

United States District Court
Northern District of California

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IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

TIM DAVIS, et al., individually and on
behalf of all others similarly situated,

Plaintiffs,

v.

SALESFORCE.COM, INC., et al.,

Defendants.

Case No. [20-cv-01753-MMC](#)

**ORDER GRANTING DEFENDANTS'
MOTION TO DISMISS**

Before the Court is the “Motion to Dismiss and to Strike Jury Demand,” filed June 15, 2020, by defendants Salesforce.com, Inc. (“Salesforce”), Board of Directors of Salesforce.com, Inc. (“Board”), Marc Benioff (“Benioff”), The Investment Advisory Committee (“Committee”), Joseph Allanson (“Allanson”), Stan Dunlap (“Dunlap”), and Joachim Wettermark (“Wettermark”). Plaintiffs have filed opposition, to which defendants have replied. Having considered the papers filed in support of and in opposition to the motion, the Court rules as follows.¹

BACKGROUND

Plaintiffs are former Salesforce employees that participated in the Salesforce 401(k) Plan (“the Plan”). (See Compl. ¶¶ 15-17.) In 2000, the Plan was established by Salesforce to provide benefits to eligible Salesforce and Salesforce.com Foundation employees. (See *id.* ¶ 37.) The Plan is a “defined contribution plan,” i.e., a plan wherein participants’ benefits “are limited to the value of their own investment accounts, which is determined by the market performance of employee and employer contributions, less

¹ By order filed September 18, 2020, the Court took the matter under submission.

1 expenses.” (See id. ¶¶ 2-3 (internal quotation and citation omitted).)

2 As of December 31, 2018, the Plan had over \$2 billion in assets (see Compl. ¶ 5),
 3 and offered twenty-seven investment options, comprised of actively and passively
 4 managed funds, as well as a brokerage link (see id. ¶¶ 49, 99), through which link
 5 participants have access to “a wide variety” of additional investment options with “a
 6 diverse fee structure” (see Defs.’ Request for Judicial Notice (“RJN”), filed June 15, 2020,
 7 Ex. 7 at 11).²

8 By the instant action, plaintiffs allege defendants breached their fiduciary duties to
 9 the Plan and Plan participants in violation of the Employee Retirement Income Security
 10 Act of 1974 (“ERISA”) §§ 1104 and 1105. (See Compl. ¶ 68.)

11 First, plaintiffs allege the Committee, Allanson, Dunlap, and Wettermark
 12 (collectively, “Committee Defendants”) breached their fiduciary duty of prudence by
 13 selecting and retaining investment options with high costs relative to other, comparable
 14 investments. (See Compl. ¶¶ 122-123.) Second, plaintiffs allege the Committee
 15 Defendants breached their fiduciary duty of loyalty, in that some of the funds’ “investment
 16 managers own a portion of [Salesforce].” (See Compl. ¶¶ 117-119.) Lastly, plaintiffs
 17 allege the Board, Benioff, and Salesforce (collectively, “Monitoring Defendants”)
 18 breached their fiduciary monitoring duty by failing to adequately monitor the Committee
 19 Defendants. (See Compl. ¶¶ 127-133.)

20 Based on the above allegations, plaintiffs assert two Claims for Relief under
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22 ² The Court hereby GRANTS defendants’ unopposed Requests for Judicial Notice
 23 (see id.; see also Second Request for Judicial Notice, filed Aug. 3, 2020), wherein
 24 defendants seek judicial notice of the following documents: (1) Plan-related documents,
 25 including IRS Form 5500 filings from 2012-2018, (2) prospectuses for funds referenced in
 26 the complaint, (3) a third-party research paper referenced in the complaint, and (4) two
 27 JPMorgan press releases regarding JPMorgan SmartRetirement funds. See Sanders v.
 28 Brown, 504 F.3d 903, 910 (9th Cir. 2007) (noting, “a court can consider a document on
 which the complaint relies if the document is central to the plaintiff’s claim, and no party
 questions the authenticity of the document”); White v. Chevron Corp., No. 16-cv-0793,
 2017 WL 2352137, at *5 (N.D. Cal. May 31, 2017), aff’d, 752 F. App’x 453 (9th Cir. 2018)
 (taking judicial notice of Form 5500 filings, a summary prospectus, and third-party articles
 and reports).

1 ERISA: (1) a claim against the Committee Defendants for breach of the fiduciary duties of
 2 prudence and loyalty; and (2) a claim against the Monitoring Defendants for failing to
 3 adequately monitor the Committee Defendants.

4 **LEGAL STANDARD**

5 Dismissal under Rule 12(b)(6) of the Federal Rules of Civil Procedure can be
 6 based on the lack of a cognizable legal theory or the absence of sufficient facts alleged
 7 under a cognizable legal theory. See Balistreri v. Pacifica Police Dep't, 901 F.2d 696,
 8 699 (9th Cir.1990). Rule 8(a)(2), however, "requires only 'a short and plain statement of
 9 the claim showing that the pleader is entitled to relief.'" See Bell Atlantic Corp. v.
 10 Twombly, 550 U.S. 544, 555 (2007) (quoting Fed. R. Civ. P. 8(a)(2)). Consequently, "a
 11 complaint attacked by a Rule 12(b)(6) motion to dismiss does not need detailed factual
 12 allegations." See id. Nonetheless, "a plaintiff's obligation to provide the grounds of his
 13 entitlement to relief requires more than labels and conclusions, and a formulaic recitation
 14 of the elements of a cause of action will not do." See id. (internal quotation, citation, and
 15 alteration omitted).

16 In analyzing a motion to dismiss, a district court must accept as true all material
 17 allegations in the complaint and construe them in the light most favorable to the
 18 nonmoving party. See NL Indus., Inc. v. Kaplan, 792 F.2d 896, 898 (9th Cir.1986). "To
 19 survive a motion to dismiss, a complaint must contain sufficient factual material, accepted
 20 as true, to 'state a claim to relief that is plausible on its face.'" Ashcroft v. Iqbal, 556 U.S.
 21 662, 678 (2009) (quoting Twombly, 550 U.S. at 570). "Factual allegations must be
 22 enough to raise a right to relief above the speculative level[.]" Twombly, 550 U.S. at 555.
 23 Courts "are not bound to accept as true a legal conclusion couched as a factual
 24 allegation." See Iqbal, 556 U.S. at 678 (internal quotation and citation omitted).

25 **DISCUSSION**

26 **A. First Claim for Relief: Breach of Fiduciary Duties of Prudence and Loyalty**

27 In the instant motion, defendants contend both Claims for Relief are subject to
 28 dismissal for failure to state a claim. The Court addresses below the sufficiency of

1 plaintiffs' allegations.

2 **1. Breach of Fiduciary Duty of Prudence**

3 In their First Claim for Relief, plaintiffs allege the Committee Defendants breached
 4 their fiduciary duty of prudence by selecting and retaining costly investment options. In
 5 that regard, plaintiffs allege the Plan retained several actively managed funds "despite
 6 the fact that these funds charged grossly excessive fees compared with comparable or
 7 superior alternatives." (See Compl. ¶ 99.)³ Plaintiffs also allege the Committee
 8 Defendants failed to investigate the availability of lower-cost share classes of certain
 9 mutual funds offered in the Plan (see id. ¶¶ 104-109, 123), and that the Plan "did not
 10 receive any additional services or benefits based on its use of more expensive share
 11 classes" (see id. ¶ 109). Further, plaintiffs allege, the Committee Defendants failed to
 12 adequately investigate the availability of collective trusts⁴ and separate accounts⁵ "in the
 13 same investment style of mutual funds in the Plan." (See id. ¶¶ 110-111, 123.)

14 Under ERISA, a plan fiduciary "shall discharge his duties with respect to a plan
 15 solely in the interest of the participants and beneficiaries," see 29 U.S.C. § 1104(a)(1),
 16 and must do so "with the care, skill, prudence, and diligence under the circumstances
 17 then prevailing that a prudent man acting in a like capacity and familiar with such matters
 18 would use in the conduct of an enterprise of a like character and with like aims," see 29
 19 U.S.C. § 1104(a)(1)(B). To evaluate whether a plan fiduciary has breached his fiduciary

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 21 ³ Actively managed funds, "which have a mix of securities selected in the belief
 22 they will beat the market, have higher fees, to account for the work of the investment
 23 managers of such funds and their associates" (see id. ¶ 82), whereas passively managed
 funds, or index funds, "are designed to mimic a market index such as Standard & Poor's
 500" and "offer both diversity of investment and comparatively low fees" (see id. ¶ 81).

24 ⁴ Collective trusts "are administered by banks or trust companies, which assemble
 25 a mix of assets such as stocks, bonds and cash," and have "much lower" costs given
 their "simple disclosure requirements" and inability to "advertise [or] issue formal
 prospectuses." (See id. ¶ 91.)

26 ⁵ Separate accounts "are another type of investment vehicle similar to collective
 27 trusts, which retain their ability to assemble a mix of stocks, bonds, real property and
 cash, and their lower administrative costs," and offer "the ability to negotiate fees." (See
 28 id. ¶¶ 94-95.)

1 duty of prudence, the Court focuses “not only on the merits of the transaction, but also on
 2 the thoroughness of the investigation into the merits of the transaction.” Howard v. Shay,
 3 100 F.3d 1484, 1488 (9th Cir. 1996). “Because the content of the duty of prudence turns
 4 on the circumstances . . . prevailing at the time the fiduciary acts, the appropriate inquiry
 5 will necessarily be context specific.” Fifth Third Bancorp v. Dudenhoeffer, 573 U.S. 409,
 6 425 (2014) (internal quotation and citation omitted).

7 **a. Actively Managed Funds**

8 As noted, plaintiffs allege the Committee Defendants acted imprudently by
 9 retaining “several” actively managed funds where less costly alternatives, specifically
 10 passively managed funds, were available. (See Compl. ¶¶ 99, 113, 115.)⁶ Additionally,
 11 plaintiffs allege, eleven actively managed funds offered in the Plan have excessive fees
 12 in comparison to the “ICI Median Fee”⁷ for the same investment category. (See id. ¶¶
 13 101-103.) According to plaintiffs, actively managed funds “rarely” outperform passively
 14 managed funds “over a longer term,” and, plaintiffs allege, the Plan offered nine actively
 15 managed JPMorgan SmartRetirement Institutional Class funds and one actively
 16 managed Fidelity Diversified International Class K fund that “lagged behind in
 17 performance” when compared with certain passively managed funds, as demonstrated by
 18 their five-year returns as of January 2020. (See id. ¶ 115.)⁸

19 At the outset, defendants argue, passively managed funds “are not comparable to
 20 actively-managed funds in any meaningful way.” (See Mot. to Dismiss at 11:6-7.) As set

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 22 ⁶ In their opposition to the instant motion, plaintiffs contend four of the less costly
 23 “alternative” funds are “actively managed investments.” (See Opp. to Mot. to Dismiss at
 24 16:3-12.) As defendants point out, however, those funds, like the other alternative funds
 25 proposed by plaintiffs, are passively managed. (See Reply at 10:18-22 & n.4.)

26 ⁷ The ICI Median Fee is the median “percentile asset-weighted mutual fund
 27 expense ratio[] as a percentage of assets among plans with audited 401(k) filings in the
 28 BrightScope database by mutual fund investment objective and plan assets.” (See RJN,
 filed June 15, 2020, Ex. 13 at 69.)

⁸ The Court assumes the five-year returns listed in paragraph 115 of the complaint
 are calculated as of January 2020, the date for the corresponding expense ratios listed
 therein. (See id.)

1 forth below, the Court agrees.

2 Where, as here, plaintiffs claim “a prudent fiduciary in like circumstances would
3 have selected a different fund based on the cost or performance of the selected fund,
4 [plaintiffs] must provide a sound basis for comparison—a meaningful benchmark.” See
5 Meiners v. Wells Fargo & Co., 898 F.3d 820, 822 (8th Cir. 2018) (internal quotation
6 omitted). Passively managed funds, however, ordinarily cannot serve as meaningful
7 benchmarks for actively managed funds, because the two types of funds “have different
8 aims, different risks, and different potential rewards that cater to different investors.” See
9 Davis v. Wash. Univ., 960 F.3d 478, 485 (8th Cir. 2020). As noted, actively and passively
10 managed funds have, for example, different management approaches, and “analysts
11 continue to debate whether active or passive management is a better approach.” See id.
12 Further, actively managed funds “can offer investors the chance to earn superior returns,
13 access specialized sectors, or take advantage of alternative investment strategies” (see
14 RJN, filed June 15, 2020, Ex. 13 at 59), while also “allow[ing] rapid turnover both in the
15 funds’ holdings and the participants’ investments,” whereas passively managed funds
16 “typically disallow[] new investments for a month or more following any withdrawal,” see
17 Loomis v. Exelon Corp., 658 F.3d 667, 670 (7th Cir. 2011). In light of such differences,
18 plaintiffs’ allegations that passively managed funds are available as alternatives to the
19 actively managed funds offered in the Plan do not suffice to demonstrate imprudence.
20 See Davis, 960 F.3d at 484-85 (finding claim subject to dismissal where based on
21 comparison of actively and passively managed funds; noting “[c]omparing apples and
22 oranges is not a way to show that one is better or worse than the other”).⁹

23 Next, as defendants point out, even assuming, arguendo, a passively managed
24 fund can be used for purposes of comparison, the complaint here contains no factual

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27 ⁹ For the same reasons, plaintiffs fail to base a viable claim on their contention that
28 the expense ratios of ten actively managed funds offered in the Plan were excessive in
comparison to the ICI Median Fee; as plaintiffs concede, the ICI Median Fee reflects the
fees of both passively and actively managed funds.

1 allegations to support a finding that the passively managed funds identified therein
 2 “provide a ‘meaningful benchmark.’” (See Mot. to Dismiss at 13:11-13 (quoting Meiners,
 3 898 F.3d at 822).)

4 In support of their asserted comparison, plaintiffs allege the passively managed
 5 funds have “the same investment style” or “materially similar characteristics” as certain
 6 actively managed funds offered in the Plan. (See Compl. ¶¶ 113, 115.) Such conclusory
 7 allegations, however, are not sufficient to state a claim for relief, see Ashcroft v. Iqbal,
 8 556 U.S. 662, 678 (2009) (holding “[t]hreadbare recitals of the elements of a cause of
 9 action, supported by mere conclusory statements” do not suffice to state claim for relief);
 10 see also Patterson v. Stanley, No. 16-CV-6568 (RJS), 2019 WL 4934834, at *12
 11 (S.D.N.Y. Oct. 7, 2019) (finding plaintiffs’ allegation that defendants imprudently retained
 12 certain funds insufficient to state claim, where plaintiffs asserted, “in a conclusory
 13 manner,” that less costly alternative funds were “comparable . . . without ever explaining
 14 how or why the funds were comparable” (internal quotation and emphasis omitted)).

15 Moreover, as defendants also point out, allegations “based on five-year returns are
 16 not sufficiently long-term to state a plausible claim of imprudence.” (See Mot. to Dismiss
 17 at 15:6-15); see also Patterson, 2019 WL 4934834, at *10 (noting, “consistent, ten-year
 18 underperformance may support a duty of prudence claim” if the underperformance is
 19 “substantial”); Dorman v. Charles Schwab Corp., No. 17-CV-00285-CW, 2019 WL
 20 580785, at *6 (N.D. Cal. Feb. 8, 2019) (characterizing five years of underperformance as
 21 “relatively short”; finding underperformance “measured on a five-year basis” insufficient to
 22 support plaintiffs’ allegation that funds “persistent[ly]” or “materially” underperformed).
 23 Plaintiffs cite no authority to the contrary.¹⁰

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 26 ¹⁰ In addition, a number of the funds challenged by plaintiffs were not offered for
 27 the entirety of the five-year period on which plaintiffs appear to rely, namely 2015 to
 28 2020. Out of the eleven Plan funds plaintiffs include in their five-year comparison, nine
 were, as of January 2018, no longer offered in the Plan. (See RJN, filed June 15, 2020,
 Ex. 15 (announcing “Institutional Share Class” of JPMorgan SmartRetirement funds
 “renamed” “Class R5,” effective April 3, 2017); id. Ex. 9 (announcing share class changed
 from “Class R5” to “Class R6,” effective December 29, 2017).)

1 Accordingly, plaintiffs fail to state an imprudence claim predicated on a
2 comparison of actively and passively managed funds.

3 **b. Lower-Cost Share Classes**

4 Plaintiffs allege the Committee Defendants acted imprudently by failing to
5 investigate and offer lower-cost share classes of certain mutual funds, which, according
6 to plaintiffs, “are identical to the mutual funds in the Plan in every way except for their
7 lower cost.” (See Compl. ¶ 104.) Specifically, plaintiffs identify two lower-cost share
8 classes, Class R5 and Class R6, for nine JPMorgan SmartRetirement Institutional Class
9 funds offered in the Plan, as well as one lower-cost share class for two Fidelity funds
10 offered in the Plan. (See *id.* ¶ 105.) Based on the foregoing, plaintiffs allege the
11 Committee Defendants “knew or should have known of the existence of cheaper share
12 classes and therefore also should have immediately identified the prudence of
13 transferring the Plan’s funds into these alternative investments.” (See *id.* ¶ 106.)

14 At the outset, as noted, the Institutional Share Class of the nine JPMorgan
15 SmartRetirement funds was, as of April 3, 2017, renamed Class R5, and, as further
16 noted, the Plan offered the lowest-cost share class, Class R6, as of December 29, 2017.

17 Further, as defendants argue, the Form 5500 filings for the Plan indicate the fees
18 charged in connection with the JPMorgan SmartRetirement Institutional and Class R5
19 funds were used to pay for recordkeeping and other administrative services provided to
20 the Plan (see Mot. to Dismiss at 7:11-8:7 (citing RJN, filed June 15, 2020, Ex. 1 at 5, 7,
21 28-31; *id.* Ex. 2 at 5, 7, 39-42; *id.* Ex. 3 at 5, 7, 49-52; *id.* Ex. 4 at 5, 8, 9-12)),¹¹ an
22 arrangement which “frequently inure[s] to the benefit of ERISA plans,” see *Terraza v.*
23 *Safeway Inc.*, 241 F. Supp. 3d 1057, 1081 n.8 (N.D. Cal. 2017) (quoting *Tussey v. ABB,*
24 *Inc.*, 746 F.3d 327, 336 (8th Cir. 2014)). Known as “revenue sharing,” this arrangement
25 provides an “obvious, alternative explanation” for why the Plan did not offer the lowest-

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27 ¹¹ In contrast to the page citations for other documents referenced herein, the page
28 numbers for Exhibits 1, 2, 3, and 4 to the RJN, filed June 15, 2020, are those affixed to
the top of each page by this district’s electronic filing program.

1 cost share class for those funds, see White, 2017 WL 2352137, at *14 (internal quotation
 2 omitted), and plaintiffs fail to allege any facts to support their conclusory allegation that
 3 the Plan “did not receive any . . . services or benefits based on its use of more expensive
 4 share classes” (see Compl. ¶ 109).

5 The majority of the cases on which plaintiffs rely in arguing courts have accepted
 6 allegations similar to those pled in the Complaint (see Opp. to Mot. to Dismiss at 9:2-9 &
 7 n.7; see also id. at 1:21-2:7 & n.2), are readily distinguishable on their facts. First, in a
 8 number of those cases, the plaintiffs therein had alleged numerous acts of wrongdoing,
 9 which, when viewed collectively, were found sufficient to state a claim. See, e.g., Braden
 10 v. Wal-Mart Stores, Inc., 588 F.3d 585, 596 & n.7 (8th Cir. 2009) (denying motion to
 11 dismiss given “totality of the specific allegations in [the] case”); Bouvy v. Analog Devices,
 12 Inc., No. 19-CV-881 DMS (BLM), 2020 WL 3448385, at *9 (S.D. Cal. June 24, 2020)
 13 (denying motion to dismiss where plaintiff, in addition to higher-cost shares, “specifically
 14 allege[d] other indicia of imprudence” (internal quotation and citation omitted)). In others,
 15 there is no indication that the defendant therein submitted for the court’s consideration
 16 the same type of evidence regarding revenue sharing as defendants have submitted
 17 here. See, e.g., Tracey v. Mass. Inst. of Tech., No. CV 16-11620-NMG, 2017 WL
 18 4478239, at *2 (D. Mass. Oct. 4, 2017) (declining to dismiss imprudence claim where
 19 defendants only disputed whether “identical lower-cost investment options” were, in fact,
 20 “identical”).

21 To the extent the cases on which plaintiffs rely have held allegations identifying
 22 lower-cost share classes are, without more, sufficient to state a claim for imprudence, the
 23 Court is not persuaded by the reasoning therein, see, e.g., Kruger v. Novant Health, Inc.,
 24 131 F. Supp. 3d 470, 476 (denying motion to dismiss where plaintiff alleged defendant
 25 offered retail class shares instead of institutional class shares),¹² and, indeed, the Ninth
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 28 ¹² Retail class shares are generally “more expensive share classes . . . targeted at
 smaller investors with less bargaining power,” whereas institutional class shares are
 “lower cost shares . . . targeted at institutional investors with more assets, generally \$1

1 Circuit would appear to hold to the contrary, see Tibble v. Edison Int'l, 729 F.3d 1110,
 2 1135 (9th Cir. 2013), vacated on other grounds, 575 U.S. 523 (2015) (rejecting argument
 3 that, in lieu of “retail-class mutual funds,” fiduciary “should have offered only . . .
 4 ‘institutional’ funds”; finding “[t]here are simply too many relevant considerations for a
 5 fiduciary, for that type of bright-line approach to prudence to be tenable”).

6 Accordingly, plaintiffs fail to state an imprudence claim predicated on a
 7 comparison of share classes.¹³

8 c. Collective Trusts and Separate Accounts

9 Plaintiffs allege the Committee Defendants acted imprudently by failing to
 10 investigate collective trusts and separate accounts as less costly alternatives to mutual
 11 funds. (See Compl. ¶ 110.)

12 As defendants point out, however, “plans are under no duty to offer alternatives to
 13 mutual funds, even when the plaintiffs argue they are markedly superior.” See Moitoso v.
 14 FMR LLC, No. CV 18-12122-WGY, 2020 WL 1495938, at *13 (D. Mass. Mar. 27, 2020);
 15 see also Hecker v. Deere & Co., 556 F.3d 575, 586 (7th Cir. 2009) (noting, “[w]e see
 16 nothing in the [ERISA] statute that requires plan fiduciaries to include any particular mix
 17 of investment vehicles in their plan”). Further, collective trusts and separate accounts
 18 “differ so much from mutual funds . . . that other courts have found it impossible to make
 19 an ‘apples-to-oranges’ comparison of the two.” See Moitoso, 2020 WL 1495938, at *14.
 20 For example, unlike mutual funds, collective trusts and separate accounts “are not
 21 subject to the reporting, governance, and transparency requirements of the Securities Act
 22 of 1933, 15 U.S.C. § 77a et seq., and the Investment Company Act of 1940, 15 U.S.C.

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 24 million or more, and therefore greater bargaining power.” (See Compl. ¶ 85.)

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 26 ¹³ To the extent plaintiffs seek to draw an inference of imprudence from their
 27 allegation that the Plan’s investment options “stayed relatively unchanged from 2013 until
 28 2019” (see Compl. ¶ 101), the Court notes that the record before it appears to contradict
 such assertion (see, e.g., RJN, filed June 15, 2020, Ex. 9 (announcing to Plan
 participants, effective December 29, 2017, replacement of six mutual funds and changes
 to share class of thirteen mutual funds offered in Plan)).

1 § 80a-1 et seq.” See id. Consequently, it is “inappropriate to compare [these] distinct
 2 investment vehicles solely by cost, since their essential features differ so significantly.”
 3 See White v. Chevron Corp., No. 16-CV-0793-PJH, 2016 WL 4502808, at *9, *12 (N.D.
 4 Cal. Aug. 29, 2016) (dismissing imprudence claim where plaintiffs alleged plan fiduciaries
 5 “‘could have’ provided,” inter alia, less costly separate accounts as investment options).

6 Accordingly, plaintiffs fail to state an imprudence claim predicated on a
 7 comparison of mutual funds with collective trusts and separate accounts.¹⁴

8 **2. Breach of Fiduciary Duty of Loyalty**

9 Plaintiffs allege the Committee Defendants breached their fiduciary duty of loyalty
 10 by offering funds managed by companies that are investors in Salesforce. (See Compl.
 11 ¶ 119.) Specifically, plaintiffs allege, “affiliates” of Fidelity Investments, Inc. (“Fidelity”),
 12 which owns a large number of Salesforce shares, “served as the Plan’s recordkeeper and
 13 investment manager of some of the Plan’s investments.” (See id. ¶ 117.) Further,
 14 plaintiffs allege, Fidelity Contrafund, the “largest mutual fund investment in Salesforce,” is
 15 also the “largest single actively managed non-target date investment in the Plan.” (See
 16 id.) Similarly, plaintiffs allege, JPMorgan Chase, “[a]nother investment manager,” is “the
 17 8th largest owner of Salesforce shares as of December 31, 2019.” (See id. ¶ 118.)
 18 According to plaintiffs, these relationships “created an indisputable conflict of interest for
 19 the Plan’s fiduciaries.” (See id. ¶ 119.)

20 Under ERISA, a fiduciary is required to act “solely in the interest of the [plan’s]
 21 participants . . . for the exclusive purpose of: (i) providing benefits to participants and their
 22 beneficiaries; and (ii) defraying reasonable expenses of administering the plan.” See 29
 23 U.S.C. § 1104(a)(1)(A); see also Howard, 100 F.3d at 1488 (holding “ERISA fiduciary
 24 must act for the exclusive benefit of plan beneficiaries”).

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 27 ¹⁴ As set forth above, plaintiffs fail to make an adequate showing based on any of
 28 the above-discussed challenges to investment options offered in the Plan, and,
 consequently, whether those challenges are viewed individually or collectively, plaintiffs
 fail to state an imprudence claim.

1 Defendants argue plaintiffs fail to allege facts “from which it can plausibly be
2 inferred that the Plan’s fiduciaries subjectively intended to benefit either themselves or a
3 third party at the expense of the Plan’s participants.” (See Mot. to Dismiss at 19:5-14.)
4 In particular, as defendants point out, plaintiffs’ allegations that the above-referenced
5 relationships “created an indisputable conflict of interest for the Plan’s fiduciaries” by
6 “prevent[ing] the Plan’s fiduciaries from (1) critically reviewing the fees or performance of
7 the Fidelity and JPMorgan Chase branded investments . . . , and (2) making decisions
8 with an eye single to the interests of plan participants” (see Compl. ¶ 119 (internal
9 quotations omitted)), are wholly conclusory and, consequently, insufficient to state a
10 claim. See, e.g., White, 2017 WL 2352137, at *8-9 (dismissing breach of loyalty claim
11 where plaintiff “allege[d] no facts showing any benefit to [defendant] resulting from”
12 shareholder’s revenue sharing agreement and role as plan’s recordkeeper).

13 **3. Conclusion: First Claim for Relief**

14 Having failed to plead facts sufficient to support a finding that the Committee
15 Defendants breached their fiduciary duties of prudence and loyalty, plaintiffs’ First Claim
16 for Relief is subject to dismissal.

17 **B. Second Claim for Relief: Failure to Adequately Monitor Other Fiduciaries**

18 In their Second Claim for Relief, plaintiffs allege the Monitoring Defendants
19 breached their fiduciary monitoring duties in the following respects: (1) failing to monitor
20 and evaluate the performance of the Committee Defendants as to “imprudent actions and
21 omissions,” (2) failing to monitor the processes by which Plan investments and possible
22 alternatives were evaluated, and (3) failing to remove Committee members whose
23 performances were inadequate. (See Compl. ¶ 131.)

24 Plaintiffs’ Second Claim for Relief is, as defendants point out, derivative of the First
25 Claim for Relief, and, as discussed above, plaintiffs’ First Claim for Relief is subject to
26 dismissal. Consequently, plaintiffs’ Second Claim for Relief necessarily fails. See, e.g.,
27 Dorman v. Charles Schwab Corp., No. 17-cv-00285, 2018 WL 6803738, at *7 (N.D. Cal.
28 Sept. 20, 2018).

1 **C. Request for Jury Trial**

2 Defendants argue “ERISA actions for breach of fiduciary duty are equitable in
3 nature,” and thus “there is no right to a jury trial.” (See Mot. to Dismiss at 21:11-19.)

4 As the instant complaint will be dismissed, the Court does not further address this
5 issue at this time.

6 **CONCLUSION**

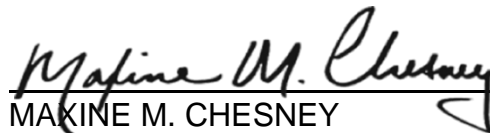
7 For the reasons stated, defendants’ motion to dismiss is hereby GRANTED, and
8 the Complaint is hereby DISMISSED, with leave to amend. Plaintiffs’ First Amended
9 Complaint, if any, shall be filed no later than October 23, 2020.

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11 **IT IS SO ORDERED.**

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13 Dated: October 5, 2020


14 MAKINE M. CHESNEY
15 United States District Judge

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United States District Court
Northern District of California