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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

MARIO SALAS, individually)	Case No. CV 12-10506 DDP (VBKx)
and on behalf of all others)	
similarly situated; et al.,)	
)	
Plaintiffs,)	ORDER RE: FIFTH CAUSE OF ACTION
)	(ERISA)
v.)	
)	
INTERNATIONAL UNION OF)	
OPERATING ENGINEERS, a trade)	
union; et al.,)	
)	[Dkt. Nos. 177, 178, 179,
Defendants.)	180, 181, 182, 190, 191]
)	

Presently before the court are four separate Motions to Dismiss Plaintiffs' Fifth Claim for violation of the Employee Retirement Income Security Act ("ERISA"). (Dkts. 177, 179, 181, 182) The substance of the four motions is essentially the same. Having considered the submissions of the parties and heard oral argument, the court denies the motions and adopts the following order.

I. Background

The Fifth Claim of Plaintiff's Fourth Amended Complaint ("FAC") alleges that Defendants violated ERISA by issuing, or

1 allowing Defendant William Waggoner to issue, a thirteenth (i.e.,
2 additional) monthly pension payment from Local 12's ERISA-governed
3 Pension Plan (the "Plan") to retirees at the end of each year.
4 Plaintiffs allege that the decision to make the thirteenth payment
5 was motivated by a desire to curry favor with retirees for the
6 purpose of securing votes for Defendant Waggoner and his slate of
7 candidates for elected union positions. (4AC ¶¶ 500-15.) Several
8 Defendants now move to dismiss Plaintiffs' Fifth claim.

9 **II. Legal Standard**

10 A complaint will survive a motion to dismiss when it contains
11 "sufficient factual matter, accepted as true, to state a claim to
12 relief that is plausible on its face." Ashcroft v. Iqbal, 556 U.S.
13 662, 678 (2009) (quoting Bell Atl. Corp. v. Twombly, 550 U.S. 544,
14 570 (2007)). When considering a Rule 12(b)(6) motion, a court must
15 "accept as true all allegations of material fact and must construe
16 those facts in the light most favorable to the plaintiff." Resnick
17 v. Hayes, 213 F.3d 443, 447 (9th Cir. 2000). Although a complaint
18 need not include "detailed factual allegations," it must offer
19 "more than an unadorned, the-defendant-unlawfully-harmed-me
20 accusation." Iqbal, 556 U.S. at 678. Conclusory allegations or
21 allegations that are no more than a statement of a legal conclusion
22 "are not entitled to the assumption of truth." Id. at 679. In
23 other words, a pleading that merely offers "labels and
24 conclusions," a "formulaic recitation of the elements," or "naked
25 assertions" will not be sufficient to state a claim upon which
26 relief can be granted. Id. at 678 (citations and internal
27 quotation marks omitted).

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1 "When there are well-pleaded factual allegations, a court should
2 assume their veracity and then determine whether they plausibly
3 give rise to an entitlement of relief." Id. at 679. Plaintiffs
4 must allege "plausible grounds to infer" that their claims rise
5 "above the speculative level." Twombly, 550 U.S. at 555.

6 "Determining whether a complaint states a plausible claim for
7 relief" is a "context-specific task that requires the reviewing
8 court to draw on its judicial experience and common sense." Iqbal,
9 556 U.S. at 679.

10 **III. Discussion**

11 Under ERISA, a fiduciary with control over a Pension Trust
12 shall act (1) solely in the interest of the participants, (2) "for
13 the exclusive purpose" of providing benefits for participants and
14 their beneficiaries, (3) with the "care, skill, prudence, and
15 diligence" that a prudent man acting under similar circumstances
16 would, and (4) to minimize the risk of large losses whenever
17 reasonably possible. 29 U.S.C. § 1104(a)(1); see also Donovan v.
18 Marzzola, 716 F.2d 1226, 1231 (9th Cir. 1983). A fiduciary
19 violates ERISA if he breaches any of these duties.

20 Plan fiduciaries are liable for the breaches of their co-
21 fiduciaries if they (1) knowingly participate in an act of such
22 other fiduciaries, knowing that such acts are a breach, (2) fail to
23 satisfy their own responsibilities, thus enabling the breach, or
24 (3) knowingly fail to make reasonable efforts under the
25 circumstances to remedy a co-fiduciary's breach. 29 U.S.C. §
26 1105(a)(1)-(3). Trustees of plans with multiple trustees are also
27 liable if they fail to use "reasonable care to prevent a co-trustee
28 from committing a breach." 29 U.S.C. § 1105(b)(1).

1 Here, Plaintiffs allege that Defendants violated the duties of
2 loyalty, exclusivity, and prudence. Specifically, Plaintiffs
3 contend that Defendants did not act in the interests of
4 beneficiaries or with the exclusive purpose of providing for plan
5 participants, but were instead motivated by a desire to aid
6 Waggoner's electoral ambitions. Plaintiffs further contend that
7 Defendants acted imprudently by approving a thirteenth payment to
8 retirees that the Fund could ill-afford.

9 A. Standard of Review

10 Courts apply an arbitrary and capricious standard of review to
11 resolve claims that allege that trustees incorrectly used their
12 discretion to balance valid interests among beneficiaries. See,
13 e.g., Firestone Tire & Rubber Co. v. Bruch, 489 U.S. 101 (1989)
14 (Where an ERISA plan grants "discretionary authority to determine
15 eligibility for benefits or to construe the terms of the plan, a
16 plan administrator's interpretation of a plan is reviewed for abuse
17 of discretion"); Johnson v. Trustees of Western Conference of
18 Teamsters Pension Fund, 879 F.2d 651, 1139 (9th Cir. 1989) ("Where,
19 as here, an ERISA trust instrument vests discretionary power in the
20 trustees to construe and administer the trust's terms, we review
21 the trustees' interpretations of those terms . . . for abuse of
22 discretion."); Tapley v. Locals 302 and 602 of IUOE Emp'rs Constr.
23 Ret. Plan, 728 F.3d 1134, 1139 (9th Cir. 2013) ("We equate the
24 abuse of discretion standard with arbitrary and capricious
25 review."). "Abuse of discretion can be found where an
26 administrator's benefit determination relies on clearly erroneous
27 findings of fact, is unsupported by substantial evidence, or lacks
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1 reasonable basis." Shane v. Albertson's Inc. Emps. Disability Plan,
2 381 F. Supp. 2d 1196, 1199 (C.D. Cal. 2005).

3 In cases alleging that a fiduciary misused or imprudently
4 allocated funds to non-beneficiaries, courts generally apply a less
5 permissive, de novo standard of review. See Moody v. Liberty Life
6 Assurance Co. Of Boston, 595 F.Supp.2d 1090, 1096-1097 (N.D. Cal.
7 2009); Kowalewski v. Detweiler, 770 F. Supp. 290, 292-93 (D. Md.
8 1991). Though the FAC itself alleges that Defendants were given
9 discretion over management and disposition of Plan assets (FAC ¶
10 505), and Plaintiffs acknowledge that retirees have a valid
11 interest in the Plan as participants, Plaintiffs nevertheless argue
12 that the court should review de novo Defendants' decision to issue
13 (or facilitate) the thirteenth payment to retirees.

14 Plaintiffs contend that the Fifth claim is not a challenge to
15 a discretionary decision regarding allocation of benefits among
16 retirees and non-retirees, but rather concerns a "long-standing
17 practice that was inconsistent with trustees' fiduciary duties to
18 act prudently and loyally to participants and that was detrimental
19 to the Pension Fund as a whole." (Dkt. 196 at 13.) Thus,
20 Plaintiffs argue, because the FAC alleges that Defendants
21 "substantially harmed *the Plan* by gratuitously giving away excess
22 pension benefits," this case involves a dispute between
23 beneficiaries and non-beneficiaries, which implicates a breach of
24 the duty of loyalty to the former, and should be reviewed de novo.
25 (Id.)(emphasis in original).

26 The pension plan at issue here is not attached to the
27 complaint, nor are the terms of that plan presently before the
28 court. There is insufficient basis, therefore, for this court to

1 conclude whether the decision to make the alleged thirteenth
2 payment was made pursuant to some provision of the trust instrument
3 granting the trustees the discretion to make such a decision. The
4 commonplace, unremarkable allegation that the trustees generally
5 had discretion to manage the Plan cannot alone suffice to trigger
6 deferential review. Accordingly, the court applies a heightened
7 standard.

8 B. Defendants' Duties

9 Plaintiffs allege that by approving or allowing additional
10 pension payments to retirees, Defendants knowingly violated, among
11 other duties, the duties of loyalty and prudence owed to all Plan
12 participants and beneficiaries under 29 U.S.C. § 1104. (Id. ¶ 510.)

13 Defendant Bourguignon, Defendants Crawford and Prlich,
14 Defendant Poss, and Defendants Waggoner, Adams, Sikorski, Billy,
15 Hawn, Davison, and Operating Engineer Funds, Inc. ("OEFI") each
16 filed motions to dismiss Plaintiffs' Fifth claim. Though the
17 substance of these four motions differs slightly, the arguments are
18 essentially the same.

19 First, Defendants argue that the FAC should be dismissed
20 because Plaintiffs have offered no facts to support conclusory
21 assertions. (See, e.g., Defendant Waggoner's Reply, Dkt. No. 209,
22 at 17.) ("Plaintiff's allegation that the Pension Fund is 30%
23 underfunded and in critical condition are unsupported
24 conclusions.") Second, Defendants argue that Plaintiffs' claims
25 are not plausible under the Iqbal/Twombly standard because there is
26 an "obvious alternative explanation" for the alleged facts, such as
27 they are. (Dkt. 209 at 19.) Defendants claim that the "obvious
28 alternative explanation" is that the Trustees "fulfilled their

1 obligation under [ERISA] Section 404 to act solely in the interest
2 and for the exclusive purpose of providing benefits to
3 participants, in this case the retirees." (Id.) Defendants further
4 contend that any political benefit to Waggoner was merely an
5 incidental effect of the increased payments to retirees.

6 Plaintiffs' FAC alleges that Defendants made the thirteenth
7 payment to retirees "for the purpose of securing votes for
8 Waggoner." (FAC 251). The FAC supports this assertion with the
9 allegation that retirees, the only group to benefit from the
10 additional payment, have the highest participation rate in union
11 elections. (FAC 251). Plaintiffs further allege that the Plan is
12 underfunded, that pension contributions were historically not
13 tailored to provide for thirteen payments to retirees, and that
14 current members have been forced to make additional pension
15 contributions to ensure the viability of the fund. (FAC 32, 252).

16 These allegations, taken as a whole, are sufficient to state a
17 plausible claim for breach of Defendants' duty of loyalty under
18 ERISA. The FAC alleges that retirees, a distinct and powerful
19 force in union elections, are the sole beneficiaries of additional
20 payments from a fund that, Plaintiffs allege, is in financial
21 distress. Plaintiffs contend that the additional payments were
22 made solely for the purpose of securing retiree votes. While
23 Defendants contend, and a trier of fact might ultimately find, that
24 any election-related benefits to Waggoner were merely incidental,
25 the court must consider the allegations in the light most favorable
26 to Plaintiffs at this stage. Defendants cannot escape Plaintiffs'
27 factual allegations simply by reformulating them in a light more
28 favorable to the parties seeking dismissal.

1 **III. Conclusion**

2 For the reasons set forth herein above, Defendants' Motions to
3 Dismiss the Fifth Claim are DENIED.


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5 IT IS SO ORDERED.

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8 Dated: February 18, 2015


DEAN D. PREGERSON
United States District Judge

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