached to a discovery motion unrelated to the case's merits. *Id.*

23 Here, the compelling reason standard applies because Russell seeks to seal materials that
 24 are attached to dispositive motions directly related to the case's merits, not discovery motions.
 25 Thus, I may only seal the records if I find a "compelling reason" based on articulable facts. *Id.*
 26 (quoting *Kamakana*, 447 F.3d at 1179). In ruling on Russell's motion, I must also weigh "the

1 competing interests of the public and the party who seeks to keep certain judicial records
2 secret.” *Id.* at 1097.

3 I find that Russell offers a compelling reason to seal the records at issue because they
4 contain sensitive business information. The Ninth Circuit has identified “sources of business
5 information that might harm a litigant’s competitive standing” as one type of record that
6 satisfies the compelling reason standard. *Id.* Further, Russell has submitted redacted copies of
7 the records to the court for public access. Those copies narrowly redact only the most sensitive
8 information. Thus, even if the disputed records are sealed, the public will still have access to
9 most of their contents. I find that the balance of interests favors sealing the unredacted
10 documents at issue. Therefore, I grant Russell’s motions to seal and adopt the proposed orders
11 therein (ECF Nos. 234-5, 236-5), which will be filed separately.

12 **IV. Conclusion**

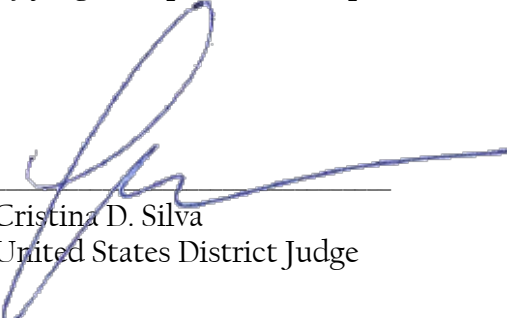
13 IT IS HEREBY ORDERED that the Caesars defendants’ motion for summary judgment
14 [ECF No. 198] is GRANTED.

15 IT IS FURTHER ORDERED that defendant Russell’s motion for summary judgment
16 [ECF No. 200] is DENIED.

17 IT IS FURTHER ORDERED that Russell’s motion to seal the documents filed in support
18 of the plaintiffs’ responses to the defendants’ motions for summary judgment [ECF No. 234] is
19 GRANTED. A separate order to issue.

20 IT IS FURTHER ORDERED that Russell’s motion to seal the documents filed in support
21 of the Caesars defendants’ motion for summary judgment [ECF No. 236] is GRANTED. A
22 separate order to issue.

23 Dated: September 25, 2025

24 
25 Cristina D. Silva
26 United States District Judge