No. 25-

In the Supreme Court of the United States

JERRY ALDRIDGE, ET AL.,
PETITIONERS
v.
REGIONS BANK,
RESPONDENT

ON PETITION FOR A WRIT OF CERTIORARI TO THE U.S. COURT OF APPEALS FOR THE SIXTH CIRCUIT

PETITION FOR A WRIT OF CERTIORARI

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QUESTIONS PRESENTED

Under § 502(a)(3) of the Employee Retirement Income Security Act of 1974, 29 U.S.C. § 1132(a)(3), a beneficiary may bring suit to obtain "appropriate equitable relief."

The questions presented are:

1. Whether, when proceeding under § 1132(a)(3), a beneficiary may seek surcharge, a remedy that this Court has described as being "exclusively equitable." *CIGNA Corp. v. Amara*, 563 U.S. 421, 442 (2011).

2. Whether, if surcharge is unavailable under § 1132(a)(3), a beneficiary may pursue state-law claims arising out of a contract that is separate and apart from an ERISA plan and that is not required by the plan, or whether these state-law claims are preempted, thereby leaving the beneficiary without a remedy under either federal or state law.

PARTIES TO THE PROCEEDING

Petitioners are Jerry Aldridge, George Beckmann, Daniel Bettis, David Biron, E. E. Bishop, Ernest Bishop, III, Patricia Boutreis, Braxton Brooks, Robert Brown, Perry Brownlee, William H. Bryant, E. J. Bueche, James Buettgen, Joe Byrum, Edna T. Caldwell, Belinda Cline, Collin Cope, Patrick Cowley, Edward F. Crofton, Tamara Cunningham, Larry Davis, Richard Dearden, Anne Dillard-McGeoch, Marguerite Duffy, Rick Eldridge, Gregory Equizi, Betty Flanagan, Paul Freeman, Kimberly Grant, Henry Grau, Gene Gruver, Ronald Harman, Cecilia Heath, Andrew Hepp, Veronica Hepp, Sandra Herrington, Peg Heyman, Robert F. Hightower, James Holland, James Holman, Pfilip G. Hunt, Ken Hutson, Nicholas Ibrahim, Ross Jackson, Paul S. Jones, Roy Keene, Louis Frank Knight, Adam Koontz, Fred Kuhlemann, Robert Lafreniere, Douglas Lantau, Marcelino R. Largel, Robert Leboeuf, James Litchford, Glen T. Lowery, Ray Manning, Marvin Martin, Rebecca Martin, Scarlett May, Robert McClenagan, Teresa McConnell, Charles L. McGuff, Clifford Meadows, Donald Meier, Everett Mills, J. Russell Mothershed, Craig Nelson, Eric Paul, Maxwell Piet, Sherry Bigby Prime, John Pryor, Ed Rehm, Mike Roder, Charles Rosete, Lola Ruble, David Schmidt, Andrew Scoggins, Joe R. Seaitz, Lois M. Skokos, Alan P. Smith, Eubie Stacey, John Stephens, Ronnie Tatum, Larry Thompson, Barry Timmons, Sherry Turner, Jeffrey VanHorne, Jack Vaughn, Ronald Vilord, Lee Wallace, Clarice Wetmore, Fred Whitlock and Mark Young. Petitioners were plaintiffs in the district court proceedings and appellants in the court of appeals proceedings.

Respondent Regions Bank was the defendant in the district court proceedings and appellee in the court of appeals proceeding.

RELATED PROCEEDINGS

United States District Court (E.D. Tenn.)

Aldridge, et al., v. Regions Bank, No. 3:21-CV-00082-DCLC-DCP, 2021 WL 4718489 (October 8, 2021).

Aldridge, et al., v. Regions Bank, No. 3:21-CV-00082-DCLC-DCP, 2024 WL 2819523 (June 3, 2024). Judgment entered June 3, 2024.

United States Court of Appeals (6th Cir.)

Aldridge, et al., v. Regions Bank, No. 24-5603, 144 F.4th 828 (6th Cir. 2025). Judgment entered July 17, 2025.

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PETITION FOR WRIT OF CERTIORARI

Petitioners respectfully petition for a writ of certiorari to review the judgment of the United States Court of Appeals for the Sixth Circuit in this case.

OPINIONS BELOW

The opinion of the Sixth Circuit is published at 144 F.4th 828 and is reproduced in the appendix to this petition at App. 2a–39a. The opinion and order of the district court granting Respondent's motion to dismiss is unpublished and is reproduced at App. 50a–68a. The opinion and order of the district court granting Respondent's motion for summary judgment is unpublished and is reproduced at App. 40a–49a.

JURISDICTION

The Sixth Circuit issued its judgment on July 17, 2025. This Court has jurisdiction under 28 U.S.C. § 1254(1). On October 7, 2025, Justice Kavanaugh granted Petitioners' application for extension of time to file a petition for writ of certiorari, from October 15 to November 14, 2025.

STATUTORY PROVISIONS INVOLVED

Section 502(a)(3) of the Employee Retirement Income Security Act of 1974, 29 U.S.C. § 1132(a)(3), provides that:

> A civil action may be brought by a participant, beneficiary, or fiduciary (A) to enjoin any act or practice which violates any provision of this subchapter or the terms of the plan, or (B) to obtain other appropriate equitable relief (i) to redress such violations or (ii) to enforce any provisions of this subchapter or the terms of the plan.

Section 514(a) of the Employee Retirement Income Security Act of 1974, 29 U.S.C. § 1144(a), provides that:

> Except as provided in subsection (b) of this section, the provisions of this subchapter and subchapter III shall supersede any and all State laws insofar as they may now or hereafter relate to any employee benefit plan described in section 1003(a) of this title and not exempt under section 1003(b) of this title. This section shall take effect on January 1, 1975.

INTRODUCTION

The Employee Retirement Income Security Act of 1974 protects more than 150 million Americans, and encompasses over four million retirement, health, and other employee benefit plans. When either a provision of ERISA itself or a term within an ERISA plan is violated, a plan participant or beneficiary may, through 29 U.S.C.

§ 1132(a)(3), bring "[a] civil action" to seek an injunction or "obtain other appropriate equitable relief."[1]

In *CIGNA Corp. v. Amara*, 563 U.S. 421, 439–42 (2011), this Court recognized three remedies that fall within the purview of "appropriate equitable relief": reformation, estoppel, and surcharge. Surcharge, the Court explained, "require[s] the plan administrator to pay to already retired beneficiaries money owed them under the plan." *Id.* at 441. Although such relief would "take[] the form of a money payment" from a fiduciary to the beneficiary, that circumstance "does not remove it from the category of traditionally equitable relief." *Id.* That is so because, "prior to the merger of law and equity[,] this kind of monetary remedy against a trustee" was "exclusively equitable." *Id.* at 442. And because "ERISA typically treats" a plan fiduciary "as a trustee" and a plan participant as a beneficiary, this same monetary remedy is available in a suit brought by an ERISA participant against a plan fiduciary. *Id.* at 439.

Consistent with this reasoning, six courts of appeals have held, post-*Amara*, "that Section 1132(a)(3) creates a cause of action for monetary relief" for fiduciary wrongdoing. *Gimeno v. NCHMD, Inc.*, 38 F.4th 910, 914–15 (11th Cir. 2022) (citing *Sullivan-Mestecky v. Verizon Commc'ns Inc.*, 961 F.3d 91, 102–03 (2d Cir. 2020); *Moyle v. Liberty Mut. Ret. Benefit Plan*, 823 F.3d 948, 960 (9th Cir. 2016); *Silva v. Metro. Life Ins. Co.*, 762 F.3d 711, 720–22, 724–25 (8th Cir. 2014); *Gearlds v. Entergy Servs., Inc.*,

[1] Unless otherwise noted, statutory citations in this petition are to the U.S. Code.

709 F.3d 448, 450–52 (5th Cir. 2013); *Kenseth v. Dean Health Plan, Inc.*, 722 F.3d 869, 880–82 (7th Cir. 2013)).

Two years ago, however, the Fourth Circuit departed from this understanding, by deeming *Amara*'s discussion dicta and rejecting a plaintiff's attempts to rely on it to seek surcharge. *Rose v. PSA Airlines, Inc.*, 80 F.4th 488, 503–04 (4th Cir. 2023). And in the decision below, the Sixth Circuit deepened this split even further, by "sid[ing] with the Fourth Circuit" and parting ways with the other courts that recognize surcharge as an available § 1132(a)(3) remedy. App. 33a (citing *Rose*, 80 F.4th at 499–504; *Gimeno*, 38 F.4th at 914–15). That conflict alone—over a "landmark" federal law governing millions of people and trillions in assets, *Ingersoll-Rand Co. v. McClendon*, 498 U.S. 133, 137 (1990)—more than satisfies the criteria for granting a writ of certiorari.

Were that not enough, the practical consequences of the Fourth and Sixth Circuit's rule furnishes yet another basis for review. As this Court has explained, "[t]he principal object of [ERISA] is to protect plan participants and beneficiaries." *Boggs v. Boggs*, 520 U.S. 833, 845 (1997). It does so by providing beneficiaries with "prompt and fair claims settlement procedures" to "ensure that employees [can] receive the benefits they ha[ve] earned." *Aetna Health Inc. v. Davila*, 542 U.S. 200, 208 (2004); *Conkright v. Frommert*, 559 U.S. 506, 516 (2010). Yet the process in this case has been neither prompt nor fair nor has it offered a path for Petitioners to obtain the benefits that they have bargained for. It has been the opposite of all of those things.

Petitioners here allege that Regions fell afoul of its obligations under Petitioners' retirement plans and that it

violated a separate trust agreement. App. 10a, App. 32a. Together, these actions caused Petitioners to lose millions of dollars in pension benefits. App. 45a. Regions has not seriously contested these allegations. *See* App. 32a, App. 41a–44a.

When Petitioners pursued a § 1132(a)(3) claim to redress violations of their retirement plans, they—following *Amara*'s lead—sought surcharge. 563 U.S. at 442. But the Sixth Circuit closed that door to them, holding that their requested remedy did not qualify as "appropriate equitable relief," despite recognizing that surcharge would have *only* been available in an equity court during the days of the divided bench. App. 32a–33a. So Petitioners turned to state law to enforce a contract to which Regions agreed to be bound and that was neither required by ERISA nor by Petitioners' retirement plans. Yet that avenue too was unavailable because, according to the panel, "a breach-of-contract suit" is preempted "*whenever* it implicates the 'relations among the traditional ERISA plan entities,'" which include "plan beneficiaries, sponsors, and administrators." App. 25a–26a (emphasis added).

In short, Petitioners could not obtain relief under federal law because the Sixth Circuit adopted an exceedingly narrow and historically unmoored understanding of equitable relief. They could not obtain relief under state law because the Sixth Circuit embraced an all-too-broad understanding of preemption. That jarring result—no remedy for Regions's alleged wrongdoing—leaves Petitioners with no recourse. Worse, the panel's logic serves up a recipe for unchecked malfeasance in future cases in the Sixth Circuit. There is

nothing to suggest that Congress, which enacted ERISA "to protect . . . the interests of participants in employee benefit plans," intended for that to happen. 29 U.S.C. § 1001(b). And had Petitioners filed suit one state over, in Alabama or Arkansas, it would not have happened.

This case thus presents the Court an excellent opportunity to resolve an acknowledged and entrenched split on a deeply important issue. Alternatively and additionally, it offers a vehicle to rein in an overly expansive understanding of ERISA preemption. The Court should grant review and reverse.

STATEMENT OF THE CASE

A. Legal framework

Petitioners are former employees of Ruby Tuesday, Inc., and participants of two retirement plans offered by the company: the Executive Supplemental Pension Plan and the Management Retirement Plan (together, the "Plans"). App. 51a. These Plans were established in 1984 and 1989, respectively. *Id.* They are top-hat plans, which "provide retirement benefits to a select group of management or highly compensated employees." App. 41a (internal quotation marks omitted).

Like other top-hat plans, the Plans are "nonqualified," *id.*, which means that they are "exempted from ERISA's funding, fiduciary, and other requirements," *Browe v. CTC Corp.*, 15 F.4th 175, 186 n.3 (2d Cir. 2021). They are also "unfunded," which means that Ruby Tuesday did not have to "set[] aside money for participants (whether in 'escrow, trust fund, or otherwise')" and did not need to

"giv[e] [Petitioners] a security interest in assets." App. 8a (quoting *In re IT Grp., Inc.*, 448 F.3d 661, 665, 667–69 (3d Cir. 2006)).

In order to "provide[]" a degree of "protection to participants," many employers—including Ruby Tuesday—create a "rabbi trust" for top-hat plans. App. 9a. "A 'rabbi trust' is a mechanism through which an employer may segregate top-hat plan funds without jeopardizing a plan's unfunded status." App. 42a n.1 (quoting *Loffredo v. Daimler AG*, 666 F. App'x 370, 372 (6th Cir. 2016)). The trust is irrevocable, so its funds are "out of reach of the employer." *Id.* Yet "[b]ecause the trust corpus technically remains property of the employer, the beneficiaries of the trust are not taxed on their portion of the Trust corpus or Trust proceeds until the assets are actually distributed." *Id.* (quoting *In re Outboard Marine Corp.*, 278 B.R. 778, 785 (N.D. Ill. 2002)).

Though an employer need not establish a rabbi trust, many do, and the Internal Revenue Service has published a model trust for employers to reference. IRS Rev. Proc. 92-64. This model contemplates that rabbi trusts will both follow and be governed by state law. It provides, for example, (1) that the rabbi trust must be "a valid trust under state law," (2) "that all of the material terms and provisions of the trust" be "enforceable under the appropriate state laws," and (3) that any trust agreement "be governed by and construed in accordance with the laws of" a particular forum state. *Id.*

Ruby Tuesday created its rabbi trust (the "Trust") for the Plans in 1992 and funded it through corporate-owned life insurance policies. App. 9a, App. 51–52a. The Trust

was governed by a Trust Agreement that designates Ruby Tuesday as the Trust's Sponsor and Regions as its Trustee. D. Ct. Dkt. No. 19-3. ("Tr. Agmt.") at 1. Like the IRS's model trust, the Agreement references state and federal law, and includes a forum selection clause stating that all trust agreement provisions "shall be construed according to the laws of the State of Alabama." *Id.* at 17.

The Agreement, further, specifies the relevant obligations and responsibilities of Regions and Ruby Tuesday. These responsibilities include (i) vesting "day-to-day administration of the Plans" to Regions; (ii) requiring Ruby Tuesday to "fund the Plans to the present actuarial value of all unpaid benefits" upon a change in control; (iii) requiring Ruby Tuesday to submit a signed "writing" to Regions before Regions may cease benefit payments; and (iv) mandating that Regions "take any and all legal action to enforce" Ruby Tuesday's trust obligations. *Id.* at 6, 15, 17; App. 10a. Separate and apart from the Trust Agreement, the Plans provide that, so long as not prohibited by law, Ruby Tuesday shall "pay a lump sum . . . of any retirement benefits due to Participants upon [the Plans'] termination." D. Ct. Dkt. 19-1 at 15; D. Ct. Dkt. 19-2 at 13.

B. Factual background[2]

1. In December 2017, NRD Capital, a private investment firm, purchased Ruby Tuesday. That

[2] Because this matter arises in a summary judgment posture, the facts are viewed in the light most favorable to Petitioners, with reasonable inferences drawn in their favor. *Tolan v. Cotton*, 572 U.S.

purchase triggered a "change of control" and, as specified above, this change "triggered many duties" under the Trust Agreement. App. 10a. Those duties included Ruby Tuesday fully funding the plans to their present actuarial value. But Regions did not demand—and Ruby Tuesday did not take—any such action. *Id.*

2. In March 2019, Ruby Tuesday's board "terminated the Plans" and "permitted participants to take lump-sum payouts between March 2020 and March 2021." *Id.* Yet contrary to the terms of the Plans, Regions "failed to notify" participants of their rights to these distributions and "failed to enforce" Ruby Tuesday's "obligation to distribute" these lump-sum payments. App. 52a.

3. In July 2020 (and notwithstanding the provisions of its March 2019 termination), Ruby Tuesday "orally instructed" Regions to cease all benefit payments starting on August 1, 2020. App. 10a. Regions complied. *Id.* The Trust Agreement, however, only allowed for the suspension of benefits with written notice of insolvency. App. 10a–11a. Ruby Tuesday ultimately sent Regions this written notice in September 2020. "In that notice, Ruby Tuesday alerted Regions to its insolvency, ordered Regions to cease payments, and told it to 'hold the assets of the Trust for the benefit of [Ruby Tuesday's] creditors.'" App. 11a.

4. On October 7, 2020, Ruby Tuesday filed for bankruptcy. App. 44a. Around this same time, Regions brought an interpleader action, seeking clarity on what to do with the Trust's assets—i.e., whether to distribute

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650, 651 (2014) (citing *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 255 (1986)).

them to Petitioners, return them to Ruby Tuesday, or transfer them to Ruby Tuesday's bankruptcy estate. *Id.* The bankruptcy court chose the final option and ordered Regions to transfer all funds to the bankruptcy estate for the benefit of Ruby Tuesday's creditors. *Id.* Petitioners thereafter settled with the bankruptcy estate by agreeing to receive a share of the fund assets. App. 11a. In exchange, Petitioners waived their right to appeal the court's order directing Regions to transfer the Trust's assets to the bankruptcy estate. *Id.* Petitioners did not waive any other rights as to Ruby Tuesday or Regions.

C. Proceedings below

1. Petitioners subsequently filed suit against Regions in the Eastern District of Tennessee, asserting that its actions and/or failures to act caused Petitioners to lose millions in retirement benefits. App. 45a. Petitioners asserted claims under both Alabama law and § 1132(a)(3). App. 45a, App. 47a.

2. On October 8, 2021, the district court dismissed Petitioners' state-law claims, finding them expressly preempted. App. 65a. The court characterized these claims as being "intertwined with the Plans" and thus, in its view, an attempt by Petitioners to eschew ERISA's enforcement scheme in favor of state law. App. 66a.

After discovery, the district court dismissed Petitioners' remaining claim under § 1132(a)(3). App. 49a. According to the court, "although [Petitioners] classif[ied] their requested relief as an 'equitable surcharge,' they [were], in essence, seeking monetary compensation for the full amount of benefits they would have received under the Plans." *Id.* The court reasoned that

§ 1132(a)(3) "does not, in most situations, authorize an action for money," particularly where parties "seek no more than compensation for loss resulting from the defendant's breach." App. 48a–49a.

3. The Sixth Circuit affirmed. As to preemption, it held that "no matter the 'label' the Participants place on their four [state-law] causes of action, their claims all seek the same thing: the benefits allegedly due them under their ERISA-covered Plans." App. 22a. Allowing these claims to proceed in federal court would "impose additional duties on Regions on top of the duties that ERISA imposes" and "undercut ERISA's uniformity goals" by "subject[ing] plan administrators . . . to the potentially conflicting standards of conduct of all 50 States." App. 22a–23a.

In tackling preemption, the panel acknowledged that "this case comes with a wrinkle": top-hat plans, it noted, are exempt from ERISA's "federal fiduciary duties." App. 23a. The panel also observed that "Congress 'deliberately omitted' these duties [from federal law] because high-level employees can protect themselves through contract." *Id.* (quoting *Pilot Life Ins. Co. v. Dedeaux*, 481 U.S. 41, 54 (1987)). And the panel recognized Petitioners here did actually seek such protection, by entering into a separate rabbi-trust agreement with Regions. App. 9a–10a.

Yet the Sixth Circuit nonetheless held that any claims arising from the Trust Agreement sufficiently "relate to" the Plans to trigger ERISA's preemption provision, which precludes Petitioners from asserting state-law "right[s]" or seeking "state-law remed[ies]." App. 21a–22a, App. 24a (emphasis omitted); 29 U.S.C. § 1144(a) (providing that

ERISA "shall supersede any and all State laws insofar as they may now or hereafter relate to any employee benefit plan"). "[T]hat fact remains true even for the top-hat plans that ERISA exempts from its fiduciary-duty rules"; § 1144(a) "continues to apply" even if Petitioners bargain for protections under state law and codify these protections into a separate trust agreement. App. 23a–24a. Thus, if Petitioners wish to obtain relief, "they must enforce the contractual duties under ERISA's 'exclusive' remedial scheme." App. 25a.

4. The Sixth Circuit turned next to the claim that Petitioners did bring under that remedial scheme: for equitable relief under § 1132(a)(3). As to this claim, the court declined to address whether Regions had "violated" a term of the plan or had otherwise committed a "remediable wrong." App. 32a. Instead, it examined only whether Petitioners could obtain their sought-after remedy: surcharge.

On this question, the panel acknowledged *Amara*'s "suggest[ion] that equity courts could grant a beneficiary 'monetary "compensation" for a loss resulting from a trustee's breach of duty[.]'" App. 33a (quoting *Amara*, 563 U.S. at 441). The Sixth Circuit added that, "[i]n the years after *Amara*, several courts [had] relied on that decision to conclude that ERISA plan participants may seek this type of monetary award against ERISA fiduciaries under § 1132(a)(3)." *Id.* (citing *Gimeno*, 38 F.4th at 914–15).

But the Sixth Circuit declined to follow these courts and opted instead for the rule of the Fourth Circuit. Like that court, the Sixth Circuit characterized *Amara*'s surcharge discussion as "not essential" to the judgment.

App. 33a–34a. This dicta, it reasoned, contravenes *Mertens v. Hewitt Associates*, which states that "'monetary relief for all losses . . . sustained as a result of [an] alleged breach of fiduciary duties' [falls] outside the phrase 'equitable relief' in § 1132(a)(3)." App. 35a (quoting 508 U.S. 248, 255–59 (1993)). According to the Sixth Circuit, "[n]othing in *Mertens* suggests that the Court would have changed its mind if the participants had simply changed the name of their monetary remedy from *damages* to *surcharge*." *Id.*

The Sixth Circuit rejected *Amara*'s attempt to distinguish *Mertens* because the defendant in *Amara* was a fiduciary and the defendant in *Mertens* was not. "[T]his distinction," per the panel, "did not matter under the common law of trusts"; equity courts could grant relief against both the trustee and against third parties who knowingly participate in the trustee's breach. *Id.*

Finally, the Sixth Circuit reasoned that *Montanile v. Board of Trustees*, 577 U.S. 136 (2016), dispelled any remaining uncertainty over the interplay between *Mertens* and *Amara*. This is because, in *Montanile*, this Court characterized *Amara*'s § 1132(a)(3) discussion as dicta and affirmed "that *Mertens*'s interpretation of § 1132(a)(3) 'remains unchanged.'" App. 37a. Such language, the Sixth Circuit asserted, prevents Petitioners from moving forward with their § 1132(a)(3) claim.

REASONS FOR GRANTING THE PETITION

I. COURTS ARE DIVIDED ON WHETHER PLAINTIFFS MAY SEEK SURCHARGE UNDER 29 U.S.C. § 1132(a)(3).

When Congress drafted ERISA, it sought to provide "a uniform regime of ultimate remedial orders and awards when a violation has occurred." *Rush Prudential HMO, Inc. v. Moran*, 536 U.S. 355, 379 (2002). The conflicting approaches courts have taken on whether plaintiffs can seek and obtain surcharge under § 1132(a)(3) undermines that goal.

A. Six courts of appeals authorize equitable surcharge.

1. Of the decisions that recognize equitable surcharge, *Gimeno v. NCHMD, Inc.*, 38 F.4th 910 (11th Cir. 2022), is particularly instructive.

In that case, the widower of a covered employee sued to recover life insurance benefits. *Id.* at 913. The employee had sought supplemental coverage from his employer. *Id.* His employer, in turn, had "deducted premiums" from the employee's pay and "provided him with a benefits summary stating that he" had supplemental coverage. *Id.* But after the employee's passing, the employer "refused to pay any supplemental benefits because it claimed it had never" received a particular form. *Id.* The widower asserted that his spouse "did not receive the form" and that the employer "did not notify him that the form was necessary or missing." *Id.* Following the employer's denial of coverage, the widower sued under § 1132(a)(3), seeking "an order requiring that

[the employer] pay him the plan benefits that he would have received but for their alleged breach." *Id.*

The Eleventh Circuit held that the plaintiff could seek such relief. The court explained that, as used in § 1132(a)(3), the term "'[e]quitable relief' refers to 'those categories of relief that were *typically* available in equity' before the fusion of courts of equity and courts of law." *Id.* at 914. It likewise acknowledged that "[c]ompensatory damages were not typically available in equity." *Id.* But "[t]hat said, certain kinds of monetary relief *were* typically available in equity." *Id.* (citing *LaRue v. DeWolff, Boberg & Assocs., Inc.*, 552 U.S. 248, 253 n.4 (2008)) (emphasis added). That includes surcharge, which was "an order that a trustee compensate a trust beneficiary for a loss due to a breach of fiduciary duty." *Id.* (citing Samuel L. Bray, *Fiduciary Remedies*, *in* THE OXFORD HANDBOOK OF FIDUCIARY LAW 449, 456–58 (Evan J. Criddle et al. eds., 2019); Restatement (Third) of Trusts § 95 cmt. b. (A.L.I. 2012)). "The trustee's personal liability to make compensation for the loss occasioned by a breach of trust is a simple contract equitable debt," is "equitable in character," and is "enforceable against a trustee in a court exercising equity powers." *Id.* (citing 4 John N. Pomeroy, EQUITY JURISPRUDENCE § 1080, at 229 (5th ed. 1941); Restatement (Third) of Trusts § 95) (cleaned up). To close the loop, the Eleventh Circuit likened a trustee in equity to a fiduciary within an ERISA plan, observing that both manage assets for the benefit of a beneficiary. If surcharge is available in the former case, *Gimeno* reasoned, then so too should it be available in the latter. *Id.*

On this final point, the Eleventh Circuit stressed "that the defendant's status as a fiduciary made a 'critical

difference' in differentiating a surcharge from the kind of compensatory damages that were not typically available in courts of equity." *Id.* (quoting *Amara*, 563 U.S. at 442). That distinction is why the plaintiffs in *Mertens* and in other prior cases could not obtain surcharge: their suits did not "concern[] claims against a fiduciary." *Id.* at 915.

2. The Seventh Circuit charted a substantially similar course in *Kenseth v. Dean Health Plan, Inc.*, 722 F.3d 869 (7th Cir. 2013). As in *Gimeno*, the plan in *Kenseth* denied an employee coverage despite earlier statements suggesting otherwise. *Id.* at 872. And as here, the district court "declined to decide whether" the plaintiff could prove that defendant actually "breached [any] fiduciary duty," and instead dismissed plaintiff's claim because it believed that surcharge was "not available as equitable relief under section 1132(a)(3)." *Id.* at 875; *accord* App. 32a.

The Seventh Circuit reversed. *Amara*, it explained, "clarified that equitable relief may come in the form of money damages when the defendant is a trustee in breach of a fiduciary duty." *Id.* at 878–79. Like *Amara*, *Kenseth* concerned a suit "by a beneficiary against a plan fiduciary (typically treated in ERISA as a trustee) regarding the terms of the plan (typically treated under ERISA as a trust)." *Id.* at 878. Such a suit could have only been brought in equity. *Id.* And if so brought, the "[e]quity courts possessed the power to provide relief in the form of monetary 'compensation' for a loss resulting from a trustee's breach of duty, or to prevent the trustee's unjust enrichment." *Id.* (quoting *Amara*, 563 U.S. at 441).

Kenseth added that resolving § 1132(a)(3) claims requires a case-by-case analysis, as "[m]onetary

compensation [can]not automatically [be] considered 'legal' rather than 'equitable,'" or vice versa. *Id.* at 880. Rather, courts must consider "[t]he identity of the defendant as a fiduciary, the breach of a fiduciary duty, and the nature of the harm." *Id.*

3. The Second Circuit is of a piece, a point made clear in *Amara* itself, when the district court expressly recognized on remand that surcharge, reformation, and estoppel were "remedies generally available under § 502(a)(3), even if the practical result of entering such relief is a monetary payment." *Amara v. CIGNA Corp.*, 925 F. Supp. 2d 242, 250 (D. Conn. 2012). Because calculating surcharge posed challenges for class certification, however, and because reformation provided the *Amara* plaintiffs with adequate relief, the district court opted ultimately to award reformation rather than surcharge. *Id.* at 264. The Second Circuit affirmed. *Amara v. CIGNA Corp.*, 775 F.3d 510, 532 (2d Cir. 2014).

No such challenges were present in *Sullivan-Mestecky v. Verizon Communications Inc.*, and the court there held that the plaintiff could seek surcharge as a form of "appropriate[] . . . equitable relief," since the remedy was available only in equity "'prior to the merger of law and equity,'" and the plaintiff was a beneficiary suing a fiduciary for breach. 961 F.3d 91, 99, 102–03 (2d Cir. 2020) (quoting *Amara*, 563 U.S. at 442).

4. In *Gearlds v. Entergy Servs., Inc.*, the Fifth Circuit recognized that a claim to "be made whole in the form of compensation for lost benefits" was "viable in light of *Amara*." 709 F.3d 448, 452 (5th Cir. 2013). Although acknowledging that *Amara*'s discussion may have been dicta, the panel emphasized that "[b]ased on the depth of

the Court's treatment of the issue, . . . *Amara*'s pronouncements about surcharge as a potential remedy under § 502(a)(3) should be followed." *Id.*

5. The Ninth Circuit has likewise concluded that ERISA authorizes surcharge. In *Gabriel v. Alaska Electric Pension Fund*, it analogized "an ERISA lawsuit by a beneficiary against a plan fiduciary" to a case between a trust beneficiary and a trustee—which would have been an equity suit, brought in an equity court, seeking an equitable remedy. 773 F.3d 945, 955 (9th Cir. 2014) (cleaned up) (quoting *Amara*, 563 U.S. at 439–40). It reiterated the point in *Moyle v. Liberty Mutual Retirement Benefit Plan*, emphasizing that "*Amara* makes it very clear that remedies such as reformation, surcharge, estoppel, and restitution are traditionally equitable remedies, and the fact that they take a monetary form does not alter this classification." 823 F.3d 948, 960 (9th Cir. 2016).

6. Finally, the Eighth Circuit has recognized that "*Amara* changed the law as our court had previously interpreted it." *Silva v. Metro. Life Ins. Co.*, 762 F.3d 711, 724 (8th Cir. 2014). Pre-*Amara*, Eighth Circuit plaintiffs faced a "remedy-less regulatory vacuum" under § 1132(a)(3), "created by ERISA's broad preemption of state law claims and the Supreme Court's narrow interpretation of other appropriate equitable relief." *Pichoff v. QHG of Springdale, Inc.*, 556 F.3d 728, 732 (8th Cir. 2009) (internal quotation marks omitted). *Amara* altered this "landscape by clearly spelling out the possibility of an equitable remedy under ERISA for breaches of fiduciary obligations by plan administrators." *Silva*, 762 F.3d at 722. Consequently, plaintiffs like those in *Silva* could seek a make-whole remedy post-*Amara*, so

long as they can show fiduciary wrongdoing. *Id.* at 722, 725.

In reaching this conclusion, the Eighth Circuit drew not only on *Amara* but also on *McCravy v. Metropolitan Life Insurance Co.*, 690 F.3d 176, 182–83 (4th Cir. 2012). In *McCravy*, the Fourth Circuit expounded on why *Amara*'s approach "ma[de] sense." *Silva*, 761 F.3d at 725 (quoting *McCravy*, 690 F.3d at 182). As it explained, in a counterfactual world, taking surcharge off the table "would encourage abuse by fiduciaries." *Id.* Fiduciaries would have "every incentive to wrongfully accept premiums, even if they had no idea as to whether coverage existed—or even if they affirmatively knew it did not." *Id.* The result would be "risk-free windfall profits from employees who paid premiums on non-existent benefits but who never filed a claim for those benefits." *Id.* That is not a scenario "Congress would have wanted," and *Amara* appropriately "put th[ose] perverse incentives to rest." *Id.* at 722, 725.

B. Two courts of appeals hold that plaintiffs cannot seek equitable surcharge.

1. From *McCravy* and for a decade afterward, the Fourth Circuit "recognized surcharge as a form of 'appropriate equitable relief' available under § 502(a)(3)." *Peters v. Aetna Inc.*, 2 F.4th 199, 216 (4th Cir. 2021). But two years ago, in *Rose v. PSA Airlines, Inc.*, 80 F.4th 488 (4th Cir. 2023), a divided panel of that court changed tack.

The plaintiff in *Rose* sought relief stemming from a wrongful denial of medical coverage to plaintiff's son. As the Fourth Circuit recounted, the plan took a month to review the son's coverage appeal even though, under federal law, such "expedited" reviews must "be completed

within—at most—seventy-two hours." *Id.* at 493–94 (citing 45 C.F.R. § 147.136(d)(3)(iv)). "Ultimately, after completing its review," the plan "vindicated" plaintiff's son, and "overturn[ed] [its] previous claim denials." *Id.* at 494. But by then "it was too little, too late": plaintiff's son "had been dead for almost a month." *Id.*

Plaintiff filed suit and pursued two forms of § 1132(a)(3) relief: unjust enrichment and equitable surcharge. *Id.* at 496. The Fourth Circuit remanded for the district court to consider whether the plaintiff could obtain unjust enrichment, as the district court had not conducted a proper analysis on the first pass. *Id.* at 505. But the Fourth Circuit also determined that the plaintiff could not seek surcharge as a matter of law, parting ways with its prior decisions in *McCravy* and *Peters*. *Id.* at 504.

In arriving at this conclusion, *Rose* observed that "courts of equity shared 'concurrent jurisdiction' with courts of law over" certain disputes, while in other cases, certain "suits had to be brought in courts of equity, making them fall within equity's 'exclusive jurisdiction.'" *Id.* at 497. The majority acknowledged that a dispute over a trust—the analogue to an ERISA suit by a beneficiary against a fiduciary—could only be brought in equity. *Id.* And when such a suit was filed, the equity court "had a relatively free hand to award financial remedies," including "surcharge." *Id.* at 498. In short, had the *Rose* plaintiff brought the very same suit before the merger of the bench, she would have done so in equity, and the equity court could have awarded her surcharge.

But that did not end the matter. Instead, according to the *Rose* majority, "[p]laintiffs can get monetary relief under § 502(a)(3) only if such relief was '*typically*

available in equity.'" *Id.* at 500. "[T]o be a 'typically' available remedy," the Fourth Circuit claimed that "the relief must have been traditionally available in concurrent-jurisdiction cases." *Id.* In these concurrent-jurisdiction cases, "equitable courts could sometimes award monetary restitution for unjust enrichment, but they could not award the broad, personal, and compensatory relief available in law and in exclusive-jurisdiction cases." *Id.*

Granted, the court acknowledged this conclusion was at odds with *Amara*. *Id.* at 502. But it claimed that *Amara*'s discussion of surcharge "was dicta" and, moreover, "broke with" prior Supreme Court precedent in *Mertens* and *Great-West Life & Annuity Insurance Co. v. Knudson*, 534 U.S. 204 (2002). *Id.* at 502–03. The majority further claimed that, in *Montanile*, this Court "rejected the turn that it contemplated in *Amara*," and made clear that "*Amara*'s approach [was] antithetical to a proper § 502(a)(3) analysis." *Id.* at 503 (citing *Montanile*, 577 U.S. at 148 n.3).

Judge Heytens dissented from this aspect of the majority's holding. As he noted, lower courts "are bound by the Supreme Court's formulation of the relevant principles." *Id.* at 506 (Heytens, J., concurring in part and dissenting in part). That is "all-the-more-true here, where the relevant portion of the Supreme Court's opinion in *Amara* extensively discussed both *Mertens* and *Great-West*." *Id.* (citing *Amara*, 563 U.S. at 438–39). Judge Heytens was also "unconvinced" by the majority's reading of *Montanile*. *Id.* That case "did not say *Amara* had been inconsistent with the Court's prior decisions." *Id.* "Nor," Judge Heytens added, "did it say the Court was now adopting an approach contrary to *Amara*." *Id.*

2. The decision below substantially tracks the reasoning of the majority in *Rose*. Like *Rose*, the Sixth Circuit held that *Amara*'s "surcharge discussion [w]as dicta that 'was not essential' to its vacatur judgment." App. 33a–34a (quoting *Montanile*, 577 U.S. at 148 n.3). Like *Rose*, it opined that "*Amara*'s dicta conflicts with" *Mertens* and *Montanile*. App. 34a, App. 37a. And like *Rose*, the court ruled that § 1132(a)(3) authorizes "only those remedies that were typically available in equity, not all remedies that equity courts could provide in, say, trust cases." App. 30a (cleaned up). Consequently, "a request for compensatory *damages*—that is, a request for monetary relief measured by the plaintiff's losses—falls on the nonactionable legal side of the divide." App. 31a (internal quotation marks omitted).

In addition to dismissing Petitioners' § 1132(a)(3) claim, the panel rejected Petitioners' attempt to invoke state law. Though it acknowledged that top-hat plans are unfunded and nonqualified, and that Petitioners bargained for the terms set forth in the Trust Agreement, it determined that the Agreement had a sufficient "relat[ion] to" the Plans to trigger ERISA preemption. App. 8a, 21a–26a; *see also* App. 41a.

II. THE SIXTH CIRCUIT'S DECISION IS INCORRECT.

The court below erred in three ways. First, it failed to recognize surcharge as a longstanding and well-established equitable remedy, with characteristics and features unique to equity. Second, it mischaracterized *Amara* as an outlier to this Court's other decisions in

Mertens, *Great-West*, and *Montanile*. And third, it flouted ERISA's protective purpose, by leaving Petitioners no recourse under both state and federal law.

A. Surcharge is a form of equitable relief.

1. In reaching its decision, the panel characterized "surcharge and damages [as] 'essentially equivalent' because they describe the same concept: 'monetary relief' . . . to compensate a plaintiff for the losses that the defendant caused." App. 35a. But just because an equitable remedy resembles a legal one does not make it one.

Take restitution. In early cases, this Court described restitution as one of "those categories of relief that were *typically* available in equity." *Mertens*, 508 U.S. at 256. But *Great-West* later clarified that "not all relief falling under the rubric of restitution is available in equity." 534 U.S. at 212. That's because "restitution is a legal remedy when ordered in a case at law and an equitable remedy when ordered in an equity case," and "whether it is legal or equitable depends on the basis for the plaintiff's claim and the nature of the underlying remedies sought." *Id.* at 213 (cleaned up). Hence, in *Great-West*, this Court held that the plaintiffs sought legal restitution under the facts presented, while in *Sereboff v. Mid-Atlantic Medical Services*, 547 U.S. 356, 362 (2006), it reasoned that the beneficiaries there had pleaded a claim for equitable relief.

2. Surcharge is much the same way. Like equitable and legal restitution, even if surcharge might look like compensatory damages, the differences between the two "are not random," and "there are reasons to avoid

conflating [surcharge] with legal damages." Bray, *Fiduciary Remedies*, at 458. Indeed, the distinction "has a number of implications in U.S. law, including that a claim for this remedy should be subject to equitable defenses such as laches and unclean hands, and that the remedy should not be awarded by a jury." *Id.* As a distinctly equitable remedy, surcharge is subject to offsets for services rendered, is enforceable with contempt, and may not be accompanied by punitive damages. *Id.* at 458, 465. And as relevant here, "[e]quity courts" could only "provide relief in the form of monetary 'compensation' for a loss resulting from a trustee's breach of duty," meaning that, to obtain surcharge, an ERISA plaintiff must identify a beneficiary-trust-trustee relationship and point to "actual harm." *Amara*, 563 U.S. at 441, 444. Rather than being available in every possible § 1132(a)(3) case, then, surcharge is generally limited to suits "by a beneficiary against a plan fiduciary (whom ERISA typically treats as a trustee) about the terms of a plan (which ERISA typically treats as a trust)." *Id.* at 439.

3. Nor for that matter is surcharge some anomaly in structure, purpose, or operation. Consider "disgorgement," a form of relief that "parallels" the "equitable remedy" of "accounting for profits." *Liu v. SEC*, 591 U.S. 71, 76 n.1, 81 (2020). As this Court has explained, such relief "reflect[s] a foundational principle": that "it would be inequitable that a wrongdoer should make a profit out of his own wrong." *Id.* at 79–80 (cleaned up). A court may accordingly issue "a decree compelling one to disgorge profits." *Id.* at 80. Whatever this remedy's name—"disgorgement" today or "accounting" during the divided bench—the remedy itself "fall[s]

comfortably within 'those categories of relief that were *typically* available in equity.'" *Id.* at 80–81, 84–85 (quoting *Tull v. United States*, 481 U.S. 412, 424 (1987); *Great-West*, 534 U.S. at 214 n.2; *Mertens*, 508 U.S. at 256).

Surcharge is simply disgorgement's mirror image. Both ask a trustee to "account for his or her stewardship of the trust property." Bray, *Fiduciary Remedies*, at 449, 456–57. Where disgorgement requires the trustee to replenish the trust with any ill-gotten gains, surcharge returns to the plan "the expected results on the negative side of the ledger." *Id.* The former, in short, is about wrongful gains. The latter is about wrongful losses.

If anything, the circumstances here make this case more straightforward than *Liu*. The Court there examined whether 15 U.S.C. § 78u(d)(5) allows the Securities and Exchange Commission to request disgorgement in an enforcement action. 591 U.S. at 75. Under this provision, the Commission may seek and a federal court may award "any equitable relief that may be appropriate"—language that, *Liu* recognizes, parallels § 1132(a)(3). *Id.* at 75, 78–79 (citing *Mertens*, 508 U.S. at 256; *Amara*, 563 U.S. at 439, *Montanile*, 577 U.S. at 142; *Great-West*, 534 U.S. at 217).

But unlike this case, *Liu* did not involve a formal or actual trustee-trust-beneficiary relationship; it instead involved a fraudulent developer, who had no express or implied fiduciary relationship to the defrauded investors. *Id.* at 77–78. Yet that difference, this Court explained, was not determinative. That is because, in equity, a court could sometimes "authorize[] profits-based relief" where "no such trust or special relationship existed" by "impos[ing] a constructive trust." *Id.* at 81–82. It can do

that by "convert[ing]" a patent infringer "into a trustee" or, as in *Liu*, by effectively treating a fraudulent developer as a trustee. *Id.* at 82. In all such cases, "disgorgement" remains firmly within the "categories of relief that were *typically* available in equity.'" *Id.* at 79–81 (quoting *Tull*, 481 U.S. at 424; *Great-West*, 534 U.S. at 214 n.2; and *Mertens*, 508 U.S. at 256).

4. When read together, *Amara* and *Liu* also demonstrate why it is immaterial that ERISA "exempts administrators of top-hat plans from its federal fiduciary duties." App. 23a (citing 29 U.S.C. § 1101(a)(1)).

After all, to bring a successful § 1132(a)(3) claim, plaintiffs must either allege breach of a federal fiduciary duty or identify a "violation" of "the terms of the plan." True, § 1101(a)(1) removes the former avenue for top-hat plan participants. But Petitioners here have not taken that path. They have instead asserted that the Plans require lump-sum distributions upon termination, a plan term that went unenforced under Regions's watch. App. 10a.

Having satisfied this threshold condition, Petitioners must then show that the § 1132(a)(3) remedy falls under the umbrella of "appropriate equitable relief." On this point, *Amara* and several courts of appeals post-*Amara* state that surcharge is a form of "appropriate equitable relief" when sought by a plan beneficiary against a plan fiduciary. *Amara*, 563 U.S. at 442; *Gabriel*, 773 F.3d at 955, 963. As noted above, that is because "ERISA typically treats" a plan fiduciary as a trustee, "typically treats" the "terms of a plan" as a trust, and typically treats a plan participant as a beneficiary. *Amara*, 563 U.S. at 439. Accordingly, the relationship between an

ERISA plan participant, ERISA plan, and ERISA plan fiduciary is akin to that between a beneficiary, trust, and trustee. *Id.* And because beneficiaries could seek surcharge against trustees in courts of equity, then—the logic goes—surcharge should also lie in an analogous action between a plan participant and plan fiduciary.

But there is no need to carry on that extended analogy here. Regions—regardless of whether it had any fiduciary duties under ERISA—is a trustee for a trust for which Petitioners were beneficiaries. The Trust Agreement reflects that understanding, which means that in this case there is already an identified beneficiary-trust-trustee relationship. Tr. Agmt. at 8–10. Put differently, there is no need to liken an ERISA fiduciary to a trustee because here the claims are being brought against a trustee.

In any event, even if the Court were to apply the analogical framework from *Amara*, Petitioners would still have a viable surcharge claim. After all, ERISA does not say top-hat plan administrators are not fiduciaries. It "exempts top-hat plans from [ERISA's] fiduciary-duty rules." App. 32a. In other words, a top-hat administrator can still be a fiduciary; it just does not have to answer to 29 U.S.C. § 1104, ERISA's fiduciary-duty provision. And under 29 U.S.C. § 1002(21)(A), "a person is a fiduciary with respect to" an ERISA plan so long as they "exercise[] any authority or control respecting management or disposition of its assets" or exercise "any discretionary authority or discretionary responsibility in the administration of such plan." There is no question Regions checks that box.

In sum, if creating a constructive trust to award disgorgement "fall[s] comfortably" within the confines of equitable relief (as it did in *Liu*, 591 U.S. at 84–85), and if awarding surcharge in a suit between an ERISA participant and ERISA fiduciary approximates the equitable award between a trustee and beneficiary (as it did in *Amara*, 563 U.S. at 439), then recognizing here an actual trust to award surcharge stands on even firmer footing. But if the Court were to have any uncertainty on that point, Regions remains an ERISA fiduciary and, consequently, remains liable for surcharge if Petitioners can prove actual harm from a plan violation.

B. The decision below misconstrues *Amara*'s relationship with this Court's other precedents.

The Sixth Circuit's second contention, that *Amara* conflicts with *Mertens*, *Great-West*, and *Montanile*, fares no better.

1. *Amara* examined *Mertens* and *Great-West* at length and explained how to square its understanding of equitable remedies with those cases.

As it observed, in *Mertens*, the beneficiary sought damages "against a private firm that provided a trustee with actuarial services." 563 U.S. at 439. This Court thus examined "only . . . the question whether ERISA authorizes suits for money damages *against nonfiduciaries* who knowingly participate in a fiduciary's breach of fiduciary duty." *Mertens*, 508 U.S. at 251 (emphasis added).

Great-West, on the other hand, involved a fiduciary suing a beneficiary "to obtain a lien" or "constructive trust" on money that "the beneficiary had received."

Amara, 563 U.S. at 439. As discussed, the case's critical question was whether this claim was for legal or equitable restitution; because the funds at issue were no longer "in the [beneficiary's] possession," this Court held that they could not be recovered in equity. *Great-West*, 534 U.S. at 214.

Importantly, neither *Mertens* nor *Great-West* "concern[ed] a suit by a beneficiary against a plan fiduciary." *Amara*, 563 U.S. at 439. That posture, as *Amara* explains, makes a "critical difference," since in equity, surcharge was available only for a trustee's breach, and not under the circumstances presented in *Mertens* or *Great-West*. *Id.* at 442.

2. Nor did *Montanile* signal some sea change in the law. That decision confined its entire discussion of *Amara* to a footnote. 577 U.S. at 148 n.3. This footnote is itself likely dicta, as it addressed a "broad[er]" argument made in the case, *id.*, while the Court resolved the question presented on narrower grounds, *id.* at 148–49.

In any event, as Judge Heytens observed in *Rose*, *Montanile*'s footnote did not say *Amara* was "inconsistent with" other Supreme Court precedent. *Rose*, 80 F.4th at 506 (Heytens, J., concurring in part and dissenting in part). Nor did it hold that *Amara*'s approach was "contrary to" these cases. *Id.* Instead, the footnote offered two salient observations.

The first is that "the Court's discussion of § 502(a)(3) in [*Amara*] was not essential to resolving that case"—which is both undisputed and says nothing about whether *Amara* got it right. *Montanile*, 577 U.S. at 148 n.3. Next, the footnote rejected the argument, made by the respondent in *Montanile*, that *Amara* "all but

overrul[ed]" *Mertens* and *Great-West*. *Id.* To the contrary, *Amara* "reaffirmed" the holdings from those cases. *Id.* In other words, *Montanile* simply made clear that *Mertens*, *Great-West*, and *Amara* can and should be read together, with certain remedies available against fiduciaries that may be unavailable against other parties. Five years after *Montanile*, *Liu* cited *Mertens*, *Great-West*, *Amara*, and *Montanile* together in the same paragraph, without suggesting that the reasoning from any particular case stuck out from the rest of the group. 591 U.S. at 79.

3. What about the panel's assertion that the distinction between a fiduciary and non-fiduciary "did not matter under the common law of trusts," because courts in equity could grant relief not only against the trustee but also "against third persons who knowingly participated in the trustee's breach"? App. 35a.

That too is a question this Court has already asked and answered. As *Mertens* acknowledges, "[u]nder traditional trust law," "a beneficiary could obtain damages from third persons for knowing participation in a trustee's breach of fiduciary duties." 508 U.S. at 262. But "only the trustee had fiduciary duties." *Id.* And what "ERISA has eliminated" is "the common law's joint and several liability, for all direct and consequential damages suffered by the plan, on the part of persons who had no real power to control what the plan did"—i.e., non-fiduciaries. *Id.* In other words, ERISA distinguishes between fiduciaries and non-fiduciaries, and holds the former to account but not the latter. That is why the fact that the defendant in *Amara* was a fiduciary made a

"critical difference" for § 1132(a)(3) relief. *Amara*, 563 U.S. at 442.

4. As a final point, "carefully considered language of the Supreme Court, even if technically dictum, generally must be treated as authoritative." *United States v. Dorcely*, 454 F.3d 366, 375 (D.C. Cir. 2006); *accord Schwab v. Crosby*, 451 F.3d 1308, 1325–26 (11th Cir. 2006) (collecting cases). Consistent with this understanding, virtually every court of appeals has followed *Amara*. Of course, the Court is "not necessarily bound by dicta should more complete argument demonstrate that the dicta is not correct," and it can and has reconsidered its earlier dicta in later cases. *Kirtsaeng v. John Wiley & Sons, Inc.*, 568 U.S. 519, 548 (2013). But that is a task better left to this Court, rather than an open invitation for lower courts to splinter over how to apply the law.

C. The decision below conflicts with congressional intent.

Finally, ERISA was "designed to promote the interests of employees and their beneficiaries in employee benefit plans." *Shaw v. Delta Air Lines, Inc.*, 463 U.S. 85, 90 (1983). The decision below turns that principle on its head. Under the Sixth Circuit's reasoning, even if a trustee acts improperly, and even if beneficiaries incur millions in losses as a result, they have no recourse under federal or state law.

1. The panel's holding is particularly ill-suited when it comes to top-hat plans. Because Congress presumed that participants in such plans had bargaining power in negotiations, ERISA exempts top-hat plans from most of the law's substantive protections. App. 7a–8a; ERISA

Adv. Op. 90-14A (May 8, 1990) ("recogniz[ing] that [top-hat participants] . . . have the ability to affect or substantially influence, through negotiation[,] . . . the design and operation of their deferred compensation plan"). But these negotiations would be an academic exercise if top-hat participants could not enforce the fruits of their bargaining in cases of breach. For these participants, ERISA represents the "mechanism for federal judicial enforcement of the terms of the plan." Peter J. Wiedenbeck & Brendan S. Maher, ERISA PRINCIPLES 51 (2024). If the employer refuses to uphold its end of the bargain, the employee must "have access to judicial enforcement to vindicate their rights, or the plan becomes an illusory promise." *Id.* at 51–52. To hold otherwise would ensnare top-hat beneficiaries in a remedy-less twilight zone.

2. This case sharply illustrates that principle. When the courts below barred Petitioners from obtaining a federal remedy under ERISA for violations of the Plans, they turned to state law, alleging violations of the Trust Agreement. ERISA, to underscore, does not require top-hat plans to establish a rabbi trust or to memorialize trust duties and obligations in writing. The Plans themselves also did not impose such a requirement; indeed, the rabbi trust here was not established until several years after the Plans were formed. The resulting Trust Agreement was not some pro forma document. The parties negotiated relevant terms, and specified that it would be governed by Alabama law. But when Petitioners pursued remedies under Alabama law, they ended up in the same place as their § 1132(a)(3) claim: without relief.

3. Consequently, rather than being a "catchall [provision] . . . offering appropriate equitable relief for injuries caused by violations that § 502 does not elsewhere adequately remedy," *Varity Corp. v. Howe*, 516 U.S. 489, 512 (1996), the panel's reasoning turns ERISA enforcement into a "regulatory vacuum," where plaintiffs' state-law remedies are preempted but very few federal substitutes are provided," *Davila*, 542 U.S. at 222 (Ginsburg, J., concurring) (cleaned up). Under the panel's understanding, many beneficiaries would be "afford[ed] *less* protection . . . than they enjoyed before ERISA was enacted." *Firestone Tire & Rubber Co. v. Bruch*, 489 U.S. 101, 114 (1989).

"We doubt that Congress would have wanted to bar" these employees—i.e., beneficiaries who are "actual[ly] harm[ed]" because of trustee wrongdoing—"from relief." *Amara*, 563 U.S. at 444. That's because ERISA was enacted amid a rise of "employees with long years of employment . . . losing anticipated retirement benefits." 29 U.S.C. § 1001(a). To "prevent [this] 'great personal tragedy,'" *Nachman Corp. v. Pension Benefit Guar. Corp.*, 446 U.S. 359, 374 (1980) (cleaned up), Congress sought "to protect" "participants in employee benefit plans and their beneficiaries . . . by providing for appropriate remedies, sanctions, and ready access to the Federal courts," 29 U.S.C. § 1001(b). The decision below fails on that measure, by barring Petitioners from obtaining any remedy under both federal and state law.

III. THIS CASE PRESENTS AN EXCELLENT VEHICLE TO ADDRESS IMPORTANT AND RECURRING QUESTIONS.

The questions presented are undeniably significant, given the many people and plans covered by ERISA. They are also both legally important.

1. If the panel decision is upheld on preemption, for instance, then ERISA would preclude any state-law claim "whenever" that claim "implicates the relations among . . . plan beneficiaries, sponsors, and administrators." App. 25a (cleaned up). That is so even though (i) ERISA itself contemplates that parties in certain plans would negotiate separate contractual trust agreements which would be governed by state law; (ii) federal agencies have issued a model trust agreement which is governed by state law; (iii) and the beneficiaries and trustee here did in fact negotiate a separate trust agreement that would be governed by state law. If there were ever a case to draw a line to rein in the breadth of ERISA preemption, this would be it.

The other question presented, as to § 1132(a)(3), bears all of the hallmarks of an issue meriting review. It concerns a deep and entrenched split, which the court below acknowledged. App. 33a. The ramifications of that split are both clear and significant. If the position taken by the Fourth and Sixth Circuits is correct, then plaintiffs in the Second, Fifth, Seventh, Eighth, Ninth, and Eleventh Circuits have been improperly awarding money to plaintiffs for life insurance, health insurance, and pension benefits. On the other hand, if these six courts of appeals are right, then the Fourth and Sixth Circuits have wrongly denied a critical remedy to beneficiaries

proceeding under § 1132(a)(3), resulting in millions in unrecovered losses.

This petition, moreover, squarely presents both legal questions for the Court to resolve. In *Rose*, the Fourth Circuit remanded to the district court to determine whether the plaintiff had plausibly alleged the alternative remedy of unjust enrichment and could obtain relief through that avenue. *See* 80 F.4th at 504–05; *Rose v. PSA Airlines* (23-734), BIO at 22 (discussing decision's interlocutory posture). Here, on the other hand, Petitioners seek no other form of equitable relief, and the Sixth Circuit disposed of Petitioners' suit in its entirety, by dismissing both their § 1132(a)(3) claim and their state-law claims. App. 6a–7a.

2. That the court below did not address whether Regions in fact violated state law or the Plans, *see* App. 32a, does not preclude review.

On the former, this Court has repeatedly examined ERISA preemption questions without resolving the underlying merits of a claim. *See, e.g.*, *Davila*, 542 U.S. at 204–06; *McClendon*, 498 U.S. at 135–38.

And on the latter, as the Sixth Circuit acknowledged, *Mertens* presented the same posture, and this Court resolved the remedy question without examining liability. App. 32a (citing *Mertens*, 508 U.S. at 254). Similarly, in *Great-West*, the petitioners lost on liability in district court, but the Ninth Circuit "affirmed on different grounds" on appeal—that, even if Great-West could prevail as to liability, the remedy that it requested was "not equitable relief." *Great-West*, 534 U.S. at 209. And outside the ERISA context, this Court has regularly granted review on whether plaintiffs can obtain certain

forms of relief, while reserving questions of liability for remand. *See Franklin v. Gwinnett Cnty. Pub. Schs.*, 503 U.S. 60, 65–66 (1992). Nothing, in short, bars review of the questions presented.

* * *

In enacting ERISA, Congress sought to provide participants, fiduciaries, and administrators a "predictable set of liabilities," enforced through uniform rules across the country. *Rush Prudential*, 536 U.S. at 379. Judicial disagreement over how to apply § 1132(a)(3) undermines that objective. And refusing to recognize state-law claims arising from contracts separate from an ERISA plan and not required by ERISA prevents the beneficiaries here from obtaining any relief whatsoever. Together, these circumstances defeat ERISA's central goal to "protect contractually defined benefits," *Mass. Mut. Life Ins. Co. v. Russell*, 473 U.S. 134, 148 (1985), and "ensure that employees will not be left empty-handed," *Lockheed Corp. v. Spink*, 517 U.S. 882, 887 (1996). This case offers the Court an ideal opportunity to resolve these legal conflicts.

CONCLUSION

For the foregoing reasons, the petition for a writ of certiorari should be granted.

Respectfully submitted,

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APPENDIX

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APPENDIX A

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File Name: 25a0187p.06

UNITED STATES COURT OF APPEALS

FOR THE SIXTH CIRCUIT

JERRY ALDRIDGE; DANIEL BETTIS; GEORGE BECKMANN; DAVID BIRON; ERNEST BISHOP, III; E. E. BISHOP; PATRICIA BOUTREIS; BRAXTON BROOKS; ROBERT BROWN; PERRY BROWNLEE; WILLIAM H. BRYANT; E. J. BUECHE; JAMES (JJ) BUETTGEN; JOE BYRUM; EDNA T. CALDWELL; BELINDA CLINE (KITTS); COLLIN COPE; PATRICK COWLEY; EDWARD F. CROFTON; TAMARA CUNNINGHAM; LARRY DAVIS; RICHARD DEARDEN; ANNE DILLARD-MCGEOCH; MARGUERITE DUFFY; RICK ELDRIDGE; GREGORY EQUIZI; BETTY FLANAGAN; PAUL FREEMAN; KIMBERLY GRANT; HENRY GRAU; GENE GRUVER; RONALD HARMAN; CECILIA HEATH; ANDREW HEPP; VERONICA HEPP; SANDRA HERRINGTON; PEG HEYMAN; ROBERT F. HIGHTOWER; JAMES HOLLAND; JAMES HOLMAN; PFILIP G. HUNT; KEN HUTSON; NICHOLAS IBRAHIM; ROSS JACKSON; PAUL S. JONES; ROY KEENE, deceased; LOUIS FRANK KNIGHT; ADAM

No. 24-5603

(DANNY) KOONTZ; FRED KUHLEMANN; ROBERT LAFRENIERE; DOUGLAS LANTAU; MARCELINO R. LARGEL; ROBERT LEBOEUF; JAMES LITCHFORD; GLEN T. LOWERY; RAY MANNING; MARVIN MARTIN; REBECCA MARTIN; SCARLETT MAY; ROBERT MCCLENAGAN; TERESA MCCONNELL; CHARLES L. MCGUFF; CLIFFORD MEADOWS; DONALD MEIER; EVERETT MILLS; J. RUSSELL MOTHERSHED; CRAIG NELSON; ERIC PAUL; MAXWELL PIET; SHERRY BIGBY PRIME; JOHN PRYOR; ED REHM; MIKE RODER; CHARLES ROSETE; LOLA RUBLE; DAVID SCHMIDT; ANDREW SCOGGINS; JOE R. SEAITZ; LOIS M. SKOKOS; ALAN P. SMITH; EUBIE STACEY; JOHN STEPHENS; RONNIE TATUM; LARRY THOMPSON; BARRY TIMMONS; SHERRY TURNER; JEFFREY VAN HORNE; JACK VAUGHN; RONALD VILORD; LEE WALLACE; CLARICE WETMORE; FRED WHITLOCK; MARK YOUNG,

Plaintiffs-Appellants,

v.

REGIONS BANK,

Defendant-Appellee.

Appeal from the United States District Court for the Eastern District of Tennessee at Knoxville.

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No. 3:21-cv-00082—Clifton Leland Corker, District Judge.

Argued: March 20, 2025

Decided and Filed: July 17, 2025

Before: GIBBONS, LARSEN, and MURPHY, Circuit Judges.

COUNSEL

ARGUED: James A. Holifield, Jr., HOLIFIELD & JANICH, PLLC, Knoxville, Tennessee, for Appellants. John C. Neiman, Jr., MAYNARD NEXSEN PC, Birmingham, Alabama, for Appellee. **ON BRIEF:** James A. Holifield, Jr., Christina J. Haley, Kelly P. Endelman, HOLIFIELD & JANICH, PLLC, Knoxville, Tennessee, for Appellants. John C. Neiman, Jr., Braden T. Morell, William B. Wahlheim, Jr., Ashlee D. Riopka, MAYNARD NEXSEN PC, Birmingham, Alabama, for Appellee.

OPINION

MURPHY, Circuit Judge. The Employee Retirement Income Security Act of 1974 (ERISA) imposes many fiduciary duties on those who manage the retirement plans that employers set up for their employees. ERISA generally allows employees who participate in these plans to pursue breach-of-fiduciary-duty claims against these plan administrators. But the law exempts retirement plans designed for high-level managers from its fiduciary-duty requirements. It also directs employers to keep these so-called "top hat" plans unfunded, so participating managers

risk losing their benefits to an employer's creditors if the employer becomes insolvent. This risk materialized for former managers of Ruby Tuesday, Inc., when the company filed for bankruptcy. After losing their benefits, these managers sued Regions Bank—the bank that had administered their top-hat plans. Unable to bring federal fiduciary-duty claims under ERISA, the managers instead turned to state law. They asserted that Regions had breached state-law fiduciary, trust, contract, and tort duties. Alternatively, the managers sought to obtain their lost benefits from Regions under an ERISA provision that allows them to recover only equitable (not legal) relief. These claims require us to ask both a preemption question and a remedies question under ERISA.

The preemption question considers whether the Ruby Tuesday managers may pursue state-law causes of action against Regions even though ERISA preempts all state laws that "relate to" ERISA-covered plans. 29 U.S.C. § 1144(a). Our answer is no. Congress's decision to exempt administrators of top-hat plans from ERISA's fiduciary-duty requirements shows that participating managers must protect themselves through contract—not through 50 potentially conflicting state-law standards of conduct. And while the managers argue that they seek to enforce the contractual duties that Regions agreed to accept, they must pursue this type of contract claim through ERISA's exclusive remedial scheme, not through a state-law contract action.

The remedies question considers whether the Ruby Tuesday managers may pursue their lost monetary benefits under a provision of ERISA that allows them to seek only "equitable relief" from Regions. 29 U.S.C. § 1132(a)(3). Our answer is again no. The Supreme Court and this court have both made clear that money damages

qualify as legal relief that plan participants cannot obtain under § 1132(a)(3). And although the managers argue that they seek an "equitable surcharge" from Regions, they merely request damages under another label. All told, then, our answers to these two questions lead us to affirm the district court's judgment for Regions.

I. Background

A. ERISA Top-Hat Plans

ERISA regulates "employee benefit plans," a phrase that includes retirement plans for employees. 29 U.S.C. §§ 1002(3), 1003(a). This law serves competing goals. *See Conkright v. Frommert*, 559 U.S. 506, 516–17 (2010). On the one hand, Congress sought to encourage employers to create these plans. *See id.* at 517. ERISA thus contains uniform rules to simplify the regulatory environment. *See id.* It, for example, contains a single remedial scheme and preempts conflicting state laws. 29 U.S.C. §§ 1132(a), 1144(a). On the other hand, Congress sought to ensure that employees receive promised benefits. *See Conkright*, 559 U.S. at 516. ERISA thus imposes many rules on plans. Among other things, plan fiduciaries must meet several "standards of conduct" when managing the plans. 29 U.S.C. §§ 1001(b), 1104. And the plans must meet minimum vesting and funding obligations. *See id.* §§ 1053, 1082.

Congress cared more about the first of these goals than the second for retirement plans provided to high-level executives—what have come to be called "top hat" plans. A firm's top-level managers typically have the bargaining power to "substantially influence" the "design" of their retirement plans. *Bakri v. Venture Mfg. Co.*, 473 F.3d 677, 678 (6th Cir. 2007) (quoting Dep't of Labor, Office of Pension & Welfare Benefit Programs, Opinion 90–14A,

1990 WL 123933, at *1 (May 8, 1990)). So they can insulate themselves from poor management by adding contractual protections in the plan itself. *See id.* ERISA thus exempts top-hat plans from many of its statutory protections. *See In re IT Grp., Inc.*, 448 F.3d 661, 664 (3d Cir. 2006); *Simpson v. Mead Corp.*, 187 F. App'x 481, 483–84 (6th Cir. 2006). For example, the law's fiduciary-duty rules do not apply to "a plan which is unfunded and is maintained by an employer primarily for the purpose of providing deferred compensation for a select group of management or highly compensated employees[.]" 29 U.S.C. § 1101(a)(1). And the law contains identically worded exemptions to its funding and vesting requirements. *Id.* §§ 1051(2), 1081(a)(3).

An employer must meet two conditions to create a top-hat plan. *See* Opinion 90–14A, 1990 WL 123933, at *2. The plan may cover only a "select group" of high-level employees. 29 U.S.C. §§ 1051(2), 1081(a)(3), 1101(a)(1). And the plan must be "unfunded." *Id.* Other courts have interpreted this adjective to bar employers from setting aside money for participants (whether in "escrow, trust fund, or otherwise") or from giving them a security interest in assets. *IT Grp.*, 448 F.3d at 665, 667–69 (quoting David J. Cartano, *Taxation of Compensation & Benefits* § 20.01, at 721 (2004)). Employers must instead pay benefits out of general funds that remain subject to their creditors if they become insolvent. *See id.* at 669; *Demery v. Extebank Deferred Comp. Plan (B)*, 216 F.3d 283, 287 (2d Cir. 2000). Although unfunded plans come with greater risks, they also help executives by delaying taxation on their benefits until they receive them in later years when they will likely have less income (and fall in a lower tax bracket). *See IT Grp.*, 448 F.3d at 664.

Employers often try to meet ERISA's requirement that a top-hat plan be "unfunded" by putting benefits into an account colloquially known as a "rabbi trust" (which got its name because the first IRS letter about such an account concerned a congregation's attempt to set aside benefits for a rabbi). *See Bank of Am., N.A. v. Moglia*, 330 F.3d 942, 944 (7th Cir. 2003). A rabbi-trust structure provides greater protection to participants because the company itself can use the trust's assets only to pay the participants' benefits and not for general corporate purposes. *See IT Grp.*, 448 F.3d at 665; *Moglia*, 330 F.3d at 944; I.R.S., Revenue Procedure 92-64, 1992 WL 509838, at *6 (July 28, 1992). Despite this restriction on the use of the funds, rabbi trusts can still meet ERISA's "unfunded" top-hat requirement because these assets remain available to pay the company's creditors if it becomes insolvent and because the participants have no beneficial interest in the assets. *See IT Grp.*, 448 F.3d at 665; Revenue Procedure 92-64, 1992 WL 509838, at *3, 5.

B. Ruby Tuesday's Top-Hat Plans

Ruby Tuesday, Inc., operates a chain of casual-dining restaurants. In the 1980s, this company (or its predecessor) created two top-hat plans for qualifying executives or managers: the Executive Supplemental Pension Plan and the Management Retirement Plan. We will refer to these top-hat plans jointly as the "Plans" because their differences do not matter on appeal.

In 1992, Ruby Tuesday entered a rabbi-trust agreement with Regions Bank to help it satisfy "its obligations under" the Plans. Trust Agreement, R.19-3, PageID 455. (Technically, their predecessors signed this agreement, but those corporate distinctions also do not matter on appeal.) Under the agreement, Ruby Tuesday established a trust fund that Regions would oversee as the

trustee. The trust agreement "incorporated" the terms of the Plans. *Id.* It directed Regions to treat the money contributed to the trust fund "as general assets of" Ruby Tuesday and clarified that this money "remain[ed] subject to the claims of [Ruby Tuesday's] general creditors." *Id.*, PageID 465. The agreement also noted that the plan participants would not "have a preferred claim on or any beneficial ownership" interest in the fund's assets until the participants had the actual right to receive payments under the plan terms. *Id.* For the most part, the agreement instructed Regions to undertake the day-to-day administration of the Plans by paying benefits as they came due.

According to the complaint, Regions breached the trust agreement several times before Ruby Tuesday terminated the Plans and deprived participants of benefits. These breaches allegedly began in 2017 when NRD Capital bought Ruby Tuesday. The complaint suggests that this deal led to a "change in control" under the trust agreement. If so, that change would have triggered many duties. Of most note, Ruby Tuesday would have had to fund the Plans to the present actuarial value of all unpaid benefits. Yet Ruby Tuesday did not make these payments. And Regions also did not try to compel the company to meet this requirement, as the trust agreement allegedly obliged it to do.

Next, Ruby Tuesday's board of directors allegedly terminated the Plans in March 2019 and permitted participants to take lump-sum payouts between March 2020 and March 2021. But Regions failed to inform participants of this right to a payout.

Ruby Tuesday also orally instructed Regions in July 2020 to cease all benefit payments starting the next month. Regions complied with this command. Yet the trust

agreement barred Regions from stopping payments unless Ruby Tuesday said in *writing* that it had become insolvent. This written notice did not come until later—on September 2. In that notice, Ruby Tuesday alerted Regions to its insolvency, ordered Regions to cease payments, and told it to "hold the assets of the Trust for the benefit of [Ruby Tuesday's] creditors." Letter, R. 61-30, PageID 1758. According to the complaint, Regions breached the trust agreement by failing to pay benefits in August and September based on the oral order alone (not on the letter). Regions itself recognized this problem. In September, it filed an interpleader action asking a district court to decide who had the right to the funds it would have paid in August and September.

The next month, Ruby Tuesday filed a Chapter 11 bankruptcy petition. Over the objections of the participants in the Plans, the bankruptcy court ordered Regions to transfer the money in the trust fund to the bankruptcy estate for the benefit of Ruby Tuesday's creditors. After making this transfer, Regions dismissed its interpleader action. The participants then settled with Ruby Tuesday's bankruptcy estate and received their fees and a share of the fund assets. In return, the participants waived their right to appeal the bankruptcy court's orders directing Regions to pay the trust funds into the bankruptcy estate.

Many of these plan participants (whom we will call the "Participants" from here on) then sued Regions. They alleged an ERISA claim for "equitable relief" under 29 U.S.C. § 1132(a)(3). In this sole federal claim, they asserted the right to an "equitable surcharge" of the benefits that Regions would have paid if it had not breached the trust agreement. The Participants also alleged state-law claims against Regions for breach of

fiduciary duty, breach of trust, breach of contract, and negligence.

The district court rejected the Participants' claims across two decisions. The court first dismissed the state-law claims at the pleading stage on the ground that ERISA preempted them. *Aldridge v. Regions Bank*, 2021 WL 4718489, at *5–7 (E.D. Tenn. Oct. 8, 2021). It next granted summary judgment to Regions on the ERISA claim. It reasoned that the request for lost benefits did not qualify as the type of "equitable relief" that the Participants may seek under 29 U.S.C. § 1132(a)(3). *Aldridge v. Regions Bank*, 2024 WL 2819523, at *4–5 (E.D. Tenn. June 3, 2024).

The Participants appeal both opinions. They argue that ERISA should not preempt their state-law claims because such preemption might deprive them of a remedy. And if ERISA does preempt these claims, they add, it at least allows them to seek an equitable surcharge under § 1132(a)(3). We review the district court's motion-to-dismiss and summary-judgment decisions de novo. *See Standard Ins. Co. v. Guy*, 115 F.4th 518, 521 (6th Cir. 2024); *Penny/Ohlmann/Nieman, Inc. v. Miami Valley Pension Corp.*, 399 F.3d 692, 697 (6th Cir. 2005) (*PONI*).

II. ERISA Preemption

The Participants first challenge the district court's preemption holding. ERISA implements Congress's uniformity goals primarily through two provisions. The law first includes a "broad" preemption provision—29 U.S.C. § 1144(a)—that displaces the 50 state laws that might otherwise regulate covered employee benefit plans. *Shaw v. Delta Air Lines, Inc.*, 463 U.S. 85, 98 (1983). It next includes an "integrated enforcement mechanism"—29 U.S.C. § 1132(a)—that lists the exclusive ways that parties may sue for violations of the law or a covered plan. *Aetna Health Inc. v. Davila*, 542 U.S. 200, 208 (2004).

These two sections have led federal courts to divide ERISA preemption into two categories: complete preemption (a doctrine rooted in the law's purposes) and express preemption (a doctrine rooted in the law's text). *See K.B. ex rel. Qassis v. Methodist Healthcare - Memphis Hosps.*, 929 F.3d 795, 800 (6th Cir. 2019).

A. Complete Preemption

ERISA qualifies as one of the few laws that triggers the Supreme Court's unique "complete preemption" doctrine. *See Davila*, 542 U.S. at 208–09; *Metro. Life Ins. v. Taylor*, 481 U.S. 58, 65–66 (1987). This doctrine tells courts to treat state-law claims seeking benefits from an ERISA-covered plan as federal claims under the ERISA cause of action designed for that purpose: 29 U.S.C. § 1132(a)(1)(B). *See K.B.*, 929 F.3d at 800–01. The doctrine thus allows a defendant to remove a case from a state court to a federal district court based on that court's federal-question jurisdiction even if the complaint raises only state-law claims. *See id.* By doing so, it departs from the usual "well-pleaded complaint rule" governing federal-question jurisdiction. *See Davila*, 542 U.S. at 207. That rule typically allows a defendant to remove a case only if the complaint raises federal claims on its face (not if state-law claims trigger a federal preemption defense). *See id.*

Regions suggests that the complete-preemption doctrine applies to the Participants' state-law claims. For three reasons, though, we decline to resolve this issue. Reason One: Despite its inapt name, the complete-preemption doctrine matters more to a district court's *jurisdiction* than to a defendant's *preemption* defense. *See Hogan v. Jacobson*, 823 F.3d 872, 879 (6th Cir. 2016). Yet the district court here had federal-question jurisdiction over the Participants' separate ERISA claim. *See* 28 U.S.C. § 1331. And this fact gave the court supplemental

jurisdiction over their state-law claims. *See id.* § 1367(a). This case thus raises no jurisdictional issues.

Reason Two: If a court finds that ERISA completely preempts state-law claims, it should dismiss the claims only if they do not assert cognizable *federal* claims under § 1132(a)(1)(B). *See Hogan*, 823 F.3d at 883–85; *Loffredo v. Daimler AG*, 500 F. App'x 491, 500–01 (6th Cir. 2012) (Moore, J., for majority). But the Participants do not argue that they could have turned their state-law claims into ERISA claims. They have thus forfeited this argument. *See Bannister v. Knox Cnty. Bd. of Educ.*, 49 F.4th 1000, 1011–12 (6th Cir. 2022). So a finding that ERISA completely preempted the claims would lead to the same result as a finding that the law expressly preempted them: dismissal. *Cf. Lowe v. Lincoln Nat'l Life Ins.*, 821 F. App'x 489, 492 (6th Cir. 2020).

Reason Three: The separate "express preemption" doctrine that rests on § 1144(a)'s text applies more "broadly" than complete preemption. *K.B.*, 929 F.3d at 800. So if a state-law claim is completely preempted, it will also be expressly preempted. But the opposite is not always true. *See id.* at 800, 803. Basic judicial-economy concerns thus favor jumping to the broader express-preemption doctrine without first considering the "narrow" complete-preemption issue. *Id.* at 803.

B. Express Preemption

We thus turn to express preemption: Do the Participants' state-law claims fall within the text of 29 U.S.C. § 1144(a)? This text states that ERISA "shall supersede any and all State laws insofar as they may now or hereafter relate to any employee benefit plan" covered by ERISA. This preemption language is "conspicuous for its breadth." *FMC Corp. v. Holliday*, 498 U.S. 52, 58

(1990). Since 1983, the Supreme Court has defined the phrasal verb "relate to" broadly to cover any state law that has "a connection with or reference to" an ERISA plan. *Shaw*, 463 U.S. at 97. And ERISA defines "State law" broadly to cover "all laws, decisions, rules, regulations, or other State action having the effect of law, of any State." 29 U.S.C. § 1144(c)(1).

But just how much state law does the preemption provision swallow up? That question has plagued the Supreme Court for decades. *See Standard Ins.*, 115 F.4th at 522. The Court at first suggested that it would read the phrase "relate to" literally to have its "broad common-sense meaning[.]" *Metro. Life Ins. v. Massachusetts*, 471 U.S. 724, 739 (1985). But it soon departed from this reading once it recognized that "relations stop nowhere" and that an "uncritical literalism" could preempt all state law. *N.Y. State Conf. of Blue Cross & Blue Shield Plans v. Travelers Ins. Co.*, 514 U.S. 645, 655–56 (1995) (citation omitted). Since then, the Court has tried to develop "workable standards" to guide ERISA preemption. *Gobeille v. Liberty Mut. Ins. Co.*, 577 U.S. 312, 319 (2016).

1. Express-Preemption Standards

Today, the Court evaluates express-preemption questions using the two parts from *Shaw*'s original definition of the phrase "relate to." ERISA can preempt a state law either if the law makes "reference to" an ERISA plan or if the law has a "connection with" such a plan. *Shaw*, 463 U.S. at 97; *see Rutledge v. Pharm. Care Mgmt. Ass'n*, 592 U.S. 80, 86 (2020); *Cal. Div. of Lab. Standards Enf't v. Dillingham Constr., N.A., Inc.*, 519 U.S. 316, 324 (1997). The Court follows different rules for each part of this test. *See Rutledge*, 592 U.S. at 86, 88.

"Reference To" a Plan. The Court has given the phrase "reference to" a clear (if narrow) scope. A state law can "refer to" an ERISA plan in two situations. A reference exists if a state law "acts immediately and exclusively upon" an ERISA plan. *Dillingham*, 519 U.S. at 325. For example, a Georgia garnishment law met this test because it *specifically* exempted ERISA plans. *See Mackey v. Lanier Collection Agency & Serv., Inc.*, 486 U.S. 825, 829–30 (1988); *see also District of Columbia v. Greater Wash. Bd. of Trade*, 506 U.S. 125, 130–31 (1992). But a California prevailing-wage law did not meet the test because it applied *generally* to all "apprenticeship programs," only a subset of which were ERISA plans. *Dillingham*, 519 U.S. at 325.

Next, a prohibited reference exists if a state law depends on the "existence" of an ERISA plan for its "operation" in practice. *Id*. at 325. So a Texas common-law rule met this test by barring employers from firing employees "to avoid contributing to, or paying benefits under," an ERISA plan. *Ingersoll-Rand Co. v. McClendon*, 498 U.S. 133, 140 (1990). This wrongful-discharge claim referred to an ERISA plan because the plan's "existence" qualified as an element of the claim. *Id.* Conversely, an Arkansas law regulating the amounts that pharmacy benefits managers must pay pharmacies under prescription-drug plans did not meet this test because the law covered many plans (not just ERISA plans). *See Rutledge*, 592 U.S. at 88–89.

"Connection With" a Plan. The Court has given the phrase "connection with" a more amorphous (if broader) scope. It has said that this synonym for the phrase "relates to" offers "no more help" as a linguistic matter. *Travelers*, 514 U.S. at 656. To decide whether a preemptive connection exists, the Court instead examines ERISA's

"objectives," *id.*, and the "nature" of a state law's "effect" on a covered plan, *Dillingham*, 519 U.S. at 325.

Under this purpose and effects approach, the Court typically finds that a preemptive "connection" exists when state laws touch matters that ERISA already covers. Of most relevance, the Court has held that plan participants may not seek benefits under an ERISA-covered plan using state-law contract and tort claims. *See Pilot Life Ins. Co. v. Dedeaux*, 481 U.S. 41, 47–57 (1987). The Court reasoned that Congress established a "comprehensive civil enforcement scheme" in 29 U.S.C. § 1132(a). *Id.* at 54. Yet plan participants would upend Congress's careful "choice of remedies" in § 1132(a) if they could pursue *other* state-law remedies that Congress excluded from that subsection. *Id.* As a result, state laws that offer "alternative enforcement mechanisms" to those in § 1132(a) have the preemptive connection to ERISA plans. *Travelers*, 514 U.S. at 658; *see Smith v. Provident Bank*, 170 F.3d 609, 613–15 (6th Cir. 1999).

The Court has applied the same logic to many other ERISA-covered topics. Take ERISA's reporting requirements. Plan administrators must "keep detailed records" and provide an annual report to the Secretary of Labor about the plan. *Gobeille*, 577 U.S. at 321–22. Apart from ERISA, many state laws require payers of health-care services (including ERISA plans) to disclose to state agencies their health-care payments for inclusion in a public database. *See id.* at 315–16. The Court found one such Vermont law preempted as applied to ERISA plans. *Id.* at 321–26. It held that the law had a preemptive connection to ERISA plans both because ERISA's reporting requirements were "a central matter of plan administration" and because additional state reporting duties could impose "wasteful administrative costs" that

would undermine ERISA's uniformity goals. *Id.* at 323 (quoting *Egelhoff v. Egelhoff ex rel. Breiner*, 532 U.S. 141, 148 (2001)).

Or take beneficiary designations. ERISA requires administrators to pay the individuals that participants specifically identify as beneficiaries or those the plan identifies when participants fail to designate anyone. *See Egelhoff*, 532 U.S. at 147–48. Yet some state laws set different rules. *See id.* at 144, 146. A Washington law, for example, revoked a participant's spouse as a beneficiary for nonprobate assets (including an ERISA plan's benefits) upon their divorce. *See id.* at 144. The Court held that this law had a preemptive connection to ERISA plans because, like reporting requirements, benefits payments concerned a "central matter of plan administration." *Id.* at 148. And it would undercut ERISA's uniformity goals to require plans to keep track of all state laws governing these designations. *Id.* at 147–50; *see Boggs v. Boggs*, 520 U.S. 833, 841 (1997).

Lastly, take the content of plans. ERISA seeks to ensure that employers uphold their promises, but it does not compel them to offer any specific "substantive benefits." *Gobeille*, 577 U.S. at 320. So state laws had a preemptive connection to ERISA plans when they required those plans (among others) to adopt certain benefit structures. For instance, ERISA preempted state laws that barred ERISA plans from reducing a participant's benefits based on amounts that the participant recovered in a tort suit. *See FMC*, 498 U.S. at 59–60; *see also Alessi v. Raybestos-Manhattan, Inc.*, 451 U.S. 504, 523–25 (1981). And it preempted state laws that compelled plans to pay specific benefits. *See Shaw*, 463 U.S. at 96–100; *see also Metro. Life*, 471 U.S. at 739.

So which "connections" fall short then? ERISA does not preempt state laws just because they have an *economic effect* on ERISA plans. *See Rutledge*, 592 U.S. at 88. ERISA thus did not preempt a tax on health-care facilities as applied to facilities operated by ERISA plans even though this tax increased the costs of the plans. *De Buono v. NYSA-ILA Med. And Clinical Servs. Fund*, 520 U.S. 806, 816 (1997). And ERISA did not preempt a state law that required hospitals to charge certain customers higher prices even though this law again increased the costs of ERISA plans. *See Travelers*, 514 U.S. at 659–62; *see also Rutledge*, 592 U.S. at 88.

Similarly, ERISA does not have a preemptive connection to generally applicable state laws that regulate things far afield of ERISA plans. In *Mackey*, for example, the Supreme Court held that ERISA did not preempt Georgia's general garnishment laws as applied to the garnishment of a debtor's ERISA benefits. *See Mackey*, 486 U.S. at 830–38. The Court reasoned by analogy. It first noted that ERISA plans often contract with others (say, the owner of building space) and that ERISA would not preempt a contract claim that these contractors might bring against the plans (say, for "unpaid rent"). *Id.* at 833. Yet ERISA contains no "enforcement mechanism" for such suits, so preemption might leave a victorious plaintiff without a way to collect from a plan. *Id.* at 833–34. And the Court saw no distinction between the garnishment of a plan's general assets and the garnishment of individual benefits based on the participant's debts. *Id.* at 835–36.

Following *Mackey*'s lead, we have allowed an employer to bring a breach-of-contract claim against a company that provided the employer with recordkeeping services for its ERISA-covered plan. *See PONI*, 399 F.3d at 700–03. We reasoned that the employer sought to enforce a contract

between it and the recordkeeper independent of the plan and that the employer did not allege the breach of any plan provision. *See id.* at 700–01. The recordkeeper also owed no fiduciary duties to the plan or to plan participants. *See id.* at 700. We thus viewed the suit against this recordkeeper as analogous to an ERISA administrator's suit against a law firm that provided "legal services" to the administrator. *Id.* at 701. These types of service-provider claims do not have the preemptive connection to an ERISA plan. *Id.*; *see also Kloots v. Am. Express Tax & Bus. Servs., Inc.*, 233 F. App'x 485, 488–89 (6th Cir. 2007); *Smith*, 170 F.3d at 617.

2. The Participants' State-Law Claims

Before applying this preemption law here, we begin with two issues that the Participants have not raised. To start, the Participants do not dispute that Ruby Tuesday's Plans meet the requirements for top-hat plans. In other words, the Plans were "unfunded" and applied to only a "select group" of top-level employees. 29 U.S.C. §§ 1051(2), 1081(a)(3), 1101(a)(1).

Next, the Participants do not dispute that each Plan qualifies as an "employee benefit plan" subject to ERISA's preemption provision. 29 U.S.C. § 1144(a); *see id.* §§ 1002(2)–(3), 1003(a). To be sure, the Supreme Court has suggested that "[b]enefits paid out of an employer's general assets" (as compared to a "separate fund" reserved for benefits) do not qualify as an "employee benefit plan." *Dillingham*, 519 U.S. at 326; *see Massachusetts v. Morash*, 490 U.S. 107, 114–17 (1989). And top-hat plans must be "unfunded"—that is, these plans must pay benefits out of an employer's "general assets." 29 U.S.C. § 1101(a)(1); *IT Grp.*, 448 F.3d at 669. At the same time, we and other circuit courts unanimously hold that top-hat plans are "employee benefit plans"

subject to ERISA. We have reasoned that although ERISA exempts top-hat plans from specific protections (such as its fiduciary-duty rules), *see* 29 U.S.C. § 1101(a)(1), the plans trigger other "administrative and enforcement provisions" in the law, *IT Grp.*, 448 F.3d at 664; *see Loffredo*, 500 F. App'x at 500–02 (Moore, J., for majority); *Simpson*, 187 F. App'x at 484; *Peters v. Lincoln Elec. Co.*, 285 F.3d 456, 467 n.10 (6th Cir. 2002); *see also Cogan v. Phoenix Life Ins.*, 310 F.3d 238, 242 (1st Cir. 2002); *Paneccasio v. Unisource Worldwide, Inc.*, 532 F.3d 101, 108 (2d Cir. 2008); *Reliable Home Health Care, Inc. v. Union Cent. Ins.*, 295 F.3d 505, 515 (5th Cir. 2002). We need not reconcile the seeming tension in this caselaw—that a top-hat plan can qualify as an employee benefit plan even though the former should be "unfunded" and the latter should be paid through a "separate fund"—because the Participants concede that the Plans qualify as employee benefit plans. *Dillingham*, 519 U.S. at 326; 29 U.S.C. § 1101(a)(1).

With these two points behind us, we proceed to the preemption analysis. The Participants asserted four causes of action against Regions under Alabama law. They first alleged that Regions breached the fiduciary duties that it owed to the Participants as the trustee of the rabbi trust that Ruby Tuesday created to administer the Plans. They next alleged that Regions committed a breach of trust by violating the duties it owed to the Participants as this trustee. They then alleged that Regions breached the trust agreement itself. They lastly alleged that Regions committed negligence by violating its duty to act with reasonable care in administering the trust.

Applying the Supreme Court's preemption test to these four state-law claims, we need not decide whether the claims make "reference to" the Plans because they

have the required "connection with" them. *Shaw*, 463 U.S. at 97. That is true for both procedural and substantive reasons. Procedurally, no matter the "label" the Participants place on their four causes of action, their claims all seek the same thing: the benefits allegedly due them under their ERISA-covered Plans. *Smith*, 170 F.3d at 615 (citation omitted). Yet ERISA already contains a similar cause of action. It allows "a participant" to bring a "civil action" "to recover benefits due to him under the terms of his plan, to enforce his rights under the terms of the plan, or to clarify his rights to future benefits under the terms of the plan[.]" 29 U.S.C. § 1132(a)(1)(B). And we would "undermine[]" Congress's "policy choices" to include only "certain remedies" in § 1132(a) if we allowed participants to pursue benefits not just through § 1132(a) but also through "alternative enforcement mechanisms" in state law. *Pilot Life*, 481 U.S. at 54; *Travelers*, 514 U.S. at 658.

Substantively, the Participants seek to impose additional duties on Regions on top of the duties that ERISA imposes. The Participants argue that Regions took on the status of a "common law fiduciary of the Plans" when it became the trustee of the rabbi trust and thus that Regions owed fiduciary, trustee, contractual, and tort "duties" of care to them. Compl., R.19, PageID 376–79. Yet ERISA already requires those who administer ERISA plans to follow its own federal duties. It, for example, requires ERISA fiduciaries to administer a plan "with the care, skill, prudence, and diligence" that a "prudent man" would exercise. 29 U.S.C. § 1104(a)(1)(B). These federally imposed duties of care are just as "central" to "plan administration" as ERISA's reporting requirements or its beneficiary designations. *Gobeille*, 577 U.S. at 323 (quoting *Egelhoff*, 532 U.S. at 148). And we would undercut

ERISA's uniformity goals in the same way if we subjected plan administrators not just to ERISA's fiduciary duties but also to the potentially conflicting standards of conduct of all 50 States. *See id.*; *Smith*, 170 F.3d at 613.

Admittedly, this case comes with a wrinkle: ERISA exempts administrators of top-hat plans from its federal fiduciary duties. *See* 29 U.S.C. § 1101(a)(1). But that fact does not change things. The statutory regime shows that Congress "deliberately omitted" these duties because high-level employees can protect themselves through contract. *Pilot Life*, 481 U.S. at 54 (citation omitted); *see Bakri*, 473 F.3d at 678. Yet courts would eviscerate this legislative decision to allow for "less-intrusive regulation of top-hat plans" if they substituted "a *more*-intrusive system" of state regulation. *Loffredo*, 500 F. App'x at 495 (Sutton, J., opinion). The preemption provision thus continues to apply to these plans even though ERISA exempts them from many rules. *See Paneccasio*, 532 F.3d at 113; *Cogan*, 310 F.3d at 242. And the Participants "may not use state law to put back in what Congress has taken out." *Loffredo*, 500 F. App'x at 496 (Sutton, J., opinion).

An analogy to ERISA's requirements for plan benefits confirms this point. Congress chose not to compel any "substantive benefits" in ERISA plans. *Gobeille*, 577 U.S. at 320. It instead gives employers substantial freedom to decide on the benefits to provide. *See id.* at 320–21. Yet the Supreme Court has not read this congressional choice as a license to allow States to impose all sorts of benefit mandates. Rather, it has found that ERISA preempts those state mandates because they interfere with the freedom that ERISA gives employers. *See Rutledge*, 592 U.S. at 86–87; *see also Metro. Life*, 471 U.S. at 739; *Shaw*, 463 U.S. at 96–100. Identical logic covers Congress's

decision to exclude the administrators of top-hat plans from ERISA's fiduciary duties.

Nothing that the Participants say convinces us otherwise. They first argue that ERISA cannot preempt state-law fiduciary rules of conduct for top-hat administrators because it does not impose any federal fiduciary-duty rules on those administrators. They then add that ERISA cannot preempt state-law causes of action to enforce these state-law rules of conduct because where there is a "right," there must be a "remedy." Appellant's Br. 18 (quoting *Marbury v. Madison*, 5 U.S. 137, 163 (1803)). But this syllogism starts from a mistaken premise. ERISA does not just preempt the state-law *remedy* (a breach-of-fiduciary-duty cause of action). It also preempts the alleged *right* to state-law rules of fiduciary conduct. *Smith*, 170 F.3d at 613. ERISA instead establishes uniform standards to govern the conduct of those who manage covered plans. *See id.* And that fact remains true even for the top-hat plans that ERISA exempts from its fiduciary-duty rules. *See Loffredo*, 500 F. App'x at 495–96 (Sutton, J., opinion). Congress contemplated that ERISA's fiduciary duties would be replaced by the contractual duties set forth in these plans—not by the fiduciary-duty rules from all 50 States. *See Bakri*, 473 F.3d at 678.

The Participants respond that their lawsuit seeks to enforce not just (preempted) *state-law* fiduciary duties but also (non-preempted) *contractual* fiduciary duties that Regions agreed to accept when administering the Plans. But the Participants mistakenly seek to enforce these alleged contractual duties through an "alternative enforcement" vehicle (a state-law breach-of-contract suit) rather than the vehicle that ERISA provides: a suit to enforce the terms of a plan under § 1132(a)(1)(B).

Travelers, 514 U.S. at 658. Given the Participants' litigation strategy, we need not decide whether top-hat participants may require plan administrators to follow contractually imposed fiduciary duties and enforce those contractual duties under § 1132(a)(1)(B). We decide only that if these participants seek to take this approach, they must enforce the contractual duties under ERISA's "exclusive" remedial scheme. *Pilot Life*, 481 U.S. at 54.

The Participants next say that they could not sue under § 1132(a)(1)(B) here because the purported contractual duties that Regions owes them arise from the *rabbi-trust agreement*—not from the *terms of the Plans*. Under the Participants' view, they are third-party beneficiaries who may enforce this distinct trust agreement between Ruby Tuesday and Regions. Yet we must look through the "label" of the Participants' state-law claim and consider its substance: a claim against a plan administrator for plan benefits based on its alleged misconduct. *Hogan*, 823 F.3d at 880 (citation omitted); *see Smith*, 170 F.3d at 615. If ERISA did not preempt this state-law claim, all plan beneficiaries (including those participating in ordinary plans subject to ERISA's fiduciary duties) could seek benefits from plan administrators by bringing state-law suits to enforce the contracts that those administrators entered with the plan-sponsor employers. Such suits would add a glaring exception to ERISA's "uniform system of plan administration" by allowing beneficiaries to seek benefits outside ERISA's exclusive remedies. *Gobeille*, 577 U.S. at 323. Our caselaw prevents this result because it treats a breach-of-contract suit as having a preemptive connection to a plan whenever it implicates the "relations among the traditional ERISA plan entities" (plan beneficiaries, sponsors, and administrators). *PONI*,

399 F.3d at 700 (citation omitted). The Participants' claims against Regions implicate these relations.

That logic also shows why the Participants get nowhere with their analogy to our service-provider cases. Recall that ERISA does not preempt state-law claims that employers bring against the *nonfiduciary* service providers that help them operate their plans. *See id.* at 699. When the plans (or their employer sponsors) act like "any other commercial entity"—say, by leasing business space or obtaining a telephone plan for employees—any distinct contracts between these parties fall within the domain of state contract law rather than ERISA. *Id.* at 700 (citation omitted); *see Mackey*, 486 U.S. at 833. ERISA says nothing about a plan administrator's contract with Verizon even if that phone service helps it operate the plan. But this reasoning does not apply here because all agree that Regions would have had fiduciary duties under ERISA if it had managed ordinary plans rather than top-hat plans. That fact explains why the Participants seek to impose state-law fiduciary duties on the bank. Since Regions qualifies as "a traditional ERISA plan entity," though, the Participants may bring their claims against the bank only under ERISA's regime. *PONI*, 399 F.3d at 700.

Finally, the Participants direct us to the IRS's model rabbi-trust agreement. *See* Revenue Procedure 92-64, 1992 WL 509838. The model agreement says that it "shall be governed by and construed in accordance with the laws of" a specific State. *Id.* at *9. The Participants argue that this model term shows that ERISA does not preempt their attempts to enforce the rabbi-trust agreement under Alabama law. We disagree. Perhaps state law could govern a contract dispute between a plan-sponsor employer and the trustee of a rabbi trust. But we need not

decide that question. We hold only that plan beneficiaries may not avoid ERISA's "exclusive" provisions for seeking plan benefits by pursuing those benefits through a state-law contract claim as third-party beneficiaries of a rabbi-trust agreement. *Pilot Life*, 481 U.S. at 54.

III. ERISA's "Equitable" Remedies

The Participants thus fall back on one of ERISA's specific enforcement provisions. They challenge the district court's conclusion that they may not obtain their benefits under a provision that allows them to pursue "equitable relief" against Regions. 29 U.S.C. § 1132(a)(3). This claim falls short because the district court correctly recognized that the Participants seek legal relief.

A. The Meaning of "Equitable Relief" in § 1132(a)(3)

ERISA contains several "carefully crafted" causes of action in § 1132(a) that distinguish between the plaintiffs who may sue, the conduct that they may challenge, and the remedies that they may seek. *Mertens v. Hewitt Assoc.*, 508 U.S. 248, 254 (1993). Some paragraphs in § 1132(a) allow participants or beneficiaries to sue, *see* 29 U.S.C. § 1132(a)(1), while others allow the Secretary of Labor to sue, *see id.* § 1132(a)(5). Some permit suits only against those who qualify as ERISA fiduciaries, *see id.* § 1132(a)(2), while others permit suits against additional actors, *see id.* § 1132(a)(3); *see also Harris Tr. & Sav. Bank v. Salomon Smith Barney, Inc.*, 530 U.S. 238, 246 (2000); *Mertens*, 508 U.S. at 253. Some permit suits over violations of ERISA-covered plans, *see* 29 U.S.C. § 1132(a)(1)(B), while others permit suits over violations of ERISA itself, *see id.* § 1132(a)(4). And some permit many remedies (such as money damages), *see* 29 U.S.C. § 1132(a)(2), while others permit limited remedies (such as equitable relief),

see id. § 1132(a)(5); *see also Varity Corp. v. Howe*, 516 U.S. 489, 509–10 (1996).

This case concerns § 1132(a)(3)—what the Supreme Court has described as a "catchall" cause of action. *Varity*, 516 U.S. at 511. Section 1132(a)(3) permits a "participant, beneficiary, or fiduciary" to bring a lawsuit "to enjoin any act or practice which violates [ERISA] or the terms of the plan" or "to obtain other *appropriate equitable relief* (i) to redress such violations or (ii) to enforce [ERISA] or the terms of the plan[.]" 29 U.S.C. § 1132(a)(3) (emphasis added). The Participants claim that their request for benefits in this suit qualifies as "equitable relief" that they may seek under this cause of action. We thus must consider the meaning of that phrase.

The word equitable is a "legal term of art," so we presume that it comes with its technical legal meaning. *Ken Lick Coal Co. v. Dir., Off. of Workers' Comp. Programs*, 129 F.4th 370, 377 (6th Cir. 2025) (citation omitted); *see* Samuel L. Bray, *The Supreme Court and the New Equity*, 68 Vand. L. Rev. 997, 1013–14 (2015). It recalls the time in our history when governments divided their benches into distinct courts of equity and courts of law. *See Rose v. PSA Airlines, Inc.*, 80 F.4th 488, 497 (4th Cir. 2023) (citing Bray, *supra*, 68 Vand. L. Rev. at 998–99). These two courts could provide different types of remedies. *See id.* As "the classic form of *legal* relief," the law courts would grant compensatory damages. *Mertens*, 508 U.S. at 255. And as the classic form of *equitable* relief, the equity courts would grant injunctions. *Rose*, 80 F.4th at 498.

So which remedies fall within the phrase "equitable relief" in § 1132(a)(3)? When assessed against our history, that phrase could convey a broad idea or a narrow one. *See Mertens*, 508 U.S. at 255–59. Broadly, Congress might

have used the phrase to include *any* remedy that equity courts could grant in the "particular case at issue." *Id.* at 256. This view would have important implications for ERISA because the Supreme Court has long relied on the common law of trusts to interpret the law. *See Harris Tr.*, 530 U.S. at 250. Equity courts had exclusive jurisdiction over these trust cases, so beneficiaries could turn to the law courts only in narrow situations. *See CIGNA Corp. v. Amara*, 563 U.S. 421, 439–40 (2011); *Mertens*, 508 U.S. at 255–56 & n.6; *In re James' Estate*, 19 N.Y.S.2d 532, 534–35 (Surrogate's Ct. 1940). And when the equity courts had exclusive jurisdiction (as in trust cases), they could grant far more remedies than in cases over which they had concurrent jurisdiction with the law courts. *See Rose*, 80 F.4th at 498. Equity courts could, for example, issue money awards to beneficiaries for losses caused by a fiduciary-duty breach. *See Mertens*, 508 U.S. at 256. Thus, if the phrase "equitable relief" includes all remedies that equity courts could grant in trust cases, § 1132(a)(3) would essentially permit awards of money damages. *See id.* at 255–57; John H. Langbein, *What ERISA Means By "Equitable,"* 103 Colum. L. Rev. 1317, 1336–38, 1352–53 (2003).

Narrowly, Congress might have used the phrase "equitable relief" to cover only those remedies that would have been "traditionally viewed as 'equitable'" (rather than legal) at the time of ERISA's enactment. *Mertens*, 508 U.S. at 255. Under this view, even if an equity court could grant what most lawyers would call legal relief in special cases, that relief would still not qualify as "equitable" under § 1132(a)(3). Instead, courts would decide *as a general matter* whether a given remedy qualified as legal or equitable regardless of the cause of action at issue. *See id.* at 256. And, as the Fourth Circuit

has explained, the distinct remedies that the equity and law courts could issue when they had *concurrent* jurisdiction provides a good benchmark for the types of remedies that most lawyers would call equitable or legal. *See Rose*, 80 F.4th at 500, 502. Consider ordinary breach-of-contract cases. *See id.* at 497; Samuel L. Bray, *Equity, Law, and the Seventh Amendment*, 100 Tex. L. Rev. 467, 470, 488 (2022). The equity courts might grant specific performance to a plaintiff, but the plaintiff would have to turn to the law courts for damages. *See Rose*, 80 F.4th at 497. If "equitable relief" in § 1132(a)(3) comes with this narrower meaning, then, courts should divide all the types of relief—damages, injunctions, restitution, mandamus, accounting of profits, and the like—into equity and legal camps. And ERISA plaintiffs who sue under § 1132(a)(3) could seek only the remedies that fall within the equity camp.

Thankfully, we need not independently choose between these broad and narrow readings. For decades, the Supreme Court has held that Congress chose the narrower view of "equitable relief" in § 1132(a)(3). *See Montanile v. Bd. of Trs. of Nat'l Elevator Indus. Health Benefit Plan*, 577 U.S. 136, 142, 147–48 (2016); *US Airways, Inc. v. McCutchen*, 569 U.S. 88, 94 (2013); *Sereboff v. Mid Atl. Med. Servs., Inc.*, 547 U.S. 356, 361 (2006); *Great-West Life & Annuity Ins. v. Knudson*, 534 U.S. 204, 210, 219 (2002); *Mertens*, 508 U.S. at 255–59. The Court has explained that the phrase includes only those remedies "that were *typically* available in equity," not all remedies that equity courts could provide in, say, trust cases. *Mertens*, 508 U.S. at 256. The broader interpretation would effectively read out the word "equitable" from the statute because equity courts in trust cases could grant any conceivable remedy. *See id.* at 257.

And the Court noted that "'[e]quitable' relief must mean *something* less than *all* relief." *Id.* at 258 n.8.

When might a claim for money (like the Participants' request for their benefits) qualify as an "equitable" remedy? It depends. *See Rose*, 80 F.4th at 498. Of most note, the Supreme Court in *Mertens* concluded that a request for "compensatory *damages*"—that is, a request for "monetary relief" measured by the plaintiff's "losses"—falls on the nonactionable legal side of the divide. 508 U.S. at 255. *Mertens* thus held that plan beneficiaries could not sue under § 1132(a)(3) to recover their monetary losses from a nonfiduciary who knowingly participated in an administrator's breach of fiduciary duties. *See id.* at 255–56.

The Court, by contrast, has adopted nuanced rules when a party requests money under the "restitution" name. Often, a plan administrator who invokes a subrogation clause in a plan will ask beneficiaries to turn over money that they recover from third-party tortfeasors to reimburse the plan for expenses paid on the beneficiaries' behalf. *See Montanile*, 577 U.S. at 139–40; *McCutchen*, 569 U.S. at 92–93; *Sereboff*, 547 U.S. at 359–60; *Knudson*, 534 U.S. at 207. In this situation, administrators commonly seek "restitution" from beneficiaries under § 1132(a)(3). *See Knudson*, 534 U.S. at 212. But the generic "restitution" remedy can qualify as either legal or equitable. *See id.* at 212–13. For this remedy to be equitable, the fiduciary must seek *specific* "funds" in the beneficiaries' possession—not a money judgment collectable from any of the beneficiaries' *general* assets. *See id.* at 213–14; *see also Montanile*, 577 U.S. at 145. Thus, when beneficiaries still possessed the funds that they obtained from tortfeasors, plan administrators could seek the funds under § 1132(a)(3). *See Sereboff*, 547 U.S. at

360, 362–63. But administrators could not invoke this cause of action if the beneficiaries had already spent the funds they received from tortfeasors on nontraceable assets. *See Montanile*, 577 U.S. at 144–46.

B. The Nature of the Participants' Requested Remedy

This law requires us to characterize the nature of the relief that the Participants seek. Before addressing that remedies question, though, we start with a liability disclaimer: it is "far from clear" that the Participants' allegations suffice to hold Regions liable under § 1132(a)(3). *Mertens*, 508 U.S. at 253. This provision does not allow the Participants to pursue "appropriate equitable relief" in the abstract; they may pursue that relief only "to redress" a violation of ERISA or the Plans or to "enforce" the law or plan terms. 29 U.S.C. § 1132(a)(3). Yet the Participants have identified no plan terms that Regions violated. Quite the opposite. To shield their state-law claims from preemption, the Participants argue that they seek to enforce the *trust agreement*, not the *Plans*. They also do not argue that Regions violated ERISA because, again, the statute exempts top-hat plans from its fiduciary-duty rules. All this said, neither party has addressed this predicate question whether the Participants even identify a "remediable wrong[.]" *Mertens*, 508 U.S. at 254. We thus will resolve "this case on the narrow battlefield the parties have chosen" by jumping past any liability issues to the remedies question. *Id.* at 255.

So what type of relief do the Participants seek? We can immediately rule out one possibility: equitable restitution. The Participants concede that they do not (and could not) seek that form of equitable relief. Among other reasons, Regions turned over the Plans' assets to the bankruptcy court and no longer possesses them. The Participants thus

seek money from the bank's "general assets," not from a specific fund. *See Montanile*, 577 U.S. at 144–45.

Instead, the Participants' complaint requested an "equitable surcharge" from Regions—a surcharge that they measured by "the amounts that should have been paid to [them] as benefits under" the Plans. Complaint, R.19, PageID 376. Was this remedy "*typically* available in equity" under the Supreme Court's cases? *Mertens*, 508 U.S. at 256. The Participants' argument that it qualifies as equitable rests on the Supreme Court decision in *Amara*. *Amara* suggested that equity courts could grant a beneficiary "monetary 'compensation' for a loss resulting from a trustee's breach of duty[.]" 563 U.S. at 441. It added that courts "sometimes" called this "monetary remedy" a "surcharge" and viewed it as "exclusively equitable." *Id.* at 442 (citation omitted).

In the years after *Amara*, several courts relied on that decision to conclude that ERISA plan participants may seek this type of monetary award against ERISA fiduciaries under § 1132(a)(3). *See Gimeno v. NCHMD, Inc.*, 38 F.4th 910, 914–15 (11th Cir. 2022) (collecting cases). Yet the Fourth Circuit has since disagreed. *See Rose*, 80 F.4th at 499–504. It held that an "equitable surcharge" for a beneficiary's losses qualifies as a damages remedy that *Mertens* does not permit ERISA plaintiffs to recover under § 1132(a)(3). *See id.* The Fourth Circuit reasoned that equity courts could order an equitable surcharge only in trust cases when they had exclusive jurisdiction. *See id.* at 500. The court further explained that this remedy was not *typically* available in equity because equity courts could not grant it in concurrent-jurisdiction cases. *See id.*

For four reasons, we side with the Fourth Circuit. *First*, the Supreme Court has described *Amara*'s

surcharge discussion as dicta that "was not essential" to its vacatur judgment. *Montanile*, 577 U.S. at 148 n.3; *see Rochow v. Life Ins. Co. of N. Am.*, 780 F.3d 364, 375 n.4 (6th Cir. 2015) (en banc). In *Amara*, plan participants had alleged that a plan sponsor violated ERISA by misleading them about changes to their retirement plan. *See* 563 U.S. at 426–30. A district court agreed. *Id.* at 431–32. As for the remedy, the court reformed the terms of the changed plan to match the employer's representations and ordered the employer to pay the higher benefits that resulted. *Id.* at 433–34. The district court held that it could impose this remedy under the ERISA provision that allows participants to seek their benefits: § 1132(a)(1)(B). *Id.* at 434. On appeal, the Supreme Court reversed, holding that this separate ERISA cause of action did not give the district court the power to change the plan's terms. *Id.* at 435–38. Yet, in an unbriefed discussion, the Court then suggested that § 1132(a)(3) might permit the district court to reform the plan and order an equitable surcharge. *See id.* at 438–45; *see also id.* at 447 (Scalia, J., concurring in the judgment). Ultimately, however, the Court did not resolve this issue and instead told the district court to decide "which remedies are appropriate" on remand. *Id.* at 442 (majority opinion).

Second, *Amara*'s dicta conflicts with *Mertens*'s holding. The word "surcharge" is the label that equity courts "sometimes" used in trust cases to describe the monetary award that the law courts called damages. Langbein, *supra*, 103 Colum. L. Rev. at 1352–53; *Rose*, 80 F.4th at 498. The equity courts might also have used terms like "equitable compensation," "equitable damages," or simply "damages" to describe these awards. Samuel L. Bray, *Fiduciary Remedies*, *in* The Oxford Handbook of Fiduciary Law 449, 456 (Evan J. Criddle et al. eds., 2019)).

In other words, surcharge and damages are "essentially equivalent" because they describe the same concept: "monetary relief" that a legal or equity court would grant to compensate a plaintiff for the losses that the defendant caused. *Rose*, 80 F.4th at 498; *see* Langbein, *supra*, 103 Colum. L. Rev. at 1352–53; Bray, *supra*, *Fiduciary Remedies*, at 456. And the Supreme Court in *Mertens* held that this remedy—"monetary relief for all losses [the participants'] plan sustained as a result of the alleged breach of fiduciary duties"—fell outside the phrase "equitable relief" in § 1132(a)(3). 508 U.S. at 255–59. The Court reached that result even though it acknowledged that equity courts *could* grant this monetary relief (no matter its name) in trust cases within their exclusive jurisdiction. *See id.* at 255–56. Nothing in *Mertens* suggests that the Court would have changed its mind if the participants had simply changed the name of their monetary remedy from *damages* to *surcharge*. *See id.*; *Rose*, 80 F.4th at 500, 503–04.

In its dicta, *Amara* tried to distinguish *Mertens* on the ground that the defendant in *Amara* was "analogous to a trustee" while the defendant in *Mertens* was analogous to a nonfiduciary who knowingly participated in the trustee's breach. 563 U.S. at 442; *see Mertens*, 508 U.S. at 251. But this distinction did not matter under the common law of trusts. The equity courts in trust cases could grant monetary relief *not just* against the "trustee" for a breach of a fiduciary duty (like the defendant in *Amara*), *but also* "against third persons who knowingly participated in the trustee's breach" (like the defendant in *Mertens*). *Mertens*, 508 U.S. at 256. Indeed, the common-law authorities on which *Amara* relied (such as Bogert's and Pomeroy's treatises) made this point. *See Amara*, 563 U.S. at 442. According to Pomeroy, "[i]f third persons are

parties to a breach of trust, they are equally liable with the trustee" for the money remedy. 4 John Norton Pomeroy, *A Treatise on Equity Jurisprudence* § 1080, at 230 (5th ed. 1941); *see* George Gleason Bogert et al., *Bogert's The Law of Trusts and Trustees* § 901, Westlaw (database updated May 2025). So *Mertens*'s logic—that the phrase "equitable relief" in § 1132(a)(3) does not include this monetary remedy because it was not "*typically* available in equity" outside trust cases—applies to claims against fiduciaries too. No common-law basis exists for allowing courts to exercise this remedy against trustees but not against those who knowingly aid the trustee's breach. Either the remedy should exist in both cases or it should exist in neither. And *Mertens* took the latter course.

Third, our precedent also rejects this purported distinction of *Mertens*. *See Helfrich v. PNC Bank, Ky., Inc.*, 267 F.3d 477, 480–82 (6th Cir. 2001). In *Helfrich*, a plan participant sought money from a bank under § 1132(a)(3) for the losses that the bank's breaches of its fiduciary duties caused. *See id.* at 479–80. We held that the participant could not pursue this relief against the bank under § 1132(a)(3). *See id.* at 480–82. Like *Mertens*, we recognized that an equity court could grant "money damages" against a trustee for a breach of a fiduciary duty. *Id.* at 482. But we recognized that *Mertens*'s logic extended from a case against a nonfiduciary for aiding a trustee's breach (the facts of *Mertens*) to a case against the trustee itself (the facts of *Helfrich*). *See id.* And although *Helfrich* used the term "damages" rather than "surcharge," we fail to see why the label should matter. Indeed, even the Participants conflate these terms. Their briefing on the state-law claims argues that "they are seeking *damages* from Regions[.]" Reply Br. 6. In short, no matter the name for this money remedy, *Helfrich* holds

that courts may not grant a monetary award under § 1132(a)(3) to compensate a plan participant for losses caused by a fiduciary.

This precedent matters. We must follow *Helfrich* until the Supreme Court or our en banc court overturns it. *See Salmi v. Sec'y of Health & Hum. Servs.*, 774 F.2d 685, 689 (6th Cir. 1985). True, *Helfrich* predates *Amara*. Also true, our caselaw allows us to reevaluate our earlier decisions based on the Supreme Court's intervening dicta. *See United States v. Fields*, 53 F.4th 1027, 1048 & n.13 (6th Cir. 2022). And some of our unpublished cases have mentioned surcharge in passing as a potential remedy after *Amara*. *See Brown v. United of Omaha Life Ins.*, 661 F. App'x 852, 860 (6th Cir. 2016); *Stiso v. Int'l Steel Grp.*, 604 F. App'x 494, 500 (6th Cir. 2015); *see also Rochow*, 780 F.3d at 375 & n.4. Still, we will refuse to follow the Supreme Court's dicta if we have a "substantial reason" for the refusal—such as "subsequent statements" by the Court "undermining" the "rationale" of its earlier dicta. *Ellmann v. Baker (In re Baker)*, 791 F.3d 677, 682 (6th Cir. 2015) (citation omitted).

That brings us to our *fourth* and final point: The Supreme Court has since distanced itself from *Amara*'s dicta. *See Montanile*, 577 U.S. at 148 n.3; *Rose*, 80 F.4th at 503–04. In *Montanile*, the Court reaffirmed *Mertens*'s holding that legal remedies do not qualify as "equitable relief" under § 1132(a)(3) even if equity courts could grant those remedies when exercising their exclusive jurisdiction in trust cases. 577 U.S. at 149. *Montanile* also relegated *Amara*'s dicta to a footnote clarifying that *Mertens*'s interpretation of § 1132(a)(3) "remains unchanged." *Id.* at 148 n.3. Because we had followed *Mertens*'s interpretation in *Helfrich*, that decision remains good law: § 1132(a)(3) does not permit plan

participants to seek monetary relief from fiduciaries for the losses that they suffer because of the fiduciaries' breach of their duties. 267 F.3d at 480–82. And *Helfrich*'s holding forecloses the Participants' request for monetary relief here.

One last point. Even if the Participants cannot fit their relief within § 1132(a)(3), they ask us to create a new cause of action as a matter of the federal common law that courts may develop under ERISA. They misjudge the scope of this federal common-law authority. The Supreme Court has held that courts lack any "federal common law" power "to revise the text of the statute" by creating a cause of action that Congress did not provide in § 1132(a). *Mertens*, 508 U.S. at 258 (citation omitted); *Mass. Mut. Life Ins. v. Russell*, 473 U.S. 134, 145–48 (1985). And that ERISA-specific precedent comports with the Court's general reticence to discover implied causes of actions in statutes that do not expressly contain them. *See Alexander v. Sandoval*, 532 U.S. 275, 286–87 (2001).

The cases on which the Participants rely for this point are not to the contrary. *See Kemmerer v. ICI Americas Inc.*, 70 F.3d 281, 287 (3d Cir. 1995); *Carr v. First Nationwide Bank*, 816 F. Supp. 1476, 1487 (N.D. Cal. 1993). These cases make clear that ERISA gives us the ability to develop a "federal common law" of contracts when resolving disputes over ERISA-covered plans in suits filed under one of the causes of action in § 1132(a). *See Pilot Life*, 481 U.S. at 56; *Standard Ins.*, 115 F.4th at 525–26. So, for example, federal courts may create a substantive body of contract law that establishes the "breach of contract" rules governing ERISA disputes. *Kemmerer*, 70 F.3d at 287. But the Participants take a giant leap beyond this "restricted" principle with their suggestion that courts also have the power to add causes

of action to the ones set forth in § 1132(a)(3). *Standard Ins.*, 115 F.4th at 525 (citation omitted). The Supreme Court has refused to take that leap. *Russell*, 473 U.S. at 145–48. So neither can we.

We affirm.

APPENDIX B

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TENNESSEE
KNOXVILLE DIVISION

JERRY ALDRIDGE, et al., Plaintiffs, v. REGIONS BANK, Defendant.	)))))))	3:21-CV-00082-DCLC-DCP

MEMORANDUM OPINION AND ORDER

Plaintiffs, a group of 96 former employees of Ruby Tuesday, Inc. ("RTI"), initiated this action against Regions Bank ("Regions") alleging various state law causes of action and a claim for equitable relief pursuant to the Employee Retirement Income Security Act of 1974 ("ERISA"), 29 U.S.C. § 1001, *et seq*. [Doc. 19]. The parties filed cross motions for summary judgment [Docs. 60, 61] and the Court heard oral argument on May 8, 2024. Thus, the motions are ripe for review.

I. BACKGROUND

The relevant undisputed facts of this matter are fairly straightforward. Plaintiffs participated in two nonqualified deferred compensation plans offered by RTI: the Executive Supplemental Pension Plan ("ESPP") and the Management Retirement Plan ("MRP") (together, the "Plans") [Doc. 66, ¶¶ 3, 25; Doc. 69-1, ¶ 1]. Both were "top hat" plans, *i.e.*, they were established to provide retirement benefits to "a select group of management or highly compensated employees" [Doc. 66, ¶ 39]. Pursuant to a Trust Agreement executed by RTI and Regions' predecessors in 1992, the Plan benefits were paid out of

assets held by Regions in an irrevocable grantor trust ("the Trust"), commonly referred to as a "rabbi trust"[1] [*Id.* at ¶ 45]. The Trust assets were invested in company owned life insurance ("COLI") policies and, "like all rabbi trusts," were "treated as general assets of [RTI]" and "remain[ed] subject to the claims of the general creditors of [RTI]" [*Id.* at ¶¶ 44, 45].

This combination of a top-hat plan and a rabbi trust is "designed in such a way as to avoid any present taxation of its intended beneficiaries." *Loffredo v. Daimler AG*, No. 10-14181, 2011 WL 2262389, at *3 (E.D. Mich. June 6, 2011), *aff'd in part, rev'd in part*, 500 F. App'x 491 (6th Cir. 2012) (citation omitted). "[I]n return for this tax benefit, beneficiaries of such plans remain vulnerable to the risk of losing their benefits in the event of their employer's bankruptcy." *Id.* Unfortunately, that is precisely what happened here. However, Plaintiffs assert that Regions' conduct with respect to the Trust assets and Plan benefit payments deprived them of benefits they would have otherwise received prior to RTI's bankruptcy.

At all times relevant to the instant action, RTI was the Primary Sponsor of the Trust and Regions served as Trustee [Doc. 66 at ¶¶ 49, 54]. The Trust Agreement, which

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[1] "A 'rabbi trust' is a mechanism through which an employer may segregate top-hat plan funds without jeopardizing a plan's unfunded status." *Loffredo v. Daimler AG*, 666 F. App'x 370, 372 (6th Cir. 2016) (citation and internal quotations omitted). Under such arrangement, "[f]unds held by the trust are out of reach of the employer but are subject to the claims of the employer's creditors in the event of bankruptcy or insolvency." *Id.* (citation omitted). "Because the trust corpus technically remains property of the employer, the beneficiaries of the trust are not taxed on their portion of the Trust corpus or Trust proceeds until the assets are actually distributed to the beneficiaries." *In re Outboard Marine Corp.*, 278 B.R. 778, 785 (N.D. Ill. 2002), *aff'd sub nom. Bank of Am., N.A. v. Moglia*, 330 F.3d 942 (7th Cir. 2003).

expressly incorporated the terms and conditions of the Plans, detailed RTI's and Regions' responsibilities and powers with respect to the Trust assets and Plan benefit payments [*See generally* Doc. 19-3]. Plaintiffs take the position that Regions violated the terms of the Plans and the Trust on multiple occasions from 2017 to 2020.

First, in December 2017, NRD Capital ("NRD") purchased RTI, which Plaintiffs allege triggered a "change of control" under the Trust Agreement [Doc. 69-1, ¶¶ 9, 10]. In the event of a change of control, the relevant provisions of the Trust Agreement required that RTI fully fund the Plans and empowered Regions to "take any and all legal action" to enforce RTI's obligations [Doc. 19-3, pgs. 7, 18]. But after the alleged change of control, RTI did not fully fund the Trust, and Regions did not take any action to enforce RTI's obligation to do so [Doc. 69-1, ¶¶ 14, 15].

Then, in March 2019, RTI's board of directors terminated the Plans and authorized lump sum payments to Plan participants as soon as possible after March 1, 2020, but before March 1, 2021 [Doc. 66, ¶¶ 89, 90]. RTI never notified Regions of the termination and never directed Regions to distribute lump sum payments [*Id.* at ¶ 92]. Thus, Regions neither distributed the lump sum payments and the Plan participants continued to receive monthly payments from March 2020 through July 2020 [Doc. 69-1, ¶ 27].

In July 2020, RTI instructed Regions to cease benefit payments as of August 1, 2020, and Regions complied [Doc. 69-1, ¶ 29; Doc. 19-7, pg. 61]. The Trust Agreement, however, only provided for the suspension of payments upon written notice of insolvency from RTI [Doc. 19-3, pg. 13]. Specifically, the Trust Agreement provides:

> If the Trustee should receive any written allegation of the insolvency of the Plan Sponsor, the Trustee shall suspend payments to participants and hold the assets of the Trust for the benefit of the creditors of the Plan Sponsor and, within a period of thirty (30) days after the receipt of the written allegation, determine whether the Plan Sponsor is insolvent. If the Trustee determines that the Plan Sponsor is solvent, it shall immediately resume payments to the participants or their beneficiaries. In the event that the Trustee has actual knowledge of the insolvency of the Plan Sponsor, the Trustee shall hold the assets of the Trust for the benefit of the creditors of the Plan Sponsor in the manner directed by a court of competent jurisdiction.

[*Id.*]. On September 2, 2020, RTI provided written notice to Regions that it was insolvent [Doc. 61-8, pg. 370].

After receiving inquiries from Plan participants asking why payments had stopped, Regions filed an interpleader action in the Northern District of Alabama on September 28, 2020, seeking a declaration from the court regarding the rights between RTI and Plan participants as to the August and September 2020 plan payments [Doc. 66, ¶¶ 136, 144]. On October 7, 2020, however, RTI filed for Chapter 11 bankruptcy in the District of Delaware [*Id.* at ¶ 145] and, on November 19, 2020, the bankruptcy court ordered Regions to liquidate and transfer the Trust assets to RTI's bankruptcy estate [*Id.* at ¶ 146]. Thereafter, Regions moved to dismiss the interpleader action and complied with the bankruptcy court's order [Doc. *Id.* at ¶ 147].

Plaintiffs, as members of an *ad hoc* group of plan participants, filed proofs of claims and objected to the bankruptcy court's order, opposing liquidation of the Trust [*Id.* at ¶¶ 148, 149]. Ultimately, the *ad hoc* group

stipulated to receive a pro-rata share of their claims from RTI in the bankruptcy case [*Id.* at ¶ 156] and some Plaintiffs recovered a portion of their benefit amounts from a third-party pursuant to a 1996 Tripartite Agreement [*Id.* at ¶ 160]. Despite those payments, Plaintiffs allege they lost over $35 million dollars in benefits [Doc. 96, pg. 19].

Based on the foregoing, Plaintiffs initiated the instant action against Regions alleging state law claims for breach of fiduciary duties, breach of trust, breach of contract, and negligence, along with a claim for equitable relief pursuant to ERISA § 502(a)(3), 29 U.S.C. § 1132(a)(3) [Doc. 1]. Plaintiffs filed an Amended Complaint on May 31, 2021 [Doc. 19], and Regions subsequently moved, in relevant part, to dismiss Plaintiffs' state law claims [Doc. 20]. On October 8, 2021, the Court found Plaintiffs' state law claims to be preempted by ERISA, 29 U.S.C. § 1144(a), granted Regions' motion to dismiss, and dismissed Plaintiffs' state law claims with prejudice [Doc. 34, pgs. 11–15]. On February 16, 2024, the parties filed cross motions for summary judgment [Docs. 60, 61] on Plaintiffs' sole remaining claim for equitable relief under ERISA § 502(a)(3).

II. LEGAL STANDARD

Summary judgment is proper where "'the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law.'" *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 247 (1986) (quoting Fed.R.Civ.P. 56(c)). The moving party bears the initial burden of demonstrating that no genuine issue of material fact exists. *Celotex Corp. v. Catrett*, 477 U.S. 317, 323 (1986). The burden then shifts to the nonmoving party

to "set forth specific facts showing that there is a genuine issue for trial." *Anderson*, 477 U.S. at 248 (citation omitted). A mere "scintilla of evidence" is not enough; the Court must determine whether, viewing the record in the light most favorable to the nonmoving party, a fair-minded jury could return a verdict in favor of the nonmoving party. *Id.* at 251–52; *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 587 (1986).

III. DISCUSSION

Plaintiffs allege that "Regions violated its duties as Trustee by failing to adequately protect the Trust property for the benefit of the Plaintiffs as beneficiaries of the Trust, failing to inform the Plaintiff beneficiaries of their rights upon a Change of Control, failing to take action against RTI to enforce RTI's obligations under the Trust, and failing to distribute the benefits to Participants upon the termination of the Plans" [Doc. 60-7, pg. 23].[2] Thus, Plaintiffs seek equitable relief under ERISA § 502(a)(3) "in the form of equitable surcharge in the amounts that should have been paid to [them] as benefits under the terms of the Plans and the Trust" [Doc. 19, ¶ 161]. Plaintiffs' ERISA claim, however, hits roadblocks at every turn.

As an initial matter, because the Plans are top-hat plans, they are exempt from ERISA's substantive

[2] Plaintiffs offer additional arguments in response to Regions' "claim of ignorance" as to the purchase of RTI by NRD and the termination of the Plans by the Board [Doc. 60-7, pgs. 16, 17, 20]. The parties also dispute the veracity of Regions' claimed "ministerial role" as Trustee and whether a "change of control" occurred under the terms of the Trust Agreement [Doc. 62, pgs. 9, 15; Doc. 67, pgs. 7, 9]. For the reasons provided herein, resolution of the foregoing disputes is not relevant to the disposition of the instant motions. Thus, the Court declines to discuss them further.

fiduciary requirements. *See Simpson v. Mead Corp.*, 187 F. App'x 481, 483 (6th Cir. 2006). Plaintiffs concede this point but assert that "Regions is subject to Alabama state trust law, including any fiduciary duties provided thereunder" because the Trust Agreement provides that it is to be construed in accordance with Alabama law [Doc. 70, pg. 3; Doc. 19-3, pg. 18]. It is well-established, however, that "[w]hen Congress exempts a plan from ERISA's fiduciary-duty requirements, as it did with top-hat plans, plaintiffs may not use state law to put back in what Congress has taken out." *Loffredo v. Daimler AG*, 500 F. App'x 491, 496 (6th Cir. 2012); *see Simpson*, 187 F. App'x at 484 (in addressing a top-hat plan, the Sixth Circuit noted that "ERISA provides that federal law supersedes all state laws that relate to an ERISA plan.") (quotations and citations omitted). The Court previously dismissed Plaintiffs' claim for breach of fiduciary duty as being preempted by ERISA, and they cannot reassert that claim under the guise of ERISA § 502(a)(3). *See Goldstein v. Johnson & Johnson*, 251 F.3d 433, 443 (3d Cir. 2001) ("[I]t is well established in the caselaw that there is no cause of action for breach of fiduciary duty involving a top hat plan.").

Recognizing that "[t]op hot plans are a 'unique animal' among ERISA benefit plans[,]" Plaintiffs assert that federal common law rules of contract law apply to the Plans at issue [Doc. 70, pg. 3] (citations omitted). But even if Plaintiffs could demonstrate that Regions violated the terms of the Trust or the Plans under principles of federal common law, the relief available under ERISA § 502(a)(3) is limited. Section 502(a)(3) "allows a participant, beneficiary, or fiduciary 'to obtain other appropriate equitable relief' to redress violations . . . of ERISA 'or the terms of the plan.'" *CIGNA Corp. v. Amara*, 563 U.S. 421,

438 (2011) (quoting 29 U.S.C. § 1132(a)(3)). "As used in § 502(a)(3) . . . 'equitable relief' refers to 'those categories of relief that were typically available in equity (such as injunction, mandamus, and restitution, but not compensatory damages).'" *Crosby v. Bowater Inc. Ret. Plan for Salaries Emps. of Great N. Paper, Inc.*, 382 F.3d 587, 594 (6th Cir. 2004) (quoting *Mertens v. Hewitt Associates*, 508 U.S. 248, 256 (1993)).

Here, Plaintiffs seek "equitable relief in the form of equitable surcharge to recompense [them] for losses caused by Regions' actions" [Doc. 19, pg. 31]. More specifically, they seek to recover the full amount of benefits they would have received under the Plans, plus interest [Doc. 60-7, pg. 23]. But Plaintiffs' requested relief is more akin to compensatory damages. "Almost invariably . . . suits seeking . . . to compel the defendant to pay a sum of money to the plaintiff are suits for 'money damages,' as that phrase has traditionally been applied, since they seek no more than compensation for loss resulting from the defendant's breach of legal duty." *Great-W. Life & Annuity Ins. Co. v. Knudson*, 534 U.S. 204, 210 (2002) (citation omitted). "And '[m]oney damages are, of course, the classic form of legal relief.'" *Id.* (quoting *Mertens*, 508 U.S. at 255).

Plaintiffs rely heavily on a line of cases following *CIGNA Corp. v. Amara*, in which the Supreme Court indicated that monetary relief is available under ERISA § 502(a)(3) in the form of an "equitable surcharge" for losses resulting from a fiduciary's breach of duty or to prevent unjust enrichment. 563 U.S. at 441. However, Plaintiffs have not alleged a theory of unjust enrichment and, as stated previously, Plaintiffs' ERISA claim based on a breach of fiduciary duty fails. Moreover, the Supreme Court more recently explained that its pre-*CIGNA*

interpretation of the term "'equitable relief' . . . remains unchanged." *Montanile v. Bd. of Trustees of Nat. Elevator Indus. Health Benefit Plan*, 577 U.S. 136, 148 n.3 (2016) (citations omitted).

Accordingly, although Plaintiffs classify their requested relief as an "equitable surcharge," they are, in essence, seeking monetary compensation for the full amount of benefits they would have received under the Plans prior to RTI's Chapter 11 bankruptcy. But "ERISA § 502(a)(3) . . . does not, in most situations, authorize an action for money claimed to be due and owing." *Crosby*, 382 F.3d at 589. Additionally, "[t]o plead claims for equitable relief . . . [Plaintiffs] would have to allege either that [Regions] currently (and improperly) possess[es] the assets dispersed from the trust or that [it] retain[ed] profits generated from that property." *Loffredo v. Daimler AG*, 500 F. App'x at 499. It is undisputed that the Trust assets were liquidated, transferred to the bankruptcy estate, and disbursed to RTI's creditors. Thus, Plaintiffs cannot allege that Regions has possession of the assets which it seeks to recover, and they do not allege that Regions retained profits generated from the Trust assets. In sum, Plaintiffs' ERISA § 502(a)(3) claim against Regions fails as a matter of law.

IV. CONCLUSION

For the reasons provided herein, Plaintiffs' Motion for Summary Judgment [Doc. 60] is **DENIED** and Regions' Motion for Summary Judgment [Doc. 61] is **GRANTED**. A separate judgment shall enter.

SO ORDERED:

s/Clifton L. Corker
United States District Judge

APPENDIX C

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TENNESSEE
KNOXVILLE DIVISION

JERRY ALDRIDGE, *et al.*, Plaintiff, vs. REGIONS BANK, Defendant.	)	3:21-CV-00082-DCLC-DCP

MEMORANDUM OPINION AND ORDER

This matter is before the Court to address Defendant's Motion to Change Venue [Doc. 12] and Motion to Dismiss Counts II through V of Plaintiffs' Amended Complaint [Doc. 20]. Plaintiffs filed a response in opposition to each motion [Docs. 24, 25] and Defendant filed replies [Docs. 29, 30]. This matter is now ripe for resolution. For the reasons that follow, Defendant's Motion to Change Venue [Doc. 12] is **DENIED** and its Motion to Dismiss is **GRANTED**.

I. BACKGROUND

According to Plaintiffs' amended complaint, Plaintiffs are former employees of Ruby Tuesday, Inc. (RTI) and are from a number of states, including Alabama and Tennessee [Doc. 19, ¶¶ 2-99]. They were members in RTI's nonqualified retirement benefit plans, the Executive Supplemental Pension Plan (ESPP) and the Management Retirement Plan (MRP) (collectively, the Plans) [*Id.*, ¶ 1]. A predecessor of RTI established the ESPP in May 1984 and the MRP in June 1989 [*Id.*, pg. ¶ 106]. RTI's predecessor established an irrevocable trust (Trust) to fund the Plans, and the governing Trust agreement binds RTI [*Id.*, ¶ 108]. RTI funded the Plans and Trust through

corporate-owned life insurance policies that were assigned to, and held in, the Trust by Defendant Regions Bank [*Id.*, ¶ 109]. Regions Bank also served as the trustee [*Id.*, ¶ 1].

In 2017, NRD Capital (NRD) purchased RTI, which triggered a "change of control" clause in the Trust agreement [*Id.*, ¶¶ 111-12]. The "change of control" clause allowed Regions Bank to "exercise its own independent judgment and take certain actions independent of direction from RTI" [*Id.*, ¶ 113]. In the event of a change of control, the Trust agreement required that RTI fund the Plans fully, as determined by Regions Bank, and empowered Regions Bank, as trustee, to "take any and all legal action" to enforce RTI's obligations under the agreement [*Id.*, ¶ 115]. Plaintiffs assert that RTI never funded the Trust after the change of control and that Regions Bank failed to enforce the terms of the Trust agreement requiring RTI to fully fund the Trust [*Id.*, ¶¶ 117-20].

RTI's board of directors terminated the Plans on March 1, 2019, and authorized lump sum distributions to the Plans' members as soon as possible after March 1, 2020, but before March 1, 2021 [*Id.*, ¶ 121]. Plaintiffs explain that, although RTI's board of directors terminated the Plans, the Plans' members continued to receive monthly payments from March 1, 2020, through July 2020 [*Id.*, ¶ 132]. Plaintiffs assert that RTI failed to prepare to distribute the Trust's assets to members and that Regions Bank failed to enforce RTI's obligation to distribute the Trust's assets in lump sum distributions after March 1, 2020 [*Id.*, ¶¶ 127-30]. Plaintiffs also assert Regions Bank failed to notify members of the Plans of their rights to lump sum distributions [*Id.*].

According to Plaintiffs, RTI orally directed Regions Bank to suspend payments scheduled for August 1, 2020,

under the Plans, which violated the terms of the Trust [*Id.*, ¶¶ 133-34]. On September 11, 2020, Regions Bank sent a letter to the Plans' members, explaining that RTI had notified Regions Bank on September 2, 2020, that it was insolvent [*Id.*, ¶¶ 136-37]. Plaintiffs contend that Regions Bank had no notice before September 2, 2020, that RTI was insolvent and that it failed to pay benefits under the Plans for the months of August and September [*Id.*, ¶ 138].

Due to the uncertainty surrounding the payment of benefits under the Plans and Trust, Regions Bank filed an interpleader action on September 28, 2020, in the United States District Court for the Northern District of Alabama, seeking a declaration from the court determining the rights between RTI and participants in the Plans as to the funds held in the Trust [*Id.*, ¶¶ 140-46].

On October 7, 2020, RTI filed a Chapter 11 bankruptcy petition in the United States Bankruptcy Court for the District of Delaware [*Id.*, ¶ 147]. A week later, RTI moved the bankruptcy court for authorization to exercise ownership rights over the Trust's assets [*Id.*, ¶ 149]. Plaintiffs objected to RTI's motion in the bankruptcy court, but the bankruptcy court granted RTI's motion and authorized RTI to exercise ownership rights over the Trust [*Id.*, ¶ 150]. The bankruptcy court also ordered Regions Bank to liquidate all of the Trust's assets and direct the proceeds to RTI's bankruptcy estate [*Id.*]. The bankruptcy court allowed RTI and Regions Bank to terminate the Trust following the distribution of its assets [*Id.*]. Because of the bankruptcy petition and order directing Regions Bank to liquidate and transfer the Trust assets, Regions Bank filed a motion to dismiss the interpleader complaint for lack of subject matter jurisdiction, which the district court granted on November 25, 2020 [*Id.*, ¶ 151].

Plaintiffs assert that, because of Regions Bank's actions, they did not receive the benefits to which they were entitled under the Plans before the liquidation and termination of the Trust [*Id.*, ¶ 156]. In support of their amended complaint, Plaintiffs attach the ESPP agreement, MRP agreement, the 1992 Trust agreement, RTI's board of directors' resolution to terminate the Plans, the September 11, 2020, letter from Regions Bank, an August 1, 2020, letter from RTI notifying the Plans' members that it would cease payments under the plans, and a copy of Regions Bank's interpleader complaint [Docs. 19-1, 19-2, 19-3, 19-4, 19-5, 19-6, 19-7].

Based on the preceding, Plaintiffs filed an amended complaint asserting a claim for equitable relief under the Employee Retirement Income Security Act (ERISA), 29 U.S.C. 1132(a)(3), and claims under Alabama law for breach of fiduciary duties, breach of trust, breach of contract, and negligence [Doc. 19, ¶¶ 158-85]. Plaintiffs assert venue is proper in this District because Regions Bank is found in the Eastern District of Tennessee and Regions Banks' allegedly unlawful actions occurred in this District [*Id.*, ¶ 104]. Regions Bank now moves to transfer venue to the United States District Court for the District of Delaware for referral to the bankruptcy court and for dismissal of Plaintiffs' state law claims, respectively [Docs. 12, 20]. For ease of reference, the Court addresses each motion in turn.

II. MOTION TO CHANGE VENUE [Doc. 12]

Regions Bank moves to transfer this case to the District of Delaware for referral to the bankruptcy court in that district [Doc. 13, pg. 5-6]. It contends the bankruptcy court can exercise jurisdiction over the present suit because the present suit is "related to" RTI's bankruptcy proceeding in Delaware [*Id.*, pg. 6]. It seeks

transfer only pursuant to 28 U.S.C. § 1412 and not the general statute governing transfer under 28 U.S.C. § 1404.

According to Regions Bank, a court may transfer a case under § 1412 through one of two disjunctive prongs: (1) in the interests of justice; or (2) for the convenience of the parties [*Id.*, pgs. 7-8]. It asserts that transfer is in the interests of justice because it would "facilitate the economic and efficient administration of [RTI's] bankruptcy estate" [*Id.*, pg. 9]. It notes that many of the issues have already been litigated in bankruptcy court [*Id.*, pg. 12-13]. In support of its motion, Regions Bank attaches the claims it submitted to the bankruptcy court, the Trust agreement, and emails between RTI and Regions Bank discussing payments to the Plans' members [Doc. 13-1]. It argues this case "is still in its infancy, and the parties have not conducted any discovery" [Doc. 13, pg. 10]. Additionally, it argues Tennessee has no interest in this case because the case involves Alabama state law claims [*Id.*]. Although it has branches in Tennessee, its headquarters is in Birmingham, Alabama [*Id.*]. Lastly, it contends that the convenience of the parties favors transfer because nearly 80% of Plaintiffs do not reside in the this [sic] District [*Id.*, pgs. 12-13].

Plaintiffs respond that Regions Bank's motion to change venue is not ripe because the Court has not addressed its related motion to dismiss their state law claims [Doc. 24, pg. 5]. Plaintiffs next argue that the present suit is not sufficiently "related to" the bankruptcy proceeding in Delaware to confer subject matter jurisdiction on that court under 28 U.S.C. § 1334 [*Id.*, pg. 6-8]. Plaintiffs contend that transfer is not in the interests of justice or in the interests of the parties [*Id.*, pg. 9-10]. Plaintiffs state that transferring the case to Delaware would not support the interests of the parties because

Plaintiffs' counsel is in Tennessee and the acts occurred here [*Id.*, pg. 10].

Regions Bank replies, stating that the Court need not address its partial motion to dismiss first before determining whether to transfer the case to the District of Delaware [Doc. 30, pgs. 1-3]. It reiterates that this case is related to RTI's bankruptcy [*Id.*, pgs. 3-9]. Regions Bank also reiterates that the interests of justice and the convenience of the parties favor transfer [*Id.*, pgs. 9-12]. In support of its reply, Regions Bank attaches a transcript from the bankruptcy court where the bankruptcy court allowed RTI to exercise ownership rights over the Plans [Doc. 30-1].

A. Analysis

Two different statutes authorize a district court to transfer a pending case to another district. Under 28 U.S.C. § 1404, the general change-of-venue statute, a district court may "transfer any civil action to any other district" for the "convenience of the parties and witnesses" or "in the interest of justice." 28 U.S.C. § 1404. That statute applies to any civil action. The other change-of-venue statute—28 U.S.C. § 1412—is more limited in its application. Under § 1412, a district court can "transfer a case or proceeding under title 11 to a district court for another district, in the interest of justice or for the convenience of the parties." 28 U.S.C. § 1412. Whereas § 1404 applies to any civil action, § 1412 is limited to "case[s] or proceeding[s] under title 11." *Id.*

But what constitutes "a case or proceeding under title 11"? Is § 1412 limited by its terms to only those cases or proceedings under title 11? Or does that statute also apply to cases that are not brought under title 11 but may relate to a case under title 11? Some courts have applied § 1412

to cases that relate to case under title 11. For example, in *Dwight v. Titlemax of Tenn., Inc.*, a district court used § 1412 to transfer a case that only "related to" a bankruptcy proceeding pending in Georgia. *Dwight v. Titlemax of Tenn., Inc.*, No. 1:09-CV-267, 2010 WL 330339, at *2 (E.D. Tenn. Jan. 21, 2010). The district court, however, did not elaborate on why § 1412 controlled as opposed to § 1404. Several other courts within the Sixth Circuit have also applied § 1412 to transfer a case that *relates to* a case under title 11. *JWJ Hotel Holdings, Inc. v. W&H Realty, LLC*, No. 1:18-CV-454, 2018 WL 3772179, at *4–*5 (S.D. Ohio Aug. 9, 2018); *Holland v. FCA U.S. LLC*, No. 1:15-CV-121, 2015 WL 5172996, at *4 (N.D. Ohio Sept. 3, 2015); *Mello v. Hare, Wynn, Newell & Newton, LLP*, No. 3:10-CV-243, 2010 WL 2253535, at *3 (M.D. Tenn. May 30, 2010). In *RFF Fam. P'ship, LP*, the case that Regions Bank relies on to support its motion for transfer, the court determined that § 1412 rather than § 1404 applied by looking to "the plain language of § 1412, read in the context of [28 U.S.C.] § 1409 and the legislative history of the venue provisions of the bankruptcy code." *RFF Fam. P'ship, LP v. Wasserman*, No. 1:07-CV-1617, 2010 WL 420014 at *5 (N.D. Ohio Jan. 29, 2010).

Other courts have found that § 1412, by its own terms, is limited only to cases brought "under title 11" and does not extend to cases that merely relate to another case under title 11. *See Zohar CDO 2003-1, Ltd. v. Patriarch Partners, LLC*, 620 B.R. 456, 462 (S.D.N.Y. 2020) ("transferring pursuant to Section 1412 on a bare finding that only "related to" jurisdiction existed is contrary to a plain reading of the statute."); *see also Rumore v. Wamstad*, No. 01-2997, 2001 WL 1426680, at *2 (E.D. La. Nov. 13, 2001) ("Since section 1412 does not contain the phrase, 'or related to,' most courts have found that motions

to transfer actions 'related to' title 11 cases should be governed by section 1404, the general change of venue provision.").

The Sixth Circuit has not explicitly addressed whether § 1412 applies to cases related to bankruptcy proceedings, but it has held that "§ 1412 applies *only to bankruptcy cases* that are properly venued in the first instance." *Thompson v. Greenwood*, 507 F.3d 416, 420 (6th Cir. 2007) (emphasis added). In analyzing the scope of § 1412, the Court begins with "the plain language of the statute." *Cowherd v. Million*, 380 F.3d 909, 913 (6th Cir. 2004) (internal quotations omitted). The Sixth Circuit emphasizes that, "[w]hen a statute is unambiguous, resort to legislative history and policy considerations is improper." *Id.* (internal quotations omitted); *see also United States ex rel. Felten v. William Beaumont Hosp.*, 993 F.3d 428, 431 (6th Cir. 2021) (stating that statutory language with a plain and unambiguous meaning does not allow a court to use "extra-textual" tools in its statutory interpretation). Section 1412 is clear; it pertains to "case[s] or proceeding[s] under Title 11." 28 U.S.C. § 1412. It does not, by its terms, include those cases that are not under title 11 but *relate to* others under title 11. The Court finds the omission of the "related to" language from § 1412 dispositive. In 28 U.S.C. § 1334, the statute addressing bankruptcy jurisdiction, Congress gave district courts "original but not exclusive jurisdiction of all civil proceeding arising under title 11, *or arising in or related to cases* under title 11." 28 U.S.C. § 1334(b) (emphasis added). Section 1334 identifies two types of cases: those arising under title 11 and those that relate to other cases that arise under title 11. Congress could have included the "related to" phrase in § 1412 just as it did in § 1334. But it chose not to. Cases that only relate to other cases under

title 11 are not themselves cases under title 11. The Court gives the phrase "under title 11" its ordinary meaning and limits the application of § 1412 to only those cases or proceedings under title 11. Resort to legislative history is unnecessary to interpret this statute.[1] *Cowherd*, 380 F.3d at 913; *see also Olden v. LaFarge Corp.*, 383 F.3d 495, 502 (6th Cir. 2004) (cautioning courts to resist the "strong incentive" to interpret unambiguous language as ambiguous to then resort to legislative history).

Plaintiffs' only federal claim is their ERISA claim, brought "under" title 29, not under title 11. [Doc. 19, ¶¶ 158-85]. Although Plaintiffs' ERISA claim relates to the bankruptcy proceeding in Delaware, the claim arises under a separate title of the federal code, not "under title 11." [*Id.*]. Thus, § 1412 does not apply. Accordingly, for the reasons stated herein, Defendant's Motion to Change Venue [Doc. 12] is **DENIED**.

III. PARTIAL MOTION TO DISMISS

Regions Bank next moves to dismiss Plaintiffs' state-law claims [Doc. 21, pgs. 1-11]. It argues that ERISA preempts Plaintiffs' state-law claims related to the Plans [*Id.*, pg. 1-2, 6]. According to Regions Bank, Plaintiffs' state-law claims challenge "the manner in which [it] administrated the Trust through the Plans and [] seek[] benefits under the guise of state law damages [that] are expressly preempted." [*Id.*, pg. 6]. It contends that, for preemption purposes, the exclusion of Plaintiffs' top-hat

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[1] Although a number of courts in the Sixth Circuit have determined that transfer under § 1412 is appropriate for cases related to bankruptcy proceedings, their analyses rest on the legislative history of the bankruptcy code and the changes that Congress made following the Supreme Court's decision in *N. Pipeline Constr. Co. v. Marathon Pipe Line Co.*, 458 U.S. 50 (1982).

Plans from ERISA's fiduciary-responsibility provisions is irrelevant [*Id.*, pg. 6].[2] Regions Bank asserts that Plaintiffs' allegations are related directly to its role in administering the Trust and intertwined with the Plans [*Id.*, pg. 7-8]. It states that Plaintiffs seek to recover the value of their Plans' benefits in the form of distributions under the Trust [*Id.*]. Regions Bank also states that the alleged acts that form the basis of the state-law claims were made in the context of administering Plaintiffs' benefit claims [*Id.*, pgs. 8]. It notes that the recovery Plaintiffs seek would be based on the benefits due under the Plans [*Id.*, pg. 9].

Plaintiffs respond, opposing Regions Bank's motion to dismiss their state-law claims [Doc. 25, pgs. 1-16]. They do not dispute that the Plans were covered by ERISA. Plaintiffs assert that Regions Bank's arguments in its motion to dismiss contradict its position in its previous interpleader suit [*Id.*, pgs. 2-3]. They next argue that Regions Bank mischaracterizes their claims to support its preemption argument [*Id.*, pgs. 3-4]. They explain that their state-law claims do not fall within any of the categories of claims that are preempted by ERISA [*Id.*, pg. 5]. They state that the Trust is a funding mechanism and is not an "employee benefit plan" as defined in ERISA [*Id.*, pg. 5-6]. Plaintiffs assert that, although the terms of the Plans are incorporated into the Trust, that incorporation "does not affect the Trust's purpose as a vehicle for funding the Plans and is consistent with its

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[2] Top-hat plans are retirement plans that are unfunded and used primarily for providing deferred compensation for a select group of management or highly compensated employees. 29 U.S.C. § 1051(2); *see Bakri v. Venture Mfg. Co.*, 473 F.3d 677, 678 n.1 (6th Cir. 2007). These plans fall outside the coverage of certain ERISA provisions. *Bakri*, 473 F.3d at 678 n.1.

operating separate and distinct from the Plans." [*Id.*, pg. 6].

Plaintiffs next contend that the Plans are not subject to the fiduciary provision of ERISA because the plans are top-hat plans [*Id.*]. They explain that their state-law claims are based on Regions Bank's status as trustee and that Alabama law shows that Regions Bank owed a duty to them to administer the Trust in accordance with the terms of the Trust agreement [*Id.*, pg. 7]. Plaintiffs state that, because there is no ERISA cause of action for breach of fiduciary duty of a top-hat plan, a state-law claim for the same would not interfere with the civil enforcement scheme of ERISA [*Id.*]. Plaintiffs next argue that their state-law claims do not seek benefits under an ERISA plan. [*Id.*, pg. 12]. Lastly, Plaintiffs assert that there is "no need to scrutinize" the terms of the Plans for any of their state-law claims [*Id.*, pgs. 14-15].

Regions Bank replies, reiterating its previous arguments [Doc. 29]. Regions Bank notes that the Trust agreement states that it is to be construed according to Alabama law and the laws of the United States, which includes ERISA [*Id.*, pg. 2]. It asserts that the fact that the Trust funds the Plans and governs how the Plans' benefits were paid means that the Trust is related to the Plans and the administration of the Plans [*Id.*, pg. 3]. Regions Bank states that the Trust agreement incorporates the terms of the Plans and that the Trust agreement refers to the beneficiaries as "participant or beneficiary under the Plans." [*Id.*]. It contends that it could only owe Plaintiffs the damages they seek because of the terms of the Plans [*Id.* pg. 4]. Regions Bank states that, to the extent it owes any duties to Plaintiffs, those duties exist because of the Plans [*Id.*, pgs. 6-7]. Lastly, Regions Bank argues that Plaintiffs' claims fall into all

three categories of claims that are preempted by ERISA and that those claims require interpretation of the Plans [*Id.*, pgs. 11-21].

A. Analysis

Federal Rule of Civil Procedure 8(a)(2) requires the complaint to contain a "short plain statement of the claim showing that the pleader is entitled to relief." Fed. R. Civ. P. 8(a)(2). Dismissal pursuant to Federal Rule of Civil Procedure 12(b)(6) eliminates a pleading or portion thereof that fails to state a claim upon which relief can be granted. Fed. R. Civ. P. 12(b)(6). A motion to dismiss under Rule 12(b)(6) requires the Court to construe the allegations in the complaint in the light most favorable to the plaintiff and accept all the complaint's factual allegations as true. *Meador v. Cabinet for Human Res.*, 902 F.2d 474, 475 (6th Cir. 1990). The Court may not grant a motion to dismiss based upon a disbelief of a complaint's factual allegations. *Lawler v. Marshall*, 898 F.2d 1196, 1199 (6th Cir. 1990). The Court liberally construes the complaint in favor of the opposing party. *Miller v. Currie*, 50 F.3d 373, 377 (6th Cir. 1995).

To survive dismissal, the plaintiff must allege facts that are sufficient "to raise a right to relief above the speculative level" and "to state a claim to relief that is plausible on its face." *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 555, 570 (2007); *see Ashcroft v. Iqbal*, 556 U.S. 662, 678–79 (2009). "A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." *Ashcroft*, 556 U.S. at 678. Dismissal is appropriate "if it is clear that no relief could be granted under any set of facts that could be proved consistent with the allegations." *Hishon v. King & Spalding*, 467 U.S. 69, 73 (1984).

Under 29 U.S.C. § 1144, ERISA preempts "any and all State laws insofar as they may now or hereafter relate to any employee benefit plan." 29 U.S.C. § 1144(a). The Supreme Court has explained that Congress used language that was "deliberately expansive[] and designed to establish pension plan regulation as exclusively a federal concern." *Pilot Life Ins. Co. v. Dedeaux*, 481 U.S. 41, 46 (1987) (internal quotations omitted). Express preemption under § 1144 is a defense, and it is grounds for dismissal. *Wright v. Gen. Motors. Corp.*, 262 F.3d 610, 613 (6th Cir. 2001). Thus, state-law claims that are expressly preempted under § 1144 should be dismissed with prejudice because such claims interfere with ERISA's civil-enforcement regime. *Briscoe v. Fine*, 444 F.3d 478, 501 (6th Cir. 2006). "Congress meant for [§ 1144] to ensure that plans and plan sponsors would be subject to a uniform body of benefits law." *Sherfel v. Newson*, 768 F.3d 561, 566 (6th Cir. 2014) (internal quotations omitted). Indeed, the Supreme Court reasoned that "[t]he policy choices reflected in the inclusion of certain remedies and the exclusion of others under the federal scheme would be completely undermined if ERISA-plan participants . . . were free to obtain remedies under state law that Congress rejected in ERISA." *Pilot Life Ins. Co.*, 481 U.S. at 54.

A claim is expressly preempted if it is based on a state law that "may now or hereafter relate to any employee benefit plan." 29 U.S.C. § 1144(a). State-law claims "relate to" ERISA plans if they: "(1) mandate employee benefit structures or their administration; (2) provide alternate enforcement mechanisms; or (3) bind employers or plan administrators to particular choices or preclude uniform administrative practice, thereby functioning as a regulation of an ERISA plan itself" or otherwise seek a

remedy that is "primarily plan-related." *Thurman v. Pfizer, Inc.*, 484 F.3d 855, 861 (6th Cir. 2007) (internal quotations omitted). The three categories above are disjunctive, and a claim can be preempted if it falls into one of the categories. *See id.* "A state law may therefore be preempted even if the law is not specifically designed to affect such plans, or the effect is only indirect." *Id.* "Thus, … even general state contract and tort laws may also be preempted by ERISA." *Id.*

Further, "any state-law cause of action that duplicates, supplements, or supplants the ERISA civil enforcement remedy conflicts with the clear congressional intent to make the ERISA remedy exclusive and is therefore pre-empted." *Aetna health Inc., v. Davila*, 542 U.S. 200, 209 (2004). Even if the facts of a case make "an ERISA action [unavailable] against particular defendants, the relief provided by ERISA is the only relief available." *Smith v. Provident Bank*, 170 F.3d 609, 615 (6th Cir. 1999). "[I]t is the nature of the claim . . . that determines whether ERISA applies, not whether the claim will succeed." *Id.* at 613. The Sixth Circuit has held that "[c]ommon law breach of fiduciary duty claims are clearly preempted by ERISA." *Id.*

Regions Bank relies heavily on *Loffredo v. Daimler AG*, 500 F. App'x 491 (6th Cir. 2012), and states that that case presents similar factual circumstances to the instant suit [Doc. 21, pg. 6]. In *Loffredo*, the plaintiffs were former executives and members of their employer's ERISA retirement plan who sued their employer and the bank that held the trust that funded the plan. *Loffredo*, 500 F.

App'x at 493-94.[3] As with the instant suit, the plaintiffs' employer in *Loffredo* declared bankruptcy without fully funding the trust, thereby losing the plaintiffs most of their retirement benefits. *Id.* The plaintiffs brought a number of state-law claims against their former employer and the bank, including breach of fiduciary duty and silent fraud. *Id.* at 493. The Sixth Circuit found ERISA preempted the state-law claims because they related to the employer's ERISA plans. *Id.* at 502-03 (Moore, J., concurring). Specifically, as to the breach-of-fiduciary-duty claim, the court reasoned that, although ERISA's fiduciary-responsibility protections did not apply to the employer's top-hat plans for the plaintiffs, the nature of the claim determined whether ERISA preemption applied and not the claim's likelihood of success. *Id.* at 502. As to the silent-fraud claim, the court determined that "by seeking to hold the defendants liable for conduct that allegedly resulted in lost benefits without challenging the denial of benefits itself, [plaintiffs were] attempting to create an alternative enforcement mechanism to ERISA's vehicle for recovery of benefits." *Id.*

Here, Plaintiffs' state-law claims are expressly preempted under § 1144. Specifically, Plaintiffs' state-law claims relate to the Plans by providing an alternate enforcement mechanism from the civil-enforcement regime outlined in ERISA and, therefore, have been expressly preempted by Congress. *Thurman*, 484 F.3d at 861. Additionally, because state-law claims are preempted if they fall into one of the categories outlined above, the

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[3] As noted at the beginning of the opinion, Judge Moore's concurring opinion is the controlling opinion for the legal analysis,. [sic] *See Loffredo*, 500 F. App'x at 493.

Court need not address whether Plaintiffs' state-law claims fall into the other two categories. *See id.*

Plaintiffs' state-law claims are intertwined with the Plans and are an attempt to enforce the Plans' terms against Regions Bank. [Doc. 19, ¶¶ 162-85]. As stated in their amended complaint, Plaintiffs seek relief for Regions Bank's alleged mishandling of the Trust that funded the Plans. [*Id.*]. Plaintiffs do not dispute that the Plans were covered by ERISA. Plaintiffs assert that Regions Bank owed them certain duties because of their status as Plan members. [*Id.*]. Further, Plaintiffs hope to recover the Plans' benefits they believe were lost because of Regions Bank's actions. [*Id.*]. Plaintiff's amended complaint makes clear that they are seeking to enforce the terms of the Plans through Alabama law rather than ERISA's regulatory scheme. Similar to the plaintiff in *Loffredo*, Plaintiffs do not challenge the denial of benefits directly and, instead, seek an alternative enforcement vehicle to recover those benefits. *See Loffredo*, 500 F. App'x at 502. Those claims, then, are expressly preempted because ERISA civil-enforcement regime is the only avenue of relief for vindication of Plaintiffs' rights under the Plans. *Smith*, 170 F.3d at 615.

Contrary to Plaintiffs' assertions, the exclusion of top-hat plans, like the Plans at issue here, from ERISA's fiduciary-responsibility provisions does not allow Plaintiffs to bring their state-law claims because it is the nature of the claim that determines whether preemption applies. *Id.* at 613. Moreover, their assertion that their breach-of-fiduciary-duty claim is not preempted because ERISA does not create a cause of action for such a claim is foreclosed by Sixth Circuit precedent. *Id.* Even if that claim were not foreclosed by precedent and an ERISA action is unavailable against Regions Bank, "the relief

provided by ERISA is the only relief available" to Plaintiffs. *Id.* at 615. Similarly, Plaintiffs' argument that Regions Bank's position in the present suit is contrary to their position in its interpleader suit is inapposite. Plaintiffs do not argue that any form of preclusion or waiver would prevent Regions Bank from moving for dismissal of their state-law claims.

Moreover, Plaintiffs own amended complaint belies their attempts to distinguish the Trust from the Plans. For example, Plaintiffs' breach-of-fiduciary-duty claim alleges that "Regions was a common law fiduciary of the Plans . . . [and] had a duty to act with respect to the Plans solely in the interest of the Plaintiffs as participants." [Doc. 19, ¶ 164]. Plaintiffs' breach-of-trust claim alleges that Regions Bank failed to inform Plaintiffs of their rights under the Plans following the change of control and that Regions Bank failed to protect the trust property, which funded the Plans. [*Id.*, ¶¶ 171-73]. Similarly, Plaintiffs assert that they failed to receive the retirement benefits to which they were entitled under the Plans in their breach-of-contract claim. [*Id.*, ¶¶ 175-80]. Plaintiffs' negligence claim also seeks to recover damages for Regions Bank's failure to protect their interests in the Plans and alleges that Regions Bank breached the relevant standard of care by failing to take actions related to the administration of the Plans. [*Id.*, ¶¶ 181-85].

Therefore, Plaintiffs' state-law claims are expressly preempted under § 1144 because those claims create an alternative enforcement mechanism. Regions Bank's Motion to Dismiss [Doc. 20] is **GRANTED**.

IV. CONCLUSION

Accordingly, for the reasons stated herein, Defendant's Motion to Change Venue [Doc. 12] is

DENIED and Defendant's Motion to Dismiss [Doc. 20] is **GRANTED**. It is hereby **ORDERED** that Plaintiffs' state-law claims against Defendant are **DISMISSED WITH PREJUDICE**.

SO ORDERED:

s/ Clifton L. Corker
United States District Judge