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VIA ECF

The Honorable Laura M. Provinzino
United States District Court
District of Minnesota
316 North Robert Street
St. Paul, MN 55101

Re: *Navarro, et al. v. Wells Fargo & Company, et al.*, No. 0:24-cv-03043-LMP-DTS

Dear Judge Provinzino,

Plaintiffs submit this letter to bring the Court's attention to the recent decision in *Duke v. Luxottica U.S. Holdings Corp.*, No. 2:21-cv-6072, 2024 WL 4904509 (S.D.N.Y. Nov. 27, 2024), which was issued after Plaintiffs submitted their response to Defendants' motion to dismiss.

Duke is a defined benefit pension plan case, which "alleges that Defendants breached their fiduciary duties ... by failing to provide actuarially equivalent benefits to Duke and others" in the Luxottica Group Pension Plan. *Duke*, 2024 WL 4904509, at *3. Similar to the present case, Duke was a "former employee," *id.* at *1, who asserted "claims under [ERISA] Section 502(a)(2) and Section 502(a)(3) on behalf of herself and a putative class of participants and their beneficiaries." *Id.* at *3. Like the present case, Duke also sought "Plan-wide remedies under [ERISA] Section 409, which allows relief in the form of restoration of losses experienced by the Plan, disgorgement of profits, and 'such other equitable or remedial relief as the court may deem appropriate' to remedy the breach of fiduciary duties." *Id.* (citing 29 U.S.C. § 1109).

The Defendants challenged Duke's standing to seek Section 502(a)(2) relief under *Thole*. *See id.* at *11. However, the court held that "unlike the *Thole* plaintiffs, Duke ... plausibly alleged that she will materially benefit from prevailing on her Section 502(a)(2) claims on behalf of the Plan." *Id.* at *8. In reaching this result, the court made several observations that are relevant here. First, "[t]he fact that Duke [was] a participant in a *defined benefit plan*, rather than a defined contribution plan, [was] not dispositive of the Section 502(a)(2) standing question" *Id.* (emphasis in original). Second, Duke plausibly alleged an injury to herself and the Plan because Defendants' fiduciary breach "deprived the Plan of funds needed to pay Duke and other Plan beneficiaries" *Id.* at *10. Third, these injuries were redressable through the remedy of "loss restoration" under ERISA § 409(a) and accompanying equitable relief "ensuring that the funds restored to the Plan are properly distributed" to affected plan participants. *Id.* The court held that "[t]his backward-looking relief is akin to restitution." *Id.*

Duke did not discuss standing or redressability under Section 502(a)(3) because a Plan provision "require[ed] arbitration of her Section 502(a)(3) claims on an individual basis." *Id.* at *15. Defendants have not identified any such arbitration provision here, but agree that "Plaintiffs' claims under Section 502(a)(3) seek individual relief and, as such, do not suffer from the redressability issues" alleged by Defendants with respect to Section 502(a)(2). ECF 30 at 14.

Respectfully,

/s/ Kai Richter

Kai Richter

cc: Defendants' counsel of record (via ECF)