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

GUY M. LACROSSE, individually, and as a representative of a Class of Participants and Beneficiaries of the Jack Henry & Associates, Inc., Savings/Retirement Plan, Plaintiff, v. JACK HENRY & ASSOCIATES, INC., and RETIREMENT COMMITTEE OF THE JACK HENRY & ASSOCIATES, INC. 401(K) RETIREMENT SAVINGS PLAN, Defendants.	)	Case No. 23-cv-05088-SRB

ORDER

Before the Court is Defendant Jack Henry & Associates, Inc. ("Jack Henry") and Defendant Retirement Plan Committee of the Jack Henry and Associates, Inc. 401(k) Retirement Savings Plan's ("Retirement Committee") (collectively, "Defendants") Motion to Dismiss the Second Amended Class Action Complaint (the "Second Amended Complaint"). (Doc. #27.) For the reasons set forth below, the motion is DENIED.

I. FACTUAL BACKGROUND

The following allegations are taken from Plaintiff Guy Lacrosse's ("Plaintiff") Second Amended Complaint (Doc. #22) without further citation or attribution unless otherwise noted. Because this matter comes before the Court on a motion to dismiss, the allegations are taken as true. *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (internal citations and 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). Additional allegations relevant to the parties' arguments are discussed in Section III.[1]

Jack Henry is a financial technology provider. Jack Henry offers its employees an opportunity to invest in its 401(k) plan (the "Plan") which is governed by the Employee Retirement Income Security Act of 1974 ("ERISA"). *See* 29 U.S.C. § 1001 *et seq.* Jack Henry is the Plan Sponsor and the Retirement Committee is the Plan Administrator. The Retirement Committee "has exclusive responsibility and complete discretionary authority to control the operation, management, and administration of the Plan[.]" (Doc. #22, ¶ 26.) Employees that join the Plan are known as plan participants ("Participants"). (Doc. #22, ¶ 30) (quoting 29 U.S.C. § 1002(7)).

In June 2018, Plaintiff began working at Jack Henry and is currently employed by Defendants. On November 30, 2018, Plaintiff joined the Plan and is a current Participant. The Plan is a "defined contribution" pension plan under ERISA. (Doc. #22, ¶ 27) (quoting 29 U.S.C. § 1002(34)). The defined contribution plan allows Plaintiff and other employees to make pre-tax elective deferrals through payroll deductions to an individual account, and the employer may make a matching contribution.

Defendants hire third-party service providers to complete recordkeeping and administrative services ("RKA services") for the Plan. In general, the fee charged by a recordkeeper depends on the cost needed to provide the RKA services, the fee charged by other

[1] The Second Amended Complaint is 61 pages long and contains 176 separate allegations. This Order only discusses those allegations necessary to resolve the pending motion, and they are summarized to the extent possible. All page numbers refer to the pagination automatically generated by CM/ECF.

recordkeepers for a similar service, and the number of participants in the plan. During the relevant time period, the Plan retained and paid Prudential Retirement to provide RKA services.[2]

Plaintiff alleges that Defendants "breached their fiduciary duty of prudence by causing the Plan participants to pay excessive RKA fees." (Doc. #22, ¶ 8.) Among other things, Plaintiff alleges that Defendants failed "to ensure that the Plan's RKA fees were objectively reasonable," and to "defray reasonable expenses of administering the Plan[.]" (Doc. #22, ¶ 163.) Plaintiff also alleges that Defendants failed "to regularly monitor and evaluate the Plan's recordkeepers to make sure they were providing the RKA services at reasonable costs, given the highly competitive market surrounding RKA services and the significant bargaining power the Plan had to negotiate the best fees[.]" (Doc. #22, ¶ 164.) According to Plaintiff, Defendants paid an average of $78.00 per participant but comparator plans paid an average of only $39.00.

The Second Amended Complaint asserts two causes of action: breach of ERISA duty of prudence, and failure to adequately monitor other fiduciaries under ERISA. Plaintiff seeks various forms of relief, including an order requiring Defendants to "restore[] to the Plan all profits which the Participants would have made if the Defendants had fulfilled their fiduciary obligations[.]" (Doc. #22, p. 60.) Plaintiff requests seeks relief on behalf of himself and on behalf of a putative class. The putative class period begins October 9, 2017, and runs through the date of judgment.

Defendants now move to dismiss this case under Federal Rule of Civil Procedure 12(b)(6). Defendants argue in part that Plaintiff was required—but failed—"to plead that similar plans receiving the same services from the same vendor paid lower fees, giving rise to a plausible inference that had the Plan's fiduciaries properly employed prudent methods to

[2] Empower recently acquired Prudential. (Doc. #22, ¶ 117.)

negotiate and monitor fees, the Plan's fees would have been similarly low." (Doc. #28, p. 5.) Plaintiff opposes the motion, and the parties' arguments are addressed below.

II. LEGAL STANDARD

Rule 12(b)(6) provides that a defendant may move to dismiss for "failure to state a claim upon which relief can be granted." Fed. R. Civ. P. 12(b)(6). "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." *Iqbal*, 556 U.S. at 678 (quoting *Twombly*, 550 U.S. at 570). "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) (quoting *Iqbal*, 556 U.S. at 678). When deciding a motion to dismiss, "[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." *Data Mfg., Inc. v. United Parcel Serv., Inc.*, 557 F.3d 849, 851 (8th Cir. 2009) (citations and quotations omitted).

III. DISCUSSION

Under 29 U.S.C. § 1104(a)(1), those responsible for an ERISA plan have a fiduciary duty to act "solely in the interest of the participants," to "defray[] reasonable expenses of administering the plan," and to act with care and prudence. 29 U.S.C. § 1104(a)(1)(A), (B). With respect to the duty of prudence, fiduciaries must "carry out their duties with the care, skill, prudence, and diligence under the circumstances then prevailing that a prudent man acting in a like capacity and familiar with such matters would use in the conduct of an enterprise of a like character and with like aims." *Braden v. Wal-Mart Stores, Inc.*, 588 F.3d 585, 595 (8th Cir. 2009) (quoting 29 U.S.C. § 1104(a)(1)). The statutory duty of prudence is based on "an

objective standard that focuses on the process by which decisions are made, rather than the results of those decisions." *Davis v. Wash. Univ.*, 960 F.3d 478, 482 (8th Cir. 2020) (citations and quotations omitted). To state a claim for breach of the fiduciary duty of prudence, "a plaintiff must make a prima facie showing that the defendant acted as a fiduciary, breached its fiduciary duties, and thereby caused a loss to the Plan." *Braden*, 588 F.3d at 594.

In *Braden*, the Eighth Circuit explained how a court should evaluate ERISA claims in the motion to dismiss context:

> No matter how clever or diligent, ERISA plaintiffs generally lack the inside information necessary to make out their claims in detail unless and until discovery commences. Thus, while a plaintiff must offer sufficient factual allegations to show that he or she is not merely engaged in a fishing expedition or strike suit, we must also take account of their limited access to crucial information. If plaintiffs cannot state a claim without pleading facts which tend systemically to be in the sole possession of defendants, the remedial scheme of the statute will fail, and the crucial rights secured by ERISA will suffer. These considerations counsel careful and holistic evaluation of an ERISA complaint's factual allegations before concluding that they do not support a plausible inference that the plaintiff is entitled to relief.

Id. at 598.[3]

A. Count I—Breach of Duty of Prudence

Count I alleges that Defendants breached their fiduciary duty of prudence to the Plan by causing the Plan to pay excessive RKA fees. To state a claim for breach of prudence based on excessive recordkeeping fees, "a plaintiff typically clears the pleading bar by alleging enough facts to *infer* . . . that the process was flawed." *Matousek v. MidAmerican Energy Co.*, 51 F.4th 274, 278 (8th Cir. 2022) (citations and quotation marks omitted) (emphasis in original). "The key to nudging an inference of imprudence from possible to plausible is providing a sound basis

[3] Defendants argue—and the Court agrees—that "context is so critical for these claims that courts, and even individual judges, routinely reach different conclusions based on the specific circumstances of each case while all the time applying the same standards." (Doc. #34, p. 5.) However, the Court disagrees that this case should be dismissed based on the applicable legal standards, allegations, and context presented here.

for comparison—a meaningful benchmark—not just alleging that costs are too high[.]" *Id.* (citation and quotation marks omitted). A meaningful benchmark means identifying "similar plans offering the same services for less." *Id.* at 279.

Here, Plaintiff's Second Amended Complaint identifies eight separate plans (the "comparator plans") which are allegedly similar to Defendants' Plan. Plaintiff alleges the comparator plans received "materially the same level and quality of RKA services" as the Plan "but paid much lower RKA fees." (Doc. #22, ¶ 118.) According to Plaintiff, "[t]he Total RKA fees paid by these comparable plans provides evidence that the RKA fees paid by the Plan were excessive and unreasonable and leads to a likely inference that the Plan Fiduciaries employed an imprudent process." (Doc. #22, ¶ 124.)

Defendants contend the comparator plans are not a meaningful benchmark. Defendants raise several arguments, including that Plaintiff failed to adequately plead: (1) the comparator plans received the same RKA services as the Plan; (2) the comparator plans are the same size in terms of either participants and assets; and (3) the comparator plans rates for the entire class period and how Plaintiff calculated such rates. (Doc. #28, pp. 10-17.) The parties' arguments are addressed below.

First, Defendants argue that Plaintiff fails to "allege that the comparator plans received the same recordkeeping services as the Plan—or even received them from Prudential." (Doc. #28, p. 11.) Defendants further contend that Plaintiff impermissibly "alleges in conclusory fashion that services and service providers are irrelevant because recordkeeping services are commoditized and fungible." (Doc. #28, p. 12.)

Upon review, the Court rejects this argument. The Second Amended Complaint plausibly alleges that the Plan and the comparator plans provide the same services. As explained by Plaintiff, the Second Amended Complaint contains the following allegations:

> • A detailed summary of the services provided by recordkeepers, including "Bundled RKA Services" and "A La Carte Services." [Doc. #22, ¶¶ 40, 42.]
>
> • An explanation of how Bundled RKA Service are provided by recordkeepers as part of a standard offering of services that are priced without regard to differences in usage. *Id.* ¶ 41.
>
> • An explanation of how the fees associated with A La Carte Services, which are based on the conduct of individual plan participants and the usage of the A La Carte Services by those participants, would not result in a significant difference in the Total RKA fee rate per participant. *Id.* ¶¶ 42-49.
>
> • An explanation of how, while a recordkeeper might charge for brokerage services, this cannot explain the extraordinarily high recordkeeping fees paid by the Jack Henry Plan because the Jack Henry Plan did not use brokerage services. *Id.* ¶ 51.
>
> • An explanation of how retirement plan consultants and advisors use the Bundled RKA fee rate of different recordkeepers to make fee rate comparisons and determine whether a Bundled RKA fee rate is reasonable, which supports the inference that the RKA services provided by the major recordkeepers are materially identical. *Id.* ¶¶ 59-61.
>
> • A comparison of the recordkeeping services publicly offered by Fidelity and Empower, showing that they are essentially the same. *Id.* ¶¶ 63-73.

(Doc. #31, pp. 11-12.)

At the motion to dismiss stage, these allegations plausibly allege that the Plan and the comparator plans provide the same services. *See Davis*, 960 F.3d at 484 ("Plausibility depends on the totality of the specific allegations in [each] case.") The Court also finds that Plaintiff adequately alleged that even though "some recordkeepers *may* differ slightly in *how* they deliver the services . . . the services themselves are essentially a commodity." (Doc. #22, ¶ 73) (emphasis in original.) For these reasons, and the additional reasons stated by Plaintiff, the

Second Amended Complaint adequately alleges that the Plan and the comparator plans provide the same services.

Second, Defendants argue that "[n]one of Plaintiff's purported comparators are similar to the Plan in terms of either participants and assets." (Doc. #28, p. 14.) In support, Defendants contend that of the eight comparator plans, "three had assets under management that were 32-59% less than the Plan, three had 22-23% greater assets, and the remaining two differed by 16-17% in both directions—none are within even 15% of the Plan's asset size." (Doc. #28, p. 14.) Defendants further contend that "Plaintiff's comparator plans were within 10% of the Plan's participant count twice but only then for one of the two factors, participants, and are accompanied by a swing of -44% or + 17% in terms of assets." (Doc. #28, p. 14.)

Upon review, the Court rejects these arguments. For example, the Second Amended Complaint alleges that in 2018, the Plan had approximately $733,000,000 in assets and 7,205 participants. (Doc. #22, ¶ 117.) In 2018, the largest comparator plan had approximately $904,000,000 in assets and 8,902 participants; the smallest comparator plan had approximately $300,000,000 in assets and 6,149 participants. (Doc. #22, ¶ 117.) Plaintiff alleges that "[f]rom the years 2017 through 2022, and as compared to other plans of similar sizes with similar amounts of money under management, had Defendants been acting with prudence, the Plan actually would have paid significantly less[.]" (Doc. #22, ¶ 132.)

At the motion to dismiss stage, based on these allegations, and for the additional reasons stated by Plaintiff, the Court finds the Second Amended Complaint adequately alleges the comparator plans were similar in terms of assets and the number of participants. *See Rodriquez v. Hy-Vee, Inc.*, 4:22-cv-00072-SHL-HCA, 2022 WL 16648825, at *10 (S.D. Iowa Oct. 21, 2022)

("Given this limited universe of comparator options, Plaintiffs' Complaint does not become implausible simply because it identifies plans that are not exact enough in size[.]")

Third, Defendants argue this claim should be dismissed because Plaintiff "points only to 2018 data for his comparator plans to allege imprudence" and thus "any claim of imprudence for any other year must be dismissed." (Doc. #28, p. 15.) Defendants further argue that Plaintiff's "alleged fees for the comparator plans lack transparency" and that "Plaintiff's allegations about competitive bidding are a red herring." (Doc. #28, pp. 15-17.)

Upon review, these arguments are rejected. Plaintiff alleges in part that "by the start of, and during the entire Class Period, the level of fees that recordkeepers have been willing to accept for providing RKA was stable for mega plans, including the Jack Henry Plan. Reasonable recordkeeping fees paid in 2018 are representative of the reasonable fees during the entire Class Period." (Doc. #22, ¶ 93.) At the motion to dismiss stage, and based on the allegations in the Second Amended Complaint, the Court finds Plaintiff has plausibly alleged comparator fees throughout the class period. The Court similarly agrees with Plaintiff that "[a] lack of transparency is not a basis for dismissing Plaintiff's complaint." (Doc. #31, p. 17.) This issue may be further explored in discovery.

Finally, Plaintiff has plausibly alleged that Defendants breached their duty of prudence by failing to conduct competitive bidding for the Plan. Among other allegations, Plaintiff alleges that "Defendants either simply failed to do so, or did so ineffectively, given that it paid *over twice* the RKA fees than it should have." (Doc. #22, ¶ 141) (emphasis in original). As discussed above, these allegations are sufficient because Plaintiff has plausibly alleged that similar plans paid less for the same services. Defendants' reply brief contends that they did engage in

competitive bidding. However, whether Defendants did so and Defendants' competitive bidding process should be explored in discovery.

For these reasons, and for the additional reasons stated by Plaintiff, Count I adequately states a claim for breach of the fiduciary duty of prudence. *Braden*, 588 F.3d at 594 (recognizing that "the complaint should be read as a whole, not parsed piece by piece to determine whether each allegation, in isolation, is plausible"). Defendants' arguments to the contrary are rejected.

B. Count II—Breach of Duty to Monitor

Count II alleges that Defendants breached their duty to monitor the Plan. A failure to monitor claim is derivative of a breach of fiduciary duty claim. *See Brown v. Medtronic, Inc.*, 628 F.3d 451, 461 (8th Cir. 2010). A failure to monitor claim must therefore be dismissed if a plaintiff fails to adequately plead an underlying breach claim. *Id.*

Here, Defendants argue that "if this Court dismisses Count One, Count Two should also be dismissed." (Doc. #28, p. 17.) For the reasons discussed above, Plaintiff has adequately alleged that Defendants breached their duty of prudence. Consequently, Count II will not be dismissed.

IV. CONCLUSION

Accordingly, Defendants' Motion to Dismiss the Second Amended Class Action Complaint (Doc. #27) is DENIED.

IT IS SO ORDERED.

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

Dated: April 10, 2024