IN THE UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MISSOURI
WESTERN DIVISION

DERICK L. DOLL, et al.,	)	
	)	
Plaintiffs,	)	
	)	Case No. 25-00043-CV-W-SRB
v.	)	
	)	
EVERGY, INC., et al.,	)	
	)	
Defendants.	)	

ORDER

Before the Court is Defendant SageView Advisory Group LLC's ("SageView") Motion to Dismiss for Failure to State a Claim. (Doc. #88.) For the reasons set forth below, the motion is DENIED.

I. FACTUAL BACKGROUND[1]

This case arises from losses incurred by the Evergy, Inc. 401(k) defined-contribution pension savings plan (the "Plan") which is governed under the Employee Retirement Income Security Act ("ERISA"). The Plan allows participants to direct the investment of their contributions but limits the investment options to those selected by the Plan's fiduciaries. If a Plan participant does not instruct how they want their money invested in the Plan, their retirement assets are placed into a qualified default investment alternative ("QDIA") which can include Target Date Funds ("TDFs"). TDFs are actively managed funds that target specific dates of retirement by gradually shifting allocations of stocks, bonds, and cash overtime to more conservative investments as the retirement target date approaches. The QDIA for the Plan was

[1] The allegations are taken from Plaintiffs Derick Doll, Catherine Fluegel, and Joseph Nagle's (collectively "Plaintiffs") Second Amended Consolidated Class Action Complaint ("SAC") (Doc. #55) without further citation or attribution unless otherwise noted. In considering Defendant's motion to dismiss, the Court takes the facts pleaded in the SAC as true and construes them in the light most favorable to Plaintiffs as the non-moving party. *Hafley v. Lohman*, 90 F.3d 264, 266 (8th Cir. 1996).

the American Century TDFs, and Plaintiffs and other proposed Class Members are participants and beneficiaries of the Plan who invested in the American Century TDFs. SageView is the Plan's investment consultant and advisor. The Committee[2] is the Plan's administrator.

The Plan had investment policy statements ("IPSs") that set out investment management procedures. The first IPS went into effect in January 2010 (the "2010 IPS"), the second IPS went into effect in January 2013 (the "2013 IPS"), and the third IPS went into effect in September 2022 (the "2022 IPS"). The 2013 IPS stated:

> The [Plan] Committee, with the assistance of the Investment Consultant, [SageView,] will review the Plan's Investment Policy and monitor each investment option outlined in Appendix A on an ongoing basis, but no less frequently than annually. No less frequently than annually, the Committee will evaluate the investment results of the investment options.

(Doc. #55, p. 12.) Both the 2013 IPS and 2022 IPS had similar statements outlining that the IPS "are guidelines only" and that "fiduciaries are not required to follow them." (Doc. #55, p. 14.)

Each Plan's investment option was benchmarked to a specific market index, and fund performance was evaluated and compared to a relevant peer group and given a peer group ranking. When an investment option fell into SageView's third quartile ranking, the investment was placed on a watch list and monitored for four consecutive quarters. If the investment option remained in the third quartile for the four consecutive quarters, a "detailed review of the option was made and a recommendation to replace or retain the option would be presented to the Committee." (Doc. #55, p. 13.)

In September 2021, SageView reported that at least one of the American Century TDFs did not pass the IPS scoring criteria. By September 2023, five of the nine American Century

[2] Defendants Evergy, Inc. ("Evergy"), David A. Campbell ("Campbell"), Terry Bassham ("Bassham"), and the Administrative Committee of the Evergy, Inc. 401(k) Savings Plan's (the "Committee") filed a separate motion to dismiss (Doc. #65), which this Court has already addressed (Doc. #100).

TDFs did not pass the IPS scoring criteria. SageView "attributed the drop in rankings to the drop off of good years in the 3-and 5-year scoring," and took no further action. (Doc. #55, p. 19.) Another American Century TDF, the 2065 TDF, fell into the fourth quartile ranking in December 2023. Under the 2022 IPS, the Committee should have done an immediate analysis to determine whether to remove the fund. SageView likewise did not recommend an analysis of the 2065 TDF. By May 2024, seven of the nine American Century TDFs failed the IPS scoring criteria.

In May 2024, SageView recommended the Committee begin soliciting and reviewing proposals from other providers of TDFs. On September 11, 2024, after proposals from multiple providers, the Committee concluded that "the American Century [TDFs had] demonstrated underperformance over a five-year period and its glidepath exposes participants to more risk in retirement." (Doc. #55, pp. 19-20.) The Committee selected BlackRock TDFs as the Plan's new investment default option and, on January 6, 2025, removed the American Century TDFs from the Plan.

On June 24, 2025, Plaintiffs filed their SAC. The SAC asserts one claim against SageView: Count I—Breach of Duty of Prudence under ERISA. SageView has moved to dismiss Plaintiffs' claim against it under Federal Rule of Civil Procedure 12(b)(6) for failure to state a claim upon which relief can be granted. The parties' arguments are addressed below.

II. LEGAL STANDARD

Under Federal Rule of Civil Procedure 12(b)(6), a court may dismiss a claim for "failure to state a claim upon which relief can be granted." "To survive a motion to dismiss [for failure to state a claim], a complaint must contain sufficient factual matter, accepted as true, to state a claim to relief that is plausible on its face." *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (quotation marks omitted) (quoting *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 570 (2007));

Zink v. Lombardi, 783 F.3d 1089, 1098 (8th Cir. 2015). "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." *Ash v. Anderson Merchs., LLC*, 799 F.3d 957, 960 (8th Cir. 2015) (internal citation quotation marks omitted) (quoting *Iqbal*, 556 U.S. at 678). The Court must accept all facts alleged in the complaint as true when deciding a motion to dismiss. *See Data Mfg., Inc. v. United Parcel Serv., Inc.*, 557 F.3d 849, 851 (8th Cir. 2009) (noting "[t]he factual allegations of a complaint are assumed true and construed in favor of the plaintiff, even if it strikes a savvy judge that actual proof of those facts is improbable").

III. DISCUSSION

To prevail on a breach of fiduciary duty claim under ERISA, a plaintiff must establish that the defendant acted as a fiduciary, breached its fiduciary duties, and caused a loss to the Plan. *See Wildman v. Am. Century Servs., LLC*, 237 F. Supp. 3d 902, 912 (W.D. Mo. 2017) (citing *Pegram v. Herdrich*, 530 U.S. 211, 225–26 (2000)). Both fiduciary status and breach are disputed here. Each will be considered in turn.

A. Fiduciary Status

The parties agree that Plaintiffs do not allege SageView was named as the Plan's fiduciary in the Plan's governing document. "A party not specifically named as a fiduciary of a plan owes a fiduciary duty only 'to the extent' that party (i) exercises any discretionary authority or control over management of the plan or its assets; (ii) offers 'investment advice for a fee' to plan members; or (iii) has 'discretionary authority' over plan 'administration.'" *McCaffree Fin. Corp. v. Principal Life Ins. Co.*, 811 F.3d 998, 1002 (8th Cir. 2016) (quoting 29 U.S.C. § 1002(21)(A)).

According to SageView, Plaintiffs attempted to allege that SageView was a fiduciary through § 1002(21)(A)(i)—that SageView exercised discretionary authority or control over management of the plan or its assets—and their allegations are insufficient because "[t]he Complaint does not assert any facts that suggest SageView exercised any such final discretion." (Doc. #89, p. 14.) When Plaintiffs responded that "SageView was a fiduciary with respect to advising the Plan Committee as far as Plan investments and monitoring those investments[,]" (Doc. #99, p. 10), SageView argued that Plaintiffs switched their theory of fiduciary liability from § 1002(21)(A)(i) to § 1002(21)(A)(ii), and that "is not permitted." (Doc. #109, p. 4.)

Specifically, SageView contends that "Plaintiffs now argue that the SAC[ ] alleges SageView is a fiduciary because SageView provided investment advice for a fee. . . . The SAC[ ] alleges no such thing. Neither the word 'advice' nor the phrase 'investment advice' appear in the SAC[ ], not even once." (Doc. #109, p. 3.) SageView is correct that Plaintiffs do not use the word "advice" in their SAC. Plaintiffs do, however, use the words "advisor," "advising," and "advised":

> 1) "SageView Advisory Group LLC is a plan investment consultant and advisor." (Doc. #55, p. 9.)
>
> 2) "According to the January 2013 Plan IPS, '[t]he Investment Consultant, SageView Advisory Group, is a co-fiduciary charged with the responsibility of advising the Committee on investment policy, advising on the selection of investment managers, providing performance analysis and monitoring services, and educating the Committee on economic and investment trends that may impact the performance of the selected and available investment options.'" (Doc. #55, pp. 9-10.)
>
> 3) "Plan Committee minutes also suggest that SageView, co-fiduciary of the Evergy Plan, unreasonable favored retention of the American Century TDFS, even when prudent fiduciaries in similar circumstances would have advised their removal from the Plan." (Doc. #55, p. 16.)

While Plaintiffs do not verbatim state that SageView is a fiduciary to the Plan because it offers "investment advice for a fee," Plaintiffs plausibly allege that SageView is a fiduciary to the Plan as defined in § 1002(21)(A)(ii).

B. Breach

Turning to the breach element, SageView argues that "Plaintiffs have not alleged sufficient facts that SageView's process was imprudent." (Doc. #109, p. 4.) The duty of prudence requires fiduciaries to carry out their duties "with the care, skill, prudence, and diligence under the circumstances then prevailing." 29 U.S.C. § 1104(a)(1)(B). When determining whether a fiduciary has acted prudently, the court must "focus on the process by which it makes its decisions rather than the results of those decisions." *Braden v. Wal-Mart Stores, Inc.*, 588 F.3d 585, 595 (8th Cir. 2009).

Reading the following allegations together, the Court finds that Plaintiffs plausibly allege that SageView's investment advice process was imprudent:

1) "An overall SageView score is used to indicate where a fund places in relation to the score of the other funds in its category. SageView generally divides the funds in a category into deciles or quartiles." (Doc. #55, p. 13.)

2) "If the [investment] option remained in the 3rd quartile for four consecutive quarters, a detailed review of the option was made and a recommendation to replace or retain the option would be presented to the Committee." (Doc. #55, p. 13.)

3) In June 2019, "[a]ll nine of the One Choice Target Date Funds passed their IPS scoring criteria, with the series receiving an average Sage View ranking at the 25th percentile." (Doc. #55, p. 14.)

4) In September 2021, "SageView reported that at least one of the American Century Target Date funds had not passed IPS scoring criteria[.]" (Doc. #55, p. 18.)

5) "[I]n September 2023, when only four out of nine of the American Century Target date funds passe[d] IPS scoring criteria,[ ] SageView

simply 'attributed the drop in rankings to the drop off of good years in the 3-and 5-year scoring,' and took no further action." (Doc. #55, p. 19.)

6) [O]ne of the American Century Target Date Funds (American Century 2065 TDF) fell into the Fourth Quartile in December 2023, which required an immediate analysis of whether it should be removed under the September 2022 IPS, and this was not done by the Plan Committee or recommended by SageView." (Doc. #55, p. 19.)

7) In May of 2024, "SageView pointed that now only '[t]wo out of nine of the American Century Target Date Funds passed their IPS scoring criteria, with the series receiving an average SageView ranking at the 58th percentile. Mr. Gratton [from SageView] then briefly reviewed potential share class adjustments that could be implemented in the future.' Critically, SageView did not recommend any replacements for the American Century TDF funds." (Doc. #55 p. 19.)

SageView contends that the SAC "admits" that SageView's investment policy set forth in the IPS was prudent. (Doc. #109, p. 10.) Rather, the SAC states that the "IPS outlines and prescribes *what would have been, if implemented*, a prudent and acceptable investment philosophy." (Doc. #55, p. 10) (emphasis added). The Court concludes that Plaintiffs plausibly allege that SageView did not implement its investment advice policy, and therefore, that SageView breached its fiduciary duty of prudence.

IV. CONCLUSION

For the reasons stated above, Defendant's Motion to Dismiss for Failure to State a Claim (Doc. #88) is DENIED.

IT IS SO ORDERED.

/s/ Stephen R. Bough
STEPHEN R. BOUGH
UNITED STATES DISTRICT JUDGE

Dated: October 14, 2025