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6 **IN THE UNITED STATES DISTRICT COURT**
7 **FOR THE DISTRICT OF ARIZONA**
8

9 Ariel Armenta,

10 Plaintiff,

11 v.

12 WillScot Mobile Mini Holdings
13 Corporation, et al.,

14 Defendants.

No. CV-25-00407-PHX-MTL

ORDER

15 Plaintiff Ariel Armenta, individually and as a representative of a class of participants
16 and beneficiaries of the WillScot Mobile Mini 401(k) Plan (the “Plan”), brings this action
17 against Defendant WillScot Mobile Mini Holdings Corporation (“WillScot”),¹ fiduciary to
18 the Plan, for breach of the Employment Retirement Income Security Act of 1974, 29 U.S.C.
19 § 1001, *et seq.* (“ERISA”). (Doc. 1 ¶¶1-5.)

20 WillScot filed this instant motion to dismiss (Doc. 14), claiming that Armenta’s
21 Complaint fails to state a claim as required by Rule 12(b)(6), Fed. R. Civ. P. (Doc. 14.)
22 The motion is fully briefed. (Docs. 14, 18, 20.) For the foregoing reasons, the Court will
23 grant in part and deny in part WillScot’s motion to dismiss.²

24
25 ¹ Defendant clarifies in its motion to dismiss that the proper plan is WillScot 401(k) and
26 that “WillScot Holdings Corporation is not the Plan Sponsor and Administrator, but rather
27 is the ultimate parent company of the Plan Sponsor and Plan Administrator, Williams
28 Scotsman, Inc.,” which will need to be amended if Armenta’s Complaint survives. (Doc. 14
at 2 n.1.) Armenta does not contest these assertions. (*See* Doc. 18.) To avoid confusion, the
Court assumes the facts in the Complaint as true, *see Cousins v. Lockyer*, 568 F.3d 1063,
1067 (9th Cir. 2009), and these discrepancies do not affect the Court’s analysis.

² The Court finds that oral argument will not assist in the resolution of the motion.
See LRCiv. 7.2(f).

1 **I. BACKGROUND**

2 The following facts are taken from the allegations alleged in the Complaint (Doc. 1)
3 and documents properly subject to judicial notice.³ The Court accepts these as true for this
4 motion to dismiss. *See Cousins*, 568 F.3d at 1067.

5 The Plan is a defined contribution retirement plan and sponsored and administered
6 by WillScot. (Doc. 1 ¶¶ 9, 17.) ERISA governs the administration of employer-sponsored
7 benefit plans and “protect the interests of the participants in these plans and their designated
8 beneficiaries and [provides] employers with uniform guidelines and rules regarding the
9 administration of benefit plans.” *Metro. Life Ins. Co. v. Parker*, 436 F.3d 1109, 1111 (9th
10 Cir. 2006). “The plan administrator is a fiduciary charged with the duty to administer the
11 benefit plan in accordance with the documents and instruments governing the plan insofar
12 as such documents and instruments are consistent with ERISA.” *Id.* (citation modified).

13 The Plan incurs administrative expenses for services such as recordkeeping,
14 accounting, legal services, and other services related to administering the Plan. (Doc. 1
15 ¶ 23.) The Plan was and is funded by a combination of wage withholdings by Plan
16 participants and WillScot matching contributions. (*Id.* ¶ 25.) WillScot paid matching
17 contributions based on the participant’s contributions, which were accrued throughout a
18 calendar year to the Plan trustee. (*Id.* ¶¶ 26-27.) Once deposited into the Plan’s trust fund,
19 the contributions become assets of the Plan. (*Id.* ¶¶ 28.)

20 Plan participants become immediately vested into their own contributions and any
21 earnings from these contributions. (*Id.* ¶ 29.) Participants vested in the WillScot
22 contributions and earnings from them based on tenure with the employer, which typically

23 ³ WillScot attaches the Plan documents as Exhibits A through F (Doc. 14-1) to its motion
24 to dismiss, which the Armenta consents for the Court to take judicial notice. (Doc. 18 at 3
25 n.2.) The Court will take judicial notice of these because they are incorporated by reference
26 in Armenta’s Complaint and not subject to reasonable dispute. *Sievert v. Knight-Swift*
27 *Transp. Holdings, Inc.*, 780 F. Supp. 3d 870, 875 (D. Ariz. 2025) (“[U]nder the
28 incorporation by reference doctrine, a district court may consider documents whose
contents are alleged in a complaint and whose authenticity no party questions, but which
are not physically attached to the [plaintiff’s] pleading.” (citation modified)). Armenta also
asks the Court to take judicial notice of the Plan’s Form 5500 filed with the Department of
Labor and a brief filed by the Department of Labor. (Doc. 18 at 3 n.2; Doc. 18-2.) The
Court will take judicial notice of these exhibits because they are public documents, and the
contents are not disputed. *See Sievert*, 780 F. Supp 3d at 875.

1 ranged from four to six years before becoming fully vested. (*Id.*)

2 If a Plan participant terminated employment with WillScot before becoming fully
3 vested in the WillScot matching contributions, the participant forfeited the value of these
4 contributions and any additional earnings from them (the “forfeitures”). (*Id.* ¶ 30.) These
5 forfeitures were used by the Plan administrator to pay for both administrative expenses and
6 to reduce WillScot’s future matching contribution obligation. (*Id.* ¶ 30, 31.) The Plan
7 documents govern the process for how the forfeitures were to be allocated.

8 Armenta alleges that WillScot, as the Plan administrator, breached its fiduciary
9 duties outlined in ERISA and engaged in self-dealing and transactions prohibited by the
10 statute by improperly allocating the forfeitures. (*Id.* ¶¶1-5.)

11 **II. LEGAL STANDARD**

12 A motion to dismiss under Federal Rule of Civil Procedure 12(b)(6) “tests the legal
13 sufficiency of a claim.” *Navarro v. Block*, 250 F.3d 729, 732 (9th Cir. 2001). A district
14 court may dismiss claims lacking a cognizable legal theory or sufficient factual allegations
15 to support a cognizable legal theory. *Conservation Force v. Salazar*, 646 F.3d 1240, 1242
16 (9th Cir. 2011). Sufficient factual allegations are those that, when taken as true, state a
17 claim for relief that is plausible on its face. *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009).
18 Plausibility is more than mere possibility; a plaintiff must provide “more than labels and
19 conclusions, and a formulaic recitation of the elements of a cause of action will not do.”
20 *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555 (2007). When analyzing the sufficiency of
21 a complaint, the well-pled factual allegations “are taken as true and construed in the light
22 most favorable to the [plaintiff].” *Cousins*, 568 F.3d at 1067.

23 **III. DISCUSSION**

24 WillScot moves to dismiss all five of Armenta’s claims for failure to state a claim
25 under Rule 12(b)(6), Fed. R. Civ. P. (Doc. 14.) These claims arise out of alleged violations
26 of Sections 1104 and 1106 of ERISA.

27 **A. Counts I, II, III: Breach of Fiduciary Duties**

28 Armenta alleges three separate causes of action under 29 U.S.C. § 1104(a)(1). She

1 alleges that WillScot breached its fiduciary duties of loyalty and prudence by allegedly
2 violating subsections (a)(1)(A), (a)(1)(B), and (a)(1)(D).

3 The fiduciary duty of loyalty under ERISA requires WillScot to act “for the
4 exclusive purpose of: (i) providing benefits to participants and their beneficiaries; and
5 (ii) defraying reasonable expenses of administering the plan.” 29 U.S.C. § 1104(a)(1)(A).
6 ERISA requires that a fiduciary also discharge duties:

7 (B) with the care, skill, prudence, and diligence under the
8 circumstances then prevailing that a prudent man acting in a
9 like capacity and familiar with such matters would use in the
10 conduct of an enterprise of a like character and with like aims;

11 . . .

12 (D) in accordance with the documents and instruments
13 governing the plan insofar as such documents and instruments
14 are consistent with the provisions of this subchapter and
15 subchapter III.

16 29 U.S.C. § 1104(a)(1). The Court addresses each subsection in the order it appears in the
17 Complaint.

18 **i. Count I: Violation of § 1104(a)(1)(D)**

19 Armenta first alleges that WillScott breached “a fiduciary duty to act in accordance
20 with the Plan documents and instruments governing the Plan,” as required by
21 § 1104(a)(1)(D). (Doc. 1 ¶ 88.) WillScot argues that this claim fails because the Plan
22 permits WillScot actions and that Armenta’s Complaint misrepresents the Plan’s express
23 terms. (Doc. 14 at 6.)

24 Armenta alleges that the Plan’s documents required WillScot to use the forfeitures
25 to pay for the administrative expenses before using them to reduce WillScot’s required
26 contributions. (*Id.* ¶ 89.) Specifically, she claims WillScot was to use forfeitures to pay for
27 administrative expenses “and if ‘any forfeitures [were] not used to pay administrative
28 expenses under the Plan,’ to then reduce WillScot’s matching contribution obligation.” (*Id.*
¶ 31.) Furthermore, she claims that “the Plan’s summary plan description (‘SPD’)
expressly states that [forfeitures] are ‘retained in the Plan and may first be used to pay

1 administrative expenses” and that “any remaining amounts will be used to reduce future
2 Employer contributions payable under the Plan.” (*Id.* ¶ 32 (emphasis omitted).)

3 The Plan documents define the rights and obligations of the parties. *See U.S.*
4 *Airways, Inc. v. McCutchen*, 569 U.S. 88, 100 (2013) (“[ERISA’s] statutory scheme . . . is
5 built around reliance on the face of written plan documents.”) (citation modified). “[T]erms
6 in an ERISA plan should be interpreted in an ordinary and popular sense as would a
7 [person] of average intelligence and experience.” *Richardson v. Pension Plan of Bethlehem*
8 *Steel Corp.*, 112 F.3d 982, 985 (9th Cir. 1997). (citation omitted).

9 The Plan document terms, regarding the application of forfeitures:

10 Any forfeitures occurring during a Plan Year *may* be used to
11 pay administrative expenses under the Plan at any time, if so
12 directed by the Administrator. Except as provided otherwise in
13 the Adoption Agreement, any forfeitures not used to pay
14 administrative expenses under the Plan shall be applied to
15 reduce the contributions of the Employer for the immediately
16 following Plan Year and held and applied in accordance with
17 this Section 11.09.

18 (Doc. 14-1 at 109 (emphasis added).)

19 In *Collins v. Pension & Insurance Committee of Southern California Rock Products*
20 *& Ready Mixed Concrete Associations*, 144 F.3d 1279 (9th Cir. 1998), the Ninth Circuit
21 found that a plan’s “permissive, not mandatory” language of “*may be* amended...by the
22 Administrator” did not require the Plan to increase plan benefits. *Id.* at 1279 (emphasis
23 added). Similarly, here, the Plan’s use of “may” is permissive and “confers neither the
24 power nor the obligation upon the Administration” to pay administrative expenses with
25 forfeitures. *See id.*; (Doc. 14-1 at 109.) The use of the permissive word “may” in the Plan
26 terms here means the administrator can pay administrative expenses using forfeitures but
27 is not required to do so.

28 Armenta also alleges that the SPD supports a mandatory use of the forfeitures for
administrative expenses. (Doc. 1 at ¶ 32.) The SPD provides: “Forfeitures are retained in
the Plan and *may* first be used to pay administrative expenses. Any remaining amounts will

1 be used to reduce future Employer contributions payable under the Plan.” (Doc. 14-1 at
2 149 (emphasis added).) Like the Plan terms, the SPD includes the permissive “may”
3 language. Therefore, this document does not require the administrator to use the forfeitures
4 for administrative expenses first.

5 In her response, Armenta agrees that the word “may” is permissive language.
6 (Doc. 18 at 9 n.5.) She argues, however, that the language “any remaining forfeitures not
7 used to pay administrative expenses,” means that WillScot could only use the forfeitures
8 for contributions *after* paying administrative expenses. (*Id.*) This interpretation goes
9 against the plain language of the Plan documents, which provides the administrator with
10 the discretion of reallocating forfeitures to either administrative expenses or contributions.
11 Armenta further argues that, because she finds the Plan documents ambiguous, the Form
12 5500 supports her interpretation. (*Id.* at 8-11.) The Court, however, does not find the Plan
13 terms ambiguous, and therefore, need not address the Form 5500 language.

14 Therefore, the Court finds that, construing the facts alleged in the light most
15 favorable to Armenta, she failed to state a violation of § 1104(a)(1)(D), and as such, count I
16 of Armenta’s Complaint is dismissed.

17 **ii. Count II: Violation of § 1104(a)(1)(A)**

18 Armenta alleges that WillScot breached its duty of loyalty by “failing to use
19 [forfeitures] to defray the reasonable costs of administering the Plan or allocating them
20 back to the accounts of eligible Plan participants.” (Doc. 1 ¶ 95.) WillScot argues that its
21 reallocation of forfeitures is permitted under ERISA and other regulations. (Doc. 14 at
22 9-11.) WillScot also argues that Armenta’s theory is too broad to support a claim for breach
23 of the duty of loyalty. (*Id.* at 11-12.)

24 “ERISA does not create an exclusive duty to maximize pecuniary benefits.” *Collins*,
25 144 F.3d at 1282. “Instead, the fiduciary duty is fulfilled where the fiduciary ensures that
26 participants have received their promised benefits.” *Sievert*, 780 F. Supp. 3d at 877. Under
27 the law, a plan administrator has the discretion “to use forfeited assets to decrease its own
28 employer contributions under [a plan].” *Id.*; *see, e.g.*, 26 C.F.R. § 1.401-7 (providing

1 forfeitures be reallocated as employer contributions). Simply arguing that the defendant
2 violated ERISA’s duty of loyalty is not enough to establish a plausible claim. *Hutchins v.*
3 *HP Inc.*, 767 F. Supp. 3d 912, 923-26 (N.D. Cal. 2025) (appeal filed).

4 Armenta alleges that the forfeitures should be used “for the exclusive purpose of
5 providing benefits to participants and their beneficiaries and defraying reasonable expenses
6 of administering the plan.” (Doc. 1 ¶ 36 (emphasis omitted).) She further alleges that
7 WillScot did not offset administrative expenses “prior to” using the forfeitures to reduce
8 WillScot’s contributions to the Plan. (*Id.* ¶ 37 (emphasis omitted).)

9 As discussed, the Plan terms permit the administrator to reallocate forfeitures to
10 both administrative expenses and plan contributions, and the order in which this
11 reallocation occurs is not defined in the Plan terms. Armenta admits that WillScot used
12 some forfeitures to offset some administrative expenses from 2019 through 2022, and that
13 the forfeitures were also used to pay plan contributions. (*Id.* ¶¶ 39-60.)

14 The Court therefore finds that, construing the facts alleged in the light most
15 favorable to Armenta, she failed to state a violation of § 1104(a)(1)(A), and as such,
16 count II of Armenta’s Complaint is dismissed.

17 **iii. Count III: Violation of § 1104(a)(1)(B)**

18 Armenta alleges that WillScot violated its duty of prudence by “improperly
19 exercising discretion and control” over the forfeitures by using an “imprudent and flawed
20 process” because WillScot “failed to undertake any reasoned and impartial
21 decision-making process” for reallocating the forfeitures to reduce “WillScot’s own
22 contribution expenses” instead of paying for administrative expenses. (Doc. 1 ¶¶ 102-03.)
23 WillScot argues that Armenta does not provide factual support that WillScot breached a
24 duty of prudence by engaging in a flawed process to allocate forfeitures. (Doc. 14 at 12-
25 13.)

26 Under ERISA, fiduciaries owe a duty to act “with the care, skill, prudence, and
27 diligence” of a “prudent man.” 29 U.S.C. § 1104(a)(1)(B). A Plan’s trustees’ conflicts of
28 interests can violate this requirement. *See Pilkington PLC v. Perelman*, 72 F.3d 1396, 1401

1 (9th Cir. 1995) (citing cases). Many courts, however, including in this District, have found
2 that this conflict of interest alone insufficient to breach the duty of prudence. *See, e.g.,*
3 *Hutchins*, 767 F. Supp. 3d at 926 (finding that plaintiff’s allegations that defendant’s “used
4 a flawed process in deciding how to allocate the forfeitures,” without any specific facts,
5 conclusory and insufficient); *Sievert*, 780 F. Supp. 3d at 878 (finding that where a plan’s
6 documents allowed for reallocation of forfeitures to reduce a defendant’s own contributions
7 does not violate a duty of prudence); *see also Leigh v. Engle*, 727 F.2d 113, 125 (7th Cir.
8 1984) (“Where the potential for conflicts is substantial, it may be virtually impossible for
9 fiduciaries to discharge their duties with an eye to the interests of the beneficiaries, and the
10 fiduciaries may need to step aside, at least temporarily, from the management of assets
11 where they face potentially conflicting interests.” (citation modified)); *Id.* at 132 n.29
12 (“[This] congruence alone would not demonstrate a breach of that duty to loyalty.”).

13 Furthermore, “to find that Defendant’s decision to use forfeited assets to reduce its
14 own contributions is motivated by self-interest and violates its duties of loyalty or prudence
15 would contravene decades of federal regulations suggesting that such a decision is entirely
16 permissible.” *Sievert*, 780 F. Supp. 3d at 878. The Treasury Department has issued long-
17 standing reports and regulations that “indicate that forfeitures in defined contribution plans
18 may be used to reduce future employer contributions.” *Id.*

19 Here, like in *Hutchins* and in *Sievert*, Armenta only provides a general statement
20 that WillScot violated the duty of prudence. She does not provide any specific facts about
21 WillScot’s alleged flawed processes when making decisions to reallocate forfeitures. (*See*
22 *Doc. 1.*) In addition, it is undisputed that the forfeitures ultimately benefited plan
23 participants because they were used to pay WillScot’s contributions directly to plan
24 participants and to offset some administrative expenses. (*See id.* ¶¶ 39-60.)

25 To be sure, “[t]o state a claim for breach of fiduciary duty, a complaint does not
26 need to contain factual allegations that refer directly to the fiduciary’s knowledge, methods,
27 or investigations at the relevant times.” *Terraza v. Safeway, Inc.*, 241 F. Supp. 3d 1057,
28 1070 (N.D. Cal. 2017). The complaint, however, should allege sufficient facts to allow a

1 court “to reasonably infer from the circumstantial factual allegations that the fiduciary’s
2 decision-making process was flawed.” *Id.* Armenta’s Complaint falls short of this
3 requirement.

4 The Court therefore finds that, construing the facts alleged in the light most
5 favorable to Armenta, she failed to state a violation of § 1104(a)(1)(B), and as such,
6 count III of Armenta’s Complaint is dismissed.

7 **B. Counts IV, V: Prohibited Transactions**

8 Armenta alleges two separate causes of action under 29 U.S.C. § 1106. Specifically,
9 she alleges that WillScot violated subsections (a)(1) and (b)(1) when it reallocated
10 forfeitures toward offsetting WillScot’s contributions. (Doc. 1 ¶¶ 108-18.) WillScot argues
11 that its forfeiture reallocations are not “transactions” under § 1106. (Doc. 14 at 13-14.)

12 Under § 1106,

13 (a) Transactions between plan and party in interest . . .

14 (1) A fiduciary with respect to a plan shall not cause the plan
15 to engage in a transaction, if he knows or should know that
such transaction constitutes a direct or indirect—

16 (A) sale or exchange, or leasing, of any property
17 between the plan and a party in interest;

18 (B) lending of money or other extension of credit
between the plan and a party in interest;

19 (C) furnishing of goods, services, or facilities between
the plan and a party in interest;

20 (D) transfer to, or use by or for the benefit of a party in
interest, of any assets of the plan; or

21 (E) acquisition, on behalf of the plan, of any employer
22 security or employer real property in violation of
section 1107(a) of this title.

23 . . .

24 (b) Transactions between plan and fiduciary

A fiduciary with respect to a plan shall not—

25 (1) deal with the assets of the plan in his own interest or for his
26 own account

27 This statute is designed to prohibit “commercial bargains” that “are potentially harmful to
28 the plan” “because they are struck with plan insiders, presumably not at arm’s length.”

1 *Lockheed Corp. v. Spink*, 517 U.S. 882, 893 (1996). “To allege a violation of § 1106, a
2 plaintiff must allege an unlawful transaction.” *Sievert*, 780 F. Supp. 3d at 880. An
3 “incidental benefit” to an employer alone does not usually constitute a breach. *Id.*

4 Here, Armenta alleges that an unlawful transaction occurred when WillScot used
5 the forfeitures to offset plan contributions. (Doc. 1 ¶¶ 110, 115-16.) This transaction,
6 however, is not an unlawful transaction under § 1106. *See Sievert*, 780 F. Supp. 3d at 880
7 (finding reallocation of forfeitures for employer contributions not an unlawful transaction);
8 *Hutchins*, 767 F. Supp. 3d at 928 (same); *Dimou v. Thermo Fisher Sci. Inc.*, No. 23-CV-
9 1732 TWR (JLB), 2024 WL 4508450, at *10 (S.D. Cal. Sept. 19, 2024) (same).

10 Like the defendants in *Sievert*, *Hutchins*, and *Dimou*, WillScot reallocates plan
11 assets to provide current participants employer matching contributions. This transaction
12 follows the Plan’s documents and is not unlawful. *See, e.g., Wright v. Or. Metallurgical*
13 *Corp.*, 360 F.3d 1090, 1101 (9th Cir. 2004) (concluding an employer’s decision to hold a
14 portion of a plan’s assets in employer stock was not a “transaction,” but “merely a lawful
15 decision to remain in full compliance with the explicit language of the Plan’s terms”). At
16 best, paying employer contributions with forfeitures may provide an “incidental benefit”
17 to WillScot. The forfeited assets, however, also provide a benefit to plan participants both
18 in the form of contributions and by covering some administrative expenses.

19 The Court therefore finds that, construing the facts alleged in the light most
20 favorable to Armenta, she failed to state a violation of § 1106, and as such, count IV and
21 count V of Armenta’s Complaint are dismissed.

22 **IV. LEAVE TO AMEND**

23 Federal Rule of Civil Procedure 15(a)(2) provides that leave to amend should be
24 freely granted “when justice so requires.” Leave to amend is not available, however, where
25 amendment is futile. *Foman v. Davis*, 371 U.S. 178, 182 (1962).

26 WillScot’s motion ask the Court to dismiss Armenta’s Complaint with prejudice.
27 (Doc. 14). Armenta does not request leave to amend her Complaint. (*See* Doc. 18.) The
28 Court has made its own assessment as to whether leave to amend would be appropriate and

1 reaches the following conclusions.

2 The Court finds dismissal with prejudice proper for counts I, II, IV, and V because
3 these claims fail as a matter of law, rather than for a pleading deficiency. As discussed,
4 counts I and II fail here because the Plan terms and the law allow WillScot to reallocate
5 forfeitures for plan contributions. Counts IV and V fail because the law supports that
6 reallocation of forfeitures in this instance does not qualify as a prohibited transaction.

7 The Court finds, however, that providing leave to amend for count III proper
8 because Armenta could plausibly amend her complaint to allege facts for the Court “to
9 reasonably infer from the circumstantial factual allegations that the fiduciary’s
10 decision-making process was flawed.” *Terraza*, 241 F. Supp. 3d at 1070.

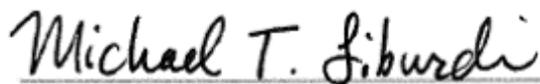
11 **V. CONCLUSION**

12 Accordingly,

13 **IT IS ORDERED granting in part and denying in part** Defendant’s motion to
14 dismiss (Doc. 14). Counts I, II, IV, and V of Armenta’s Complaint (Doc. 1) are dismissed
15 with prejudice. Armenta may file an amended complaint for count III (Doc. 1 ¶¶ 100-07)
16 no later than fourteen (14) days from the date of this Order.

17 **IT IS FURTHER ORDERED** that if no amended complaint is filed by **September**
18 **30, 2025**, the Clerk of Court shall dismiss this action without further notice to Armenta or
19 order of this Court.

20 Dated this 15th day of September, 2025.

21
22 

23 _____
24 Michael T. Liburdi
25 United States District Judge
26
27
28