

U.S. District Court
U.S. District of Minnesota (DMN)
CIVIL DOCKET FOR CASE #: 0:24-cv-03043-LMP-DLM
Internal Use Only

Navarro et al v. Wells Fargo & Company et al
Assigned to: Judge Laura M. Provinzino
Referred to: Magistrate Judge Douglas L. Micko
Cause: 29:1132 E.R.I.S.A.–Employee Benefits

Date Filed: 07/30/2024
Date Terminated: 03/03/2026
Jury Demand: None
Nature of Suit: 791 Labor: E.R.I.S.A.
Jurisdiction: Federal Question

Plaintiff

Sergio Navarro

*on their own behalf, on behalf of all
others similarly situated, and on behalf of
the Wells Fargo & Company Health Plan
and its component plans*

represented by **Allison Pienta**
Cohen Milstein Sellers & Toll PLLC
1100 New York Ave NW
Ste Eighth Floor
Washington, DC 20005
202-408-4600
Email: apienta@cohenmilstein.com
LEAD ATTORNEY
PRO HAC VICE
ATTORNEY TO BE NOTICED

Daniel E Gustafson

Gustafson Gluek PLLC
120 South 6th Street
Suite 2600
Mpls, MN 55402
612-333-8844
Fax: 612-339-6622
Email: dgustafson@gustafsongluek.com
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Daniel J Nordin

Gustafson Gluek PLLC
Canadian Pacific Plaza
120 South 6th Street, Suite 2600
Mpls, MN 55402
612-333-8844
Fax: 612-339-6622
Email: dnordin@gustafsongluek.com
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Jamie Crooks

Fairmark Partners, LLP
1001 G Street, NW
Ste. 400E

Washington, DC 20001
619-507-4182
Email: jamie@fairmarklaw.com
LEAD ATTORNEY
PRO HAC VICE
ATTORNEY TO BE NOTICED

Kai H Richter
Cohen Milstein Sellers & Toll PLLC
400 South 4th St.
Suite 401-27
Minneapolis, MN 55415
612-807-1575
Fax: 202-408-4699
Email: krichter@cohenmilstein.com
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Michael B. Eisenkraft
Cohen Milstein Sellers & Toll PLLC
88 Pine Street
Ste 14th Floor
New York, NY 10005
212-838-7797
Fax: 212-838-7745
Email: meisenkraft@cohenmilstein.com
LEAD ATTORNEY
PRO HAC VICE
ATTORNEY TO BE NOTICED

Michael D. Lieberman
Fairmark Partners LLP
400 7th Street NW
Suite 304
Washington, DC 20004
818-585-2903
Email: michael@fairmarklaw.com
LEAD ATTORNEY
PRO HAC VICE
ATTORNEY TO BE NOTICED

Michelle C Yau
Cohen Milstein Sellers & Toll PLLC
1100 New York Avenue, NW
Suite 800
Washington, DC 20005
202-408-4600
Fax: 202-408-4699
Email: myau@cohenmilstein.com
LEAD ATTORNEY
PRO HAC VICE
ATTORNEY TO BE NOTICED

Amanda M Williams
Bassford Remele, P.A.
100 S 5th St
Suite 1500
Minneapolis, MN 55402
612-333-3000
Email: awilliams@bassford.com
TERMINATED: 04/17/2025

Eleanor Emmons Frisch
Cohen Milstein Sellers & Toll PLLC
400 South 4th St.
Suite 401-29
Minneapolis, MN 55415
612-807-1575
Fax: 202-408-4699
Email: eleanor.frisch@gmail.com
TERMINATED: 05/22/2025

Plaintiff

Theresa Gamage

*on their own behalf, on behalf of all
others similarly situated, and on behalf of
the Wells Fargo & Company Health Plan
and its component plans*

represented by **Allison Pienta**

(See above for address)
*LEAD ATTORNEY
PRO HAC VICE
ATTORNEY TO BE NOTICED*

Daniel E Gustafson

(See above for address)
*LEAD ATTORNEY
ATTORNEY TO BE NOTICED*

Daniel J Nordin

(See above for address)
*LEAD ATTORNEY
ATTORNEY TO BE NOTICED*

Jamie Crooks

(See above for address)
*LEAD ATTORNEY
PRO HAC VICE
ATTORNEY TO BE NOTICED*

Kai H Richter

(See above for address)
*LEAD ATTORNEY
ATTORNEY TO BE NOTICED*

Michael B. Eisenkraft

(See above for address)
*LEAD ATTORNEY
PRO HAC VICE*

ATTORNEY TO BE NOTICED

Michael D. Lieberman
(See above for address)
LEAD ATTORNEY
PRO HAC VICE
ATTORNEY TO BE NOTICED

Michelle C Yau
(See above for address)
LEAD ATTORNEY
PRO HAC VICE
ATTORNEY TO BE NOTICED

Amanda M Williams
(See above for address)
TERMINATED: 04/17/2025

Eleanor Emmons Frisch
(See above for address)
TERMINATED: 05/22/2025

Plaintiff

Dayle Bulla
*on their own behalf, on behalf of all
others similarly situated, and on behalf of
the Wells Fargo & Company Health Plan
and its component plans*

represented by **Allison Pienta**
(See above for address)
LEAD ATTORNEY
PRO HAC VICE
ATTORNEY TO BE NOTICED

Daniel E Gustafson
(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Daniel J Nordin
(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Jamie Crooks
(See above for address)
LEAD ATTORNEY
PRO HAC VICE
ATTORNEY TO BE NOTICED

Kai H Richter
(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Michael B. Eisenkraft
(See above for address)

*LEAD ATTORNEY
PRO HAC VICE
ATTORNEY TO BE NOTICED*

Michael D. Lieberman
(See above for address)
*LEAD ATTORNEY
PRO HAC VICE
ATTORNEY TO BE NOTICED*

Michelle C Yau
(See above for address)
*LEAD ATTORNEY
PRO HAC VICE
ATTORNEY TO BE NOTICED*

Amanda M Williams
(See above for address)
TERMINATED: 04/17/2025

Eleanor Emmons Frisch
(See above for address)
TERMINATED: 05/22/2025

Plaintiff

Jane Kinsella
*on their own behalf, on behalf of all
others similarly situated, and on behalf of
the Wells Fargo & Company Health Plan
and its component plans*

represented by **Allison Pienta**
(See above for address)
*LEAD ATTORNEY
PRO HAC VICE
ATTORNEY TO BE NOTICED*

Daniel E Gustafson
(See above for address)
*LEAD ATTORNEY
ATTORNEY TO BE NOTICED*

Daniel J Nordin
(See above for address)
*LEAD ATTORNEY
ATTORNEY TO BE NOTICED*

Jamie Crooks
(See above for address)
*LEAD ATTORNEY
PRO HAC VICE
ATTORNEY TO BE NOTICED*

Kai H Richter
(See above for address)
*LEAD ATTORNEY
ATTORNEY TO BE NOTICED*

Michael B. Eisenkraft
(See above for address)
LEAD ATTORNEY
PRO HAC VICE
ATTORNEY TO BE NOTICED

Michael D. Lieberman
(See above for address)
LEAD ATTORNEY
PRO HAC VICE
ATTORNEY TO BE NOTICED

Michelle C Yau
(See above for address)
LEAD ATTORNEY
PRO HAC VICE
ATTORNEY TO BE NOTICED

Amanda M Williams
(See above for address)
TERMINATED: 04/17/2025

Eleanor Emmons Frisch
(See above for address)
TERMINATED: 05/22/2025

Plaintiff

Erica McKinley
*on their own behalf, on behalf of all
others similarly situated, and on behalf of
the Wells Fargo & Company Health Plan
and its component plans*

represented by **Daniel J Nordin**
(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Kai H Richter
(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

V.

Defendant

Wells Fargo & Company

represented by **Jeffrey P Justman**
Faegre Drinker Biddle & Reath LLP
90 S. 7th St.
Ste. 2200
Minneapolis, MN 55402
612-766-8862
Email: jeff.justman@faegredrinker.com
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Joseph Emanuel Clark

Proskauer Rose LLP
Eleven Times Square
New York, NY 10036
212-969-3178
Email: jclark@proskauer.com
LEAD ATTORNEY
PRO HAC VICE
ATTORNEY TO BE NOTICED

Kiera Murphy
Faegre Drinker Biddle & Reath LLP
90 South 7th St.
Suite 2200
Minneapolis, MN 55402
612-766-7000
Email: kiera.murphy@faegredrinker.com
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Richard A Duncan
Faegre Drinker Biddle & Reath LLP
90 S. 7th St.
Ste. 2200
Minneapolis, MN 55402
612-766-8612
Email: richard.duncan@faegredrinker.com
(Inactive)
TERMINATED: 12/20/2024
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Russell Laurence Hirschhorn
Proskauer Rose LLP
Eleven Times Square
Ste 18-26
New York, NY 10036
212-969-3286
Fax: 212-969-2900
Email: rhirschhorn@proskauer.com
LEAD ATTORNEY
PRO HAC VICE
ATTORNEY TO BE NOTICED

Sydney Juliano
11 Times Square
New York, NY 10036
212-969-3142
Email: sjuliano@proskauer.com
LEAD ATTORNEY
PRO HAC VICE
ATTORNEY TO BE NOTICED

Defendant

Michael Branca

TERMINATED: 05/08/2025

represented by **Jeffrey P Justman**
(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Joseph Emanuel Clark
(See above for address)
LEAD ATTORNEY
PRO HAC VICE
ATTORNEY TO BE NOTICED

Kiera Murphy
(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Richard A Duncan
(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Russell Laurence Hirschhorn
(See above for address)
LEAD ATTORNEY
PRO HAC VICE
ATTORNEY TO BE NOTICED

Sydney Juliano
(See above for address)
LEAD ATTORNEY
PRO HAC VICE
ATTORNEY TO BE NOTICED

Defendant

Mark Hickman

TERMINATED: 05/08/2025

represented by **Jeffrey P Justman**
(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Joseph Emanuel Clark
(See above for address)
LEAD ATTORNEY
PRO HAC VICE
ATTORNEY TO BE NOTICED

Kiera Murphy
(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Richard A Duncan
(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Russell Laurence Hirschhorn
(See above for address)
LEAD ATTORNEY
PRO HAC VICE
ATTORNEY TO BE NOTICED

Sydney Juliano
(See above for address)
LEAD ATTORNEY
PRO HAC VICE
ATTORNEY TO BE NOTICED

Defendant

Drew Wineland
TERMINATED: 05/08/2025

represented by **Jeffrey P Justman**
(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Joseph Emanuel Clark
(See above for address)
LEAD ATTORNEY
PRO HAC VICE
ATTORNEY TO BE NOTICED

Kiera Murphy
(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Richard A Duncan
(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Russell Laurence Hirschhorn
(See above for address)
LEAD ATTORNEY
PRO HAC VICE
ATTORNEY TO BE NOTICED

Sydney Juliano
(See above for address)
LEAD ATTORNEY
PRO HAC VICE
ATTORNEY TO BE NOTICED

Defendant

David Gallorese
TERMINATED: 05/08/2025

represented by **Jeffrey P Justman**
(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Joseph Emanuel Clark
(See above for address)
LEAD ATTORNEY
PRO HAC VICE
ATTORNEY TO BE NOTICED

Kiera Murphy
(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Richard A Duncan
(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Russell Laurence Hirschhorn
(See above for address)
LEAD ATTORNEY
PRO HAC VICE
ATTORNEY TO BE NOTICED

Sydney Juliano
(See above for address)
LEAD ATTORNEY
PRO HAC VICE
ATTORNEY TO BE NOTICED

Defendant

Bei Ling
TERMINATED: 05/08/2025

represented by **Jeffrey P Justman**
(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Joseph Emanuel Clark
(See above for address)
LEAD ATTORNEY
PRO HAC VICE
ATTORNEY TO BE NOTICED

Kiera Murphy
(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Richard A Duncan
(See above for address)

*LEAD ATTORNEY
ATTORNEY TO BE NOTICED*

Russell Laurence Hirschhorn
(See above for address)
*LEAD ATTORNEY
PRO HAC VICE
ATTORNEY TO BE NOTICED*

Sydney Juliano
(See above for address)
*LEAD ATTORNEY
PRO HAC VICE
ATTORNEY TO BE NOTICED*

Defendant

Does 1–20
TERMINATED: 05/08/2025

represented by **Jeffrey P Justman**
(See above for address)
*LEAD ATTORNEY
ATTORNEY TO BE NOTICED*

Joseph Emanuel Clark
(See above for address)
*LEAD ATTORNEY
PRO HAC VICE
ATTORNEY TO BE NOTICED*

Kiera Murphy
(See above for address)
*LEAD ATTORNEY
ATTORNEY TO BE NOTICED*

Richard A Duncan
(See above for address)
*LEAD ATTORNEY
ATTORNEY TO BE NOTICED*

Russell Laurence Hirschhorn
(See above for address)
*LEAD ATTORNEY
PRO HAC VICE
ATTORNEY TO BE NOTICED*

Sydney Juliano
(See above for address)
*LEAD ATTORNEY
PRO HAC VICE
ATTORNEY TO BE NOTICED*

Amicus

Amy B. Monahan

represented by

Carl F Engstrom
Engstrom Lee
323 Washington Avenue North
Suite 200
Minneapolis, MN 55401
612-305-8349
Email: cengstrom@engstromlee.com
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Email All Attorneys
Email All Attorneys and Additional Recipients

Date Filed	#	Docket Text
07/30/2024	<u>1</u>	COMPLAINT against Michael Branca, Does 1-20, David Galloreese, Mark Hickman, Bei Ling, Wells Fargo & Company, Drew Wineland (filing fee \$ 405, receipt number AMNDC-11228147) filed by Dayle Bulla, Theresa Gamage, Jane Kinsella, Sergio Navarro. Filer requests summons issued. (Attachments: # <u>1</u> Civil Cover Sheet) (Williams, Amanda) (Entered: 07/30/2024)
07/31/2024	2	(Text-Only) CLERK'S NOTICE OF INITIAL CASE ASSIGNMENT. Case assigned to Judge Kate M. Menedez per Civil Master 3rd/4th List, referred to Magistrate Judge David T. Schultz. Please use case number 24-cv-3043 KMM/DTS. <hr/> Notice: All Nongovernmental Corporate Parties must file a <u>Rule 7.1 Corporate Disclosure Statement</u>. <hr/> (LTT) (Entered: 07/31/2024)
07/31/2024	<u>3</u>	Summons Issued as to Michael Branca, Does 1-20, David Galloreese, Mark Hickman, Bei Ling, Wells Fargo & Company, Drew Wineland. (LTT) (Entered: 07/31/2024)
07/31/2024	4	(Text-Only) Notice re: Non-Admitted Attorney We have received documents listing Jamie Crooks, Michael Lieberman as counsel of record. If he or she wishes to be listed as an attorney of record in this case, he or she must be admitted to the bar of the U.S. District Court of Minnesota in accordance with <u>Local Rule 83.5 (a), (b) and (c)</u> or temporarily admitted pro hac vice in accordance with <u>Local Rule 83.5 (d) or (e)</u> . For more admissions information and forms, please see the Attorney Forms Section of the courts website at www.mnd.uscourts.gov/forms/all-forms . (LTT) (Entered: 07/31/2024)
07/31/2024	<u>5</u>	MOTION for Admission Pro Hac Vice for Attorney Jamie Crooks. Filing fee \$ 100, receipt number AMNDC-11231029 filed by Dayle Bulla, Theresa Gamage, Jane Kinsella, Sergio Navarro. (Williams, Amanda) (Entered: 07/31/2024)
07/31/2024	<u>6</u>	MOTION for Admission Pro Hac Vice for Attorney Michael Lieberman. Filing fee \$ 100, receipt number AMNDC-11231053 filed by Dayle Bulla, Theresa Gamage, Jane Kinsella, Sergio Navarro. (Williams, Amanda) (Entered: 07/31/2024)

08/01/2024	<u>7</u>	(Text-Only) ORDER granting <u>5</u> Motion for Admission Pro Hac Vice of Attorney Jamie Crooks for Dayle Bulla, Theresa Gamage, Jane Kinsella, and Sergio Navarro.; granting <u>6</u> Motion for Admission Pro Hac Vice of Attorney Michael D. Lieberman for Dayle Bulla, Theresa Gamage, Jane Kinsella, and Sergio Navarro. Approved by Magistrate Judge David T. Schultz on 8/1/2024. (jam) (Entered: 08/01/2024)
08/12/2024	<u>8</u>	NOTICE of Appearance by Jeffrey P Justman on behalf of All Defendants. (Justman, Jeffrey) (Entered: 08/12/2024)
08/12/2024	<u>9</u>	NOTICE of Appearance by Kiera Murphy on behalf of All Defendants. (Murphy, Kiera) (Entered: 08/12/2024)
08/12/2024	<u>10</u>	(Text-Only) Notice re: Non-Admitted Attorney We have received documents listing Russell L. Hirschhorn, Joseph E. Clark, Sydney L. Juliano as counsel of record. If he or she wishes to be listed as an attorney of record in this case, he or she must be admitted to the bar of the U.S. District Court of Minnesota in accordance with <u>Local Rule 83.5 (a), (b) and (c)</u> or temporarily admitted pro hac vice in accordance with <u>Local Rule 83.5 (d) or (e)</u> . For more admissions information and forms, please see the Attorney Forms Section of the courts website at www.mnd.uscourts.gov/forms/all-forms . (MMP) (Entered: 08/12/2024)
08/12/2024	<u>11</u>	MOTION for Admission Pro Hac Vice for Attorney Joseph E. Clark. Filing fee \$ 100, receipt number AMNDC-11256516 filed by Michael Branca, Does 1-20, David Galloreese, Mark Hickman, Bei Ling, Wells Fargo & Company, Drew Wineland. (Duncan, Richard) (Entered: 08/12/2024)
08/12/2024	<u>12</u>	MOTION for Admission Pro Hac Vice for Attorney Sydney L. Juliano. Filing fee \$ 100, receipt number AMNDC-11256547 filed by Michael Branca, Does 1-20, David Galloreese, Mark Hickman, Bei Ling, Wells Fargo & Company, Drew Wineland. (Duncan, Richard) (Entered: 08/12/2024)
08/12/2024	<u>13</u>	MOTION for Admission Pro Hac Vice for Attorney Russell L. Hirschhorn. Filing fee \$ 100, receipt number AMNDC-11256559 filed by Michael Branca, Does 1-20, David Galloreese, Mark Hickman, Bei Ling, Wells Fargo & Company, Drew Wineland. (Duncan, Richard) (Entered: 08/12/2024)
08/13/2024	<u>14</u>	STIPULATION <i>for Extension of Time for the Wells Fargo Defendants to Respond to the Complaint and Proposed Briefing Schedule</i> by Michael Branca, David Galloreese, Mark Hickman, Bei Ling, Wells Fargo & Company, Drew Wineland. Jointly Signed by Sergio Navarro, Theresa Gamage, Dayle Bulla, and Jane Kinsella. (Justman, Jeffrey) (Entered: 08/13/2024)
08/13/2024	<u>15</u>	PROPOSED ORDER TO JUDGE re <u>14</u> Stipulation,. (Justman, Jeffrey) (Entered: 08/13/2024)
08/14/2024	<u>16</u>	ORDER on <u>14</u> Stipulation for Extension of Time for The Wells Fargo Defendants to Respond to the Complaint and Proposed Briefing Schedule. Motions due by 9/27/2024. Replies due by 12/2/2024. Responses due by 11/8/2024. Motion Hearing set for 12/17/2024 at 09:30 AM in Courtroom 14W (MPLS) before Judge Katherine M. Menendez. Signed by Judge Katherine M. Menendez on 8/14/2024.(KAT) (Entered: 08/14/2024)

08/14/2024	<u>17</u>	RULE 7.1 DISCLOSURE STATEMENT. Parent corporation, publicly held corporation owning 10 percent or more of its stock, or subsidiary reported for Michael Branca, David Galloreese, Mark Hickman, Bei Ling, Wells Fargo & Company, Drew Wineland. (Justman, Jeffrey) (Entered: 08/14/2024)
08/15/2024	18	(Text-Only) ORDER granting <u>11</u> Motion for Admission Pro Hac Vice of Attorney Joseph Emanuel Clark for Michael Branca, Does 1-20, David Galloreese, Mark Hickman, Bei Ling, Wells Fargo & Company, and Drew Wineland. Approved by Magistrate Judge David T. Schultz on 8/15/2024. (CNO) (Entered: 08/15/2024)
08/15/2024	19	(Text-Only) ORDER granting <u>12</u> Motion for Admission Pro Hac Vice of Attorney Sydney Juliano for Michael Branca, Does 1-20, David Galloreese, Mark Hickman, Bei Ling, Wells Fargo & Company, and Drew Wineland. Approved by Magistrate Judge David T. Schultz on 8/15/2024. (CNO) (Entered: 08/15/2024)
08/15/2024	20	(Text-Only) ORDER granting <u>13</u> Motion for Admission Pro Hac Vice of Attorney Russell Laurence Hirschhorn for Michael Branca, Does 1-20, David Galloreese, Mark Hickman, Bei Ling, Wells Fargo & Company, and Drew Wineland. Approved by Magistrate Judge David T. Schultz on 8/15/2024. (CNO) (Entered: 08/15/2024)
08/16/2024	<u>21</u>	NOTICE of Appearance by Kai H Richter on behalf of Dayle Bulla, Theresa Gamage, Jane Kinsella, Sergio Navarro. (Richter, Kai) (Entered: 08/16/2024)
08/16/2024	<u>22</u>	NOTICE of Appearance by Eleanor Emmons Frisch on behalf of Dayle Bulla, Theresa Gamage, Jane Kinsella, Sergio Navarro. (Frisch, Eleanor) (Entered: 08/16/2024)
08/20/2024	<u>23</u>	MOTION for Admission Pro Hac Vice for Attorney Michelle C. Yau. Filing fee \$ 100, receipt number AMNDC-11275341 filed by Dayle Bulla, Theresa Gamage, Jane Kinsella, Sergio Navarro. (Richter, Kai) (Entered: 08/20/2024)
08/20/2024	<u>24</u>	MOTION for Admission Pro Hac Vice for Attorney Michael Eisenkraft. Filing fee \$ 100, receipt number AMNDC-11275407 filed by Dayle Bulla, Theresa Gamage, Jane Kinsella, Sergio Navarro. (Richter, Kai) (Entered: 08/20/2024)
08/20/2024	<u>25</u>	MOTION for Admission Pro Hac Vice for Attorney Allison C. Pienta. Filing fee \$ 100, receipt number AMNDC-11275431 filed by Dayle Bulla, Theresa Gamage, Jane Kinsella, Sergio Navarro. (Richter, Kai) (Entered: 08/20/2024)
08/22/2024	26	(Text-Only) ORDER granting <u>23</u> Motion for Admission Pro Hac Vice of Attorney Michelle C Yau for Dayle Bulla, Theresa Gamage, Jane Kinsella, and Sergio Navarro.; granting <u>24</u> Motion for Admission Pro Hac Vice of Attorney Michael B. Eisenkraft for Dayle Bulla, Theresa Gamage, Jane Kinsella, and Sergio Navarro; granting <u>25</u> Motion for Admission Pro Hac Vice of Attorney Allison Pienta Dayle Bulla, Theresa Gamage, Jane Kinsella, and Sergio Navarro Approved by Magistrate Judge David T. Schultz on 8/22/2024. (jam) (Entered: 08/22/2024)
09/23/2024	<u>27</u>	STIPULATION <i>Regarding Individual Defendants</i> by Dayle Bulla, Theresa Gamage, Jane Kinsella, Sergio Navarro. Jointly Signed by Wells Fargo & Company, Michael Branca, Mark Hickman, Drew Wineland, David Galloreese, and Bei Ling. (Richter, Kai) (Entered: 09/23/2024)
09/27/2024	<u>28</u>	MOTION to Dismiss/General <i>NOTICE OF DEFENDANT WELLS FARGO & COMPANY'S MOTION TO DISMISS THE CLASS ACTION COMPLAINT</i> filed by Wells Fargo & Company. (Hirschhorn, Russell) (Entered: 09/27/2024)

09/27/2024	<u>29</u>	NOTICE OF HEARING ON MOTION <u>28</u> MOTION to Dismiss/General <i>NOTICE OF DEFENDANT WELLS FARGO & COMPANY'S MOTION TO DISMISS THE CLASS ACTION COMPLAINT</i> : Motion Hearing set for 12/17/2024 at 09:30 AM in Courtroom 14W (MPLS) before Judge Katherine M. Menendez. (Hirschhorn, Russell) (Entered: 09/27/2024)
09/27/2024	<u>30</u>	MEMORANDUM in Support re <u>28</u> MOTION to Dismiss/General <i>NOTICE OF DEFENDANT WELLS FARGO & COMPANY'S MOTION TO DISMISS THE CLASS ACTION COMPLAINT</i> filed by Wells Fargo & Company. (Attachments: # <u>1</u> LR7.1/LR72.2 Word Count Compliance Certificate)(Hirschhorn, Russell) (Entered: 09/27/2024)
09/27/2024	<u>31</u>	Declaration of CLARE VERPLANK in Support of <u>28</u> MOTION to Dismiss/General <i>NOTICE OF DEFENDANT WELLS FARGO & COMPANY'S MOTION TO DISMISS THE CLASS ACTION COMPLAINT</i> filed by Wells Fargo & Company. (Attachments: # <u>1</u> Exhibit(s) Index of Exhibits, # <u>2</u> Exhibit(s) A, # <u>3</u> Exhibit(s) B, # <u>4</u> Exhibit(s) C)(Hirschhorn, Russell) (Entered: 09/27/2024)
09/27/2024	<u>32</u>	Declaration of RUSSELL L. HIRSCHHORN in Support of <u>28</u> MOTION to Dismiss/General <i>NOTICE OF DEFENDANT WELLS FARGO & COMPANY'S MOTION TO DISMISS THE CLASS ACTION COMPLAINT</i> filed by Wells Fargo & Company. (Attachments: # <u>1</u> Exhibit(s) Index of Exhibits, # <u>2</u> Exhibit(s) A, # <u>3</u> Exhibit(s) B, # <u>4</u> Exhibit(s) C, # <u>5</u> Exhibit(s) D, # <u>6</u> Exhibit(s) E, # <u>7</u> Exhibit(s) F, # <u>8</u> Exhibit(s) G, # <u>9</u> Exhibit(s) H, # <u>10</u> Exhibit(s) I)(Hirschhorn, Russell) (Entered: 09/27/2024)
09/27/2024	<u>33</u>	MEET and CONFER STATEMENT re <u>28</u> Motion to Dismiss/General filed by Wells Fargo & Company.(Hirschhorn, Russell) (Entered: 09/27/2024)
09/27/2024	<u>34</u>	PROPOSED ORDER TO JUDGE re <u>28</u> MOTION to Dismiss/General <i>NOTICE OF DEFENDANT WELLS FARGO & COMPANY'S MOTION TO DISMISS THE CLASS ACTION COMPLAINT</i> filed by Wells Fargo & Company.(Hirschhorn, Russell) (Entered: 09/27/2024)
10/28/2024	35	(Text–Only) CLERK'S NOTICE OF REASSIGNMENT. Due to the appointment of Judge Laura M. Provinzino, this case is reassigned to her. Judge Katherine M. Menendez is no longer assigned to the case. NOTE: the new case number is 24–cv–3093 LMP/DTS . Please use this case number for all subsequent pleadings. Note: any current hearings or conferences before the district judge in this case are canceled unless otherwise indicated by the new DJ courtroom deputy. (kt) (Entered: 10/28/2024)
10/28/2024	36	(Text–Only) CORRECTED CLERK'S NOTICE OF REASSIGNMENT. Due to the appointment of Judge Laura M. Provinzino, this case is reassigned to her. Katherine M. Menendez is no longer assigned to the case. NOTE: the new case number is 24–cv–3043 LMP/DTS . Please use this case number for all subsequent pleadings. Note: any current hearings or conferences before the district judge in this case are canceled unless otherwise indicated by the new DJ courtroom deputy. (kt) Modified text on 10/28/2024 (kt). (Entered: 10/28/2024)
11/06/2024	37	(Text–Only) NOTICE OF HEARING ON MOTION re: <u>28</u> MOTION to Dismiss/General <i>NOTICE OF DEFENDANT WELLS FARGO & COMPANY'S MOTION TO DISMISS THE CLASS ACTION COMPLAINT</i> : Motion Hearing set for 12/17/2024 at 01:30 PM in Courtroom 3C (STP) before Judge Laura M. Provinzino. (TJC) (Entered: 11/06/2024)

11/08/2024	<u>38</u>	MEMORANDUM in Opposition re <u>28</u> MOTION to Dismiss/General <i>NOTICE OF DEFENDANT WELLS FARGO & COMPANY'S MOTION TO DISMISS THE CLASS ACTION COMPLAINT</i> filed by Sergio Navarro, Theresa Gamage, Dayle Bulla, Jane Kinsella. (Attachments: # <u>1</u> LR7.1/LR72.2 Word Count Compliance Certificate)(Richter, Kai) (Entered: 11/08/2024)
11/08/2024	<u>39</u>	DECLARATION of Kai Richter in Opposition to <u>28</u> MOTION to Dismiss/General <i>NOTICE OF DEFENDANT WELLS FARGO & COMPANY'S MOTION TO DISMISS THE CLASS ACTION COMPLAINT</i> filed by Sergio Navarro, Theresa Gamage, Dayle Bulla, Jane Kinsella. (Attachments: # <u>1</u> Exhibit(s) 1 – Appendix B from Wells Fargo Benefits Book, # <u>2</u> Exhibit(s) 2 – Modern HealthcareTechnology Blog, # <u>3</u> Exhibit(s) 3 – Forbes Article, # <u>4</u> Exhibit(s) 4 – Fierce Healthcare Article, # <u>5</u> Exhibit(s) 5 – Wells Fargo Health Plan 5500 2019, # <u>6</u> Exhibit(s) 6 – Wells Fargo Health Plan 5500 2022)(Richter, Kai) (Entered: 11/08/2024)
11/08/2024	<u>40</u>	DECLARATION of Tyler Haydell in Opposition to <u>28</u> MOTION to Dismiss/General <i>NOTICE OF DEFENDANT WELLS FARGO & COMPANY'S MOTION TO DISMISS THE CLASS ACTION COMPLAINT</i> filed by Sergio Navarro, Theresa Gamage, Dayle Bulla, Jane Kinsella.(Richter, Kai) (Entered: 11/08/2024)
12/02/2024	<u>41</u>	REPLY re <u>28</u> MOTION to Dismiss/General <i>NOTICE OF DEFENDANT WELLS FARGO & COMPANY'S MOTION TO DISMISS THE CLASS ACTION COMPLAINT</i> filed by Wells Fargo & Company. (Attachments: # <u>1</u> LR7.1/LR72.2 Word Count Compliance Certificate)(Hirschhorn, Russell) (Entered: 12/02/2024)
12/13/2024	<u>42</u>	NOTICE by Wells Fargo & Company / <i>Notice of Supplemental Authority</i> (Hirschhorn, Russell) (Entered: 12/13/2024)
12/17/2024	43	(Text–Only) MINUTE ENTRY for proceedings held before Judge Laura M. Provinzino on 12/17/2024: Oral Arguments Motion Hearing. Court Reporter: Lynne Krenz St. Paul Courthouse, Courtroom 3C Time: 1:31 p.m.–2:41 p.m. Total Time: 1 hour, 10 minutes APPEARANCES: For Plaintiff(s): Kai Richter; Michael Lieberman; Eleanor Frisch For Defendant(s): Russell Hirschhorn; Joseph Clark; Richard Duncan PROCEEDINGS: Hearing on: <u>28</u> MOTION to Dismiss/General filed by Wells Fargo & Company. The motion was moved, argued and taken under advisement. Order to follow. (TJC) (Entered: 12/17/2024)
12/18/2024	<u>44</u>	EXHIBIT / <i>Refiling of Exhibit B to the Declaration of Clare Verplank at ECF (31)</i> re <u>28</u> MOTION to Dismiss/General <i>NOTICE OF DEFENDANT WELLS FARGO & COMPANY'S MOTION TO DISMISS THE CLASS ACTION COMPLAINT</i> filed by Wells Fargo & Company.(Hirschhorn, Russell) (Entered: 12/18/2024)
12/18/2024	<u>45</u>	EXPEDITED DAILY TRANSCRIPT SERVICES REQUEST to Court Reporter Lynne Krenz. (Hirschhorn, Russell) (Entered: 12/18/2024)
12/18/2024	<u>46</u>	

		<p>TRANSCRIPT of Motions Hearing held on 12/17/2024 before Judge Laura M. Provinzino. (52 pages). Court Reporter: Lynne Krenz. For a copy of the transcript, please file a Transcript Request under <i>Other Filings/Other Documents</i>.</p> <p>Parties have 21 days to file a <i>Statement of Redaction</i>. In accordance with Judicial Conference policy and <u>Local Rule 80.1</u>, the transcript may be released and made remotely electronically available to the public in 90 days. For further information on redaction procedures, please review <u>Local Rule 5.5</u> and <u>Case Information >Transcripts, Court Reporters and Digital Audio Recordings</u>.</p> <p>Statement of Redaction due 1/8/2025. Redacted Transcript Deadline set for 1/21/2025. Release of Transcript Restriction set for 3/18/2025.</p> <p>(LMK) (Entered: 12/18/2024)</p>
12/19/2024	<u>47</u>	NOTICE by Sergio Navarro, Theresa Gamage, Dayle Bulla, Jane Kinsella <i>Notice of Supplemental Authority</i> (Richter, Kai) (Entered: 12/19/2024)
12/19/2024	<u>48</u>	TRANSCRIPT REQUEST for an Expedited 7-Day Transcript for a COPY OF TRANSCRIPT 43 Motion Hearing, to Court Reporter Lynne Krenz. (Richter, Kai) (Entered: 12/19/2024)
12/19/2024	<u>49</u>	TRANSCRIPT REQUEST for an Expedited Daily Transcript (by 8am following day) for a COPY OF <u>46</u> Transcript(s) to Court Reporter Lynne Krenz. (KMO) (Entered: 12/19/2024)
12/20/2024	<u>50</u>	NOTICE of Withdrawal as Attorney for <i>Richard A. Duncan</i> (Justman, Jeffrey) (Entered: 12/20/2024)
12/23/2024	<u>51</u>	NOTICE of Change of Address by Michelle C Yau (Yau, Michelle) (Entered: 12/23/2024)
12/23/2024	<u>52</u>	NOTICE of Change of Address by Allison Pienta (Pienta, Allison) (Entered: 12/23/2024)
12/23/2024	<u>53</u>	LETTER TO DISTRICT JUDGE by Wells Fargo & Company / <i>Letter Response to Notice (ECF No. 47)</i> . (Hirschhorn, Russell) (Entered: 12/23/2024)
12/26/2024	<u>54</u>	LETTER TO DISTRICT JUDGE by Sergio Navarro, Theresa Gamage, Dayle Bulla, Jane Kinsella <i>Response to Notice of Supplemental Authority (ECF No. 42)</i> . (Richter, Kai) (Entered: 12/26/2024)
01/27/2025	<u>55</u>	NOTICE by Wells Fargo & Company re <u>28</u> MOTION to Dismiss/General <i>NOTICE OF DEFENDANT WELLS FARGO & COMPANY'S MOTION TO DISMISS THE CLASS ACTION COMPLAINT re Supplemental Authority</i> (Attachments: # <u>1</u> Exhibit(s) re Lewandowski Opinion)(Hirschhorn, Russell) (Entered: 01/27/2025)
01/28/2025	<u>56</u>	NOTICE by Sergio Navarro, Theresa Gamage, Dayle Bulla, Jane Kinsella re <u>55</u> Notice (Other), <i>Response to Notice of Supplemental Authority</i> (Richter, Kai) (Entered: 01/28/2025)
03/24/2025	<u>57</u>	ORDER granting <u>28</u> Motion to Dismiss/General. (Written Opinion) Signed by Judge Laura M. Provinzino on 3/24/2025. (TJC) (Entered: 03/24/2025)
03/24/2025	<u>58</u>	

		VACATED PER <u>62</u> ORDER FILED ON 04/17/25 – JUDGMENT (Attachments: # <u>1</u> Civil Notice – appeal)(MMP) Modified text on 4/17/2025 (MMP). (Entered: 03/24/2025)
04/14/2025	<u>59</u>	LETTER to Request Permission to File Motion to Reconsider <i>pursuant to LR 7.1(j) seeking leave to request reconsideration of order and judgment.</i> (Richter, Kai) (Entered: 04/14/2025)
04/15/2025	<u>60</u>	LETTER RESPONSE re <u>59</u> Letter to Request Permission to File Motion to Reconsider. (Hirschhorn, Russell) (Entered: 04/15/2025)
04/17/2025	<u>61</u>	NOTICE of Withdrawal as Attorney (<i>Amanda M. Williams</i>) (Gustafson, Daniel) (Entered: 04/17/2025)
04/17/2025	<u>62</u>	ORDER granting leave to amend the complaint re: <u>59</u> Letter to Request Permission to File Motion to Reconsider and vacating <u>58</u> Judgment. Amended Complaint due by 5/8/2025. See order for additional details. (Written Opinion) Signed by Judge Laura M. Provinzino on 4/17/2025. (SGT) (Entered: 04/17/2025)
04/18/2025	<u>63</u>	ORDER OF RECUSAL. Magistrate Judge David T. Schultz recused. Case reassigned to Magistrate Judge Douglas L. Micko for all further proceedings. NOTE: the new case number is 24-cv-3043 (LMP/DLM) . Please use this case number for all subsequent pleadings. Signed by Magistrate Judge David T. Schultz on 4/18/2025.(LTT) (Entered: 04/18/2025)
05/08/2025	<u>64</u>	AMENDED COMPLAINT against Wells Fargo & Company. filed by Dayle Bulla, Theresa Gamage, Jane Kinsella, Sergio Navarro, Erica McKinley. No summons requested. (Attachments: # <u>1</u> Exhibit(s) A – Albritton Declaration and Expert Report, DOCUMENT FILED IN ERROR. TO BE REFILED//# <u>2</u> Redline Version pursuant to Courts Order Granting Leave to Amend Complaint (ECF 62) and LR 15.1(b)) (Richter, Kai) Modified text on 5/20/2025 (ACH). (Entered: 05/08/2025)
05/19/2025	<u>65</u>	DOCUMENT PERMANENTLY SEALED PER 74 TEXT ONLY ORDER FILED ON 05/20/25 – GRANTED for Document Number(s): 65.SEALED Reference List Identifying Prescription Drugs Redacted From Amended Complaint re <u>64</u> Amended Complaint, by Plaintiffs. (Richter, Kai) Modified text on 5/21/2025 (MMP). (Entered: 05/19/2025)
05/19/2025	<u>66</u>	Joint MOTION for Extension of Time <i>OF DEADLINES FOR DEFENDANT'S MOTION TO DISMISS THE AMENDED COMPLAINT</i> filed by Wells Fargo & Company. (Hirschhorn, Russell) (Entered: 05/19/2025)
05/19/2025	<u>67</u>	Motion Regarding Continued Sealing <u>65</u> Sealed Document (<i>Reference List</i>) filed by Dayle Bulla, Theresa Gamage, Jane Kinsella, Erica McKinley, Sergio Navarro. (Richter, Kai) (Entered: 05/19/2025)
05/19/2025	<u>68</u>	PROPOSED ORDER TO JUDGE re <u>66</u> Joint MOTION for Extension of Time <i>OF DEADLINES FOR DEFENDANT'S MOTION TO DISMISS THE AMENDED COMPLAINT</i> filed by Wells Fargo & Company.(Hirschhorn, Russell) (Entered: 05/19/2025)
05/19/2025	<u>69</u>	MEMORANDUM in Support re <u>67</u> Motion Regarding Continued Sealing <u>65</u> Sealed Document (<i>Reference List</i>) filed by Dayle Bulla, Theresa Gamage, Jane Kinsella, Erica McKinley, Sergio Navarro. (Attachments: # <u>1</u> LR7.1/LR72.2 Word Count Compliance Certificate)(Richter, Kai) (Entered: 05/19/2025)

05/19/2025	<u>70</u>	MEET and CONFER STATEMENT re <u>67</u> Motion Regarding Continued Sealing filed by Dayle Bulla, Theresa Gamage, Jane Kinsella, Erica McKinley, Sergio Navarro.(Richter, Kai) (Entered: 05/19/2025)
05/19/2025	<u>71</u>	PROPOSED ORDER TO JUDGE re <u>67</u> Motion Regarding Continued Sealing <u>65</u> Sealed Document (<i>Reference List</i>) filed by Dayle Bulla, Theresa Gamage, Jane Kinsella, Erica McKinley, Sergio Navarro.(Richter, Kai) (Entered: 05/19/2025)
05/20/2025	<u>72</u>	EXHIBIT Corrected Redline Version pursuant to Courts Order Granting Leave to Amend Complaint (ECF 62) and LR 15.1(b) (<i>Doc. 64-2</i>) re <u>64</u> Amended Complaint, filed by Dayle Bulla, Theresa Gamage, Jane Kinsella, Erica McKinley, Sergio Navarro. (Richter, Kai) (Entered: 05/20/2025)
05/20/2025	73	(Text-Only) ORDER. Before the Court is the parties' Joint Motion for Extension of Time of Deadlines for Defendant's Motion to Dismiss the Amended Complaint <u>66</u> . Finding good cause, the Court GRANTS the motion. The deadline for Defendant to move to dismiss the Amended Complaint is 6/12/2025. The deadline for Plaintiffs' opposition is 7/17/2025. The deadline for Defendant's reply is 8/7/2025. Ordered by Magistrate Judge Douglas L. Micko on 5/20/2025. (JLD) (Entered: 05/20/2025)
05/20/2025	74	(Text-Only) ORDER granting Motion Regarding Continued Sealing <u>67</u> . Finding good cause supports this unopposed motion, the Court GRANTS this motion. The Clerk of the Court shall maintain the Reference List Identifying Prescription Drugs Redacted from the Amended Complaint <u>65</u> under permanent seal. Permanent Sealing GRANTED for Document Number(s): 65. Ordered by Magistrate Judge Douglas L. Micko on 5/20/2025. (JLD) (Entered: 05/20/2025)
05/21/2025	<u>75</u>	NOTICE of Appearance by Daniel J Nordin on behalf of All Plaintiffs. (Nordin, Daniel) (Entered: 05/21/2025)
05/22/2025	<u>76</u>	NOTICE of Withdrawal as Attorney (<i>Eleanor Frisch</i>) (Frisch, Eleanor) (Entered: 05/22/2025)
06/12/2025	<u>77</u>	MOTION to Dismiss/General – <i>NOTICE OF DEFENDANT WELLS FARGO & COMPANY'S MOTION TO DISMISS THE AMENDED CLASS ACTION COMPLAINT</i> filed by Wells Fargo & Company. (Hirschhorn, Russell) (Entered: 06/12/2025)
06/12/2025	<u>78</u>	NOTICE OF HEARING ON MOTION <u>77</u> MOTION to Dismiss/General – <i>NOTICE OF DEFENDANT WELLS FARGO & COMPANY'S MOTION TO DISMISS THE AMENDED CLASS ACTION COMPLAINT</i> : Date and time to be determined. (Hirschhorn, Russell) (Entered: 06/12/2025)
06/12/2025	<u>79</u>	MEMORANDUM in Support re <u>77</u> MOTION to Dismiss/General – <i>NOTICE OF DEFENDANT WELLS FARGO & COMPANY'S MOTION TO DISMISS THE AMENDED CLASS ACTION COMPLAINT</i> filed by Wells Fargo & Company. (Attachments: # <u>1</u> LR7.1/LR72.2 Word Count Compliance Certificate)(Hirschhorn, Russell) (Entered: 06/12/2025)
06/12/2025	<u>80</u>	Declaration of RUSSELL L. HIRSCHHORN in Support of <u>77</u> MOTION to Dismiss/General – <i>NOTICE OF DEFENDANT WELLS FARGO & COMPANY'S MOTION TO DISMISS THE AMENDED CLASS ACTION COMPLAINT</i> filed by

		Wells Fargo & Company. (Attachments: # <u>1</u> Exhibit(s) A)(Hirschhorn, Russell) (Entered: 06/12/2025)
06/12/2025	<u>81</u>	Declaration of CLARE VERPLANK in Support of <u>77</u> MOTION to Dismiss/General – <i>NOTICE OF DEFENDANT WELLS FARGO & COMPANY'S MOTION TO DISMISS THE AMENDED CLASS ACTION COMPLAINT</i> filed by Wells Fargo & Company. (Attachments: # <u>1</u> Exhibit(s) A)(Hirschhorn, Russell) (Entered: 06/12/2025)
06/12/2025	<u>82</u>	MEET and CONFER STATEMENT re <u>77</u> Motion to Dismiss/General filed by Wells Fargo & Company.(Hirschhorn, Russell) (Entered: 06/12/2025)
06/12/2025	<u>83</u>	PROPOSED ORDER TO JUDGE re <u>77</u> MOTION to Dismiss/General – <i>NOTICE OF DEFENDANT WELLS FARGO & COMPANY'S MOTION TO DISMISS THE AMENDED CLASS ACTION COMPLAINT</i> filed by Wells Fargo & Company.(Hirschhorn, Russell) (Entered: 06/12/2025)
06/13/2025	84	(Text–Only) ORDER. Due to the pending Motion to Dismiss <u>77</u> , the Court finds there is good cause to delay the entry of a pretrial scheduling order. The Court will schedule a pretrial conference, if needed, promptly after a decision is issued on the pending motion. Ordered by Magistrate Judge Douglas L. Micko on 6/13/2025. (jme) (Entered: 06/13/2025)
07/17/2025	<u>85</u>	MEMORANDUM in Opposition re <u>77</u> MOTION to Dismiss/General – <i>NOTICE OF DEFENDANT WELLS FARGO & COMPANY'S MOTION TO DISMISS THE AMENDED CLASS ACTION COMPLAINT</i> filed by Dayle Bulla, Theresa Gamage, Jane Kinsella, Erica McKinley, Sergio Navarro. (Attachments: # <u>1</u> LR7.1/LR72.2 Word Count Compliance Certificate)(Richter, Kai) (Entered: 07/17/2025)
07/24/2025	<u>86</u>	MOTION <i>Leave to File a Brief of Amicus Curiae ISO Plaintiffs' Opposition to Defendant's Motion to Dismiss</i> filed by Amy B. Monahan. (Engstrom, Carl) (Entered: 07/24/2025)
07/24/2025	<u>87</u>	MEMORANDUM in Support re <u>86</u> MOTION <i>Leave to File a Brief of Amicus Curiae ISO Plaintiffs' Opposition to Defendant's Motion to Dismiss</i> filed by Amy B. Monahan.(Engstrom, Carl) (Entered: 07/24/2025)
07/24/2025	<u>88</u>	Declaration of Carl F. Engstrom in Support of <u>86</u> MOTION <i>Leave to File a Brief of Amicus Curiae ISO Plaintiffs' Opposition to Defendant's Motion to Dismiss</i> filed by Amy B. Monahan. (Attachments: # <u>1</u> Exhibit(s) A [Proposed Brief of Amicus Curiae])(Engstrom, Carl) (Entered: 07/24/2025)
07/24/2025	<u>89</u>	PROPOSED ORDER TO JUDGE re <u>86</u> MOTION <i>Leave to File a Brief of Amicus Curiae ISO Plaintiffs' Opposition to Defendant's Motion to Dismiss</i> filed by Amy B. Monahan.(Engstrom, Carl) (Entered: 07/24/2025)
07/25/2025	90	(Text–Only) NOTICE OF HEARING ON MOTION re <u>77</u> MOTION to Dismiss: Motion Hearing set for 9/3/2025 at 10:00 AM in Courtroom 3A (STP) before Judge Laura M. Provinzino. (TJC) (Entered: 07/25/2025)
08/07/2025	<u>91</u>	REPLY re <u>77</u> MOTION to Dismiss/General – <i>NOTICE OF DEFENDANT WELLS FARGO & COMPANY'S MOTION TO DISMISS THE AMENDED CLASS ACTION COMPLAINT</i> filed by Wells Fargo & Company. (Attachments: # <u>1</u> LR7.1/LR72.2 Word Count Compliance Certificate)(Hirschhorn, Russell) (Entered: 08/07/2025)
09/03/2025	92	

		<p>(Text–Only) MINUTE ENTRY for proceedings held before Judge Laura M. Provinzino on 9/3/2025: Oral Arguments Motion Hearing.</p> <p>Court Reporter: Lynne Krenz St. Paul Courthouse, Courtroom 3A Time: 10:02 a.m.–11:34 a.m., 11:45 a.m.–12:03 p.m. Total Time: 1 hour, 50 minutes</p> <p>APPEARANCES: For Plaintiff(s): Michael Lieberman; Kai Richter; Daniel Nordin For Defendant(s): Russell Hirschhorn; Sydney Juliano; Kiera Murphy; Jeffrey Justman</p> <p>PROCEEDINGS: Hearing on: <u>77</u> MOTION TO DISMISS THE AMENDED CLASS ACTION COMPLAINT filed by Wells Fargo & Company. The motion was moved, argued and taken under advisement. Order to follow.</p> <p>(TJC) (Entered: 09/03/2025)</p>
09/04/2025	<u>93</u>	TRANSCRIPT REQUEST for an Expedited 3–Day Transcript of 92 Motion Hearing,, to Court Reporter Lynne Krenz. (Juliano, Sydney) (Entered: 09/04/2025)
09/04/2025	<u>94</u>	TRANSCRIPT REQUEST for an Expedited 3–Day Transcript for a COPY OF TRANSCRIPT 92 Motion Hearing,, to Court Reporter Lynne Krenz. (Richter, Kai) (Entered: 09/04/2025)
09/08/2025	<u>95</u>	<p>TRANSCRIPT of Motions Hearing held on 9/3/2025 before Judge Laura M. Provinzino. (95 pages). Court Reporter: Lynne Krenz. For a copy of the transcript, please file a Transcript Request under <i>Other Filings/Other Documents</i>.</p> <p>Parties have 21 days to file a <i>Statement of Redaction</i>. In accordance with Judicial Conference policy and <u>Local Rule 80.1</u>, the transcript may be released and made remotely electronically available to the public in 90 days. For further information on redaction procedures, please review <u>Local Rule 5.5</u> and <u>Case Information >Transcripts, Court Reporters and Digital Audio Recordings</u>.</p> <p>Statement of Redaction due 9/29/2025. Redacted Transcript Deadline set for 10/9/2025. Release of Transcript Restriction set for 12/8/2025.</p> <p>(LMK) (Entered: 09/08/2025)</p>
09/08/2025	<u>96</u>	TRANSCRIPT REQUEST for an Expedited 14–Day Transcript for a COPY OF <u>95</u> Transcript(s) to Court Reporter Lynne Krenz. (KMO) (Entered: 09/08/2025)
12/02/2025	<u>97</u>	NOTICE by Wells Fargo & Company re <u>77</u> MOTION to Dismiss/General – <i>NOTICE OF DEFENDANT WELLS FARGO & COMPANY'S MOTION TO DISMISS THE AMENDED CLASS ACTION COMPLAINT re Supplemental Authority</i> (Attachments: # <u>1</u> Exhibit(s) A, # <u>2</u> Exhibit(s) B)(Hirschhorn, Russell) (Entered: 12/02/2025)
12/03/2025	<u>98</u>	NOTICE by Dayle Bulla, Theresa Gamage, Jane Kinsella, Erica McKinley, Sergio Navarro re <u>97</u> Notice (Other), <i>Response to Defs. Notice of Supplemental Authority (ECF No. 97)</i> (Richter, Kai) (Entered: 12/03/2025)

03/03/2026	<u>99</u>	ORDER granting Defendant's <u>77</u> Motion to Dismiss. <u>86</u> Motion for Leave to File a Brief of Amicus Curiae is granted. (Written Opinion) Signed by Judge Laura M. Provinzino on 3/3/2026. (TJC) (Entered: 03/03/2026)
03/03/2026	<u>100</u>	JUDGMENT (Attachments: # <u>1</u> Civil Notice – appeal)(ACH) (Entered: 03/03/2026)
04/01/2026	<u>101</u>	NOTICE OF APPEAL TO 8TH CIRCUIT as to <u>100</u> Judgment, <u>99</u> Order on Motion to Dismiss/General, Order on Motion for Miscellaneous Relief, <u>57</u> Order on Motion to Dismiss/General by Dayle Bulla, Theresa Gamage, Jane Kinsella, Erica McKinley, Sergio Navarro. Filing fee \$ 605, receipt number AMNDC-12844397. (Richter, Kai) (Entered: 04/01/2026)
04/02/2026	<u>102</u>	TRANSMITTAL OF APPEAL LETTER TO U. S. COURT OF APPEALS, 8TH CIRCUIT, Re: Notice of Appeal to 8th Circuit, <u>101</u> . (MMP) (Entered: 04/02/2026)

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

SERGIO NAVARRO, THERESA
GAMAGE, DAYLE BULLA, and
JANE KINSELLA, *on their own
behalf, and on behalf of all others
similarly situated, and on behalf of the
Wells Fargo & Company Health Plan
and its component plans,*

Case No. 24-cv-3043 (LMP/DTS)

Plaintiffs,

**ORDER GRANTING DEFENDANT'S
MOTION TO DISMISS**

v.

WELLS FARGO & COMPANY,¹
MICHAEL BRANCA, MARK
HICKMAN, DREW WINELAND,
DAVID GALLOREESE, BEI LING,
and DOES 1–20,

Defendants.

Kai H. Richter and Eleanor E. Frisch, **Cohen Milstein Sellers & Toll, PLLC, Minneapolis, MN**; Michelle C. Yau and Allison Pienta, **Cohen Milstein Sellers & Toll, PLLC, Washington, DC**; Michael B. Eisenkraft, **Cohen Milstein Sellers & Toll, PLLC, New York, NY**; Jamie Crooks and Michael D. Lieberman, **Fairmark Partners, LLP, Washington, DC**; and Daniel E. Gustafson and Amanda M. Williams, **Gustafson Gluek PLLC, Minneapolis, MN**, for Plaintiffs.

Russell L. Hirschhorn, Joseph E. Clark, and Sydney L. Juliano, **Proskauer Rose LLP, New York, NY**; and Jeffrey P. Justman, and Kiera Murphy, **Faegre Drinker Biddle & Reath LLP, Minneapolis, MN**, for Defendants.

¹ Wells Fargo & Company agreed to assume responsibility for “all acts or omissions relating to the allegations and claims in this action” and for “any judgment entered in this action,” and Plaintiffs agreed to dismiss all claims asserted against all defendants without prejudice except Wells Fargo. [ECF No. 27 ¶¶ 2–4](#). Accordingly, the Court herein refers to Wells Fargo & Company as the Defendant in this case.

Plaintiffs Sergio Navarro, Theresa Gamage, Dayle Bulla, and Jane Kinsella (collectively, “Plaintiffs”) are former employees of Defendant Wells Fargo & Company (“Wells Fargo”), and former participants in the Wells Fargo & Company Health Plan (the “Plan”). Plaintiffs allege that Wells Fargo mismanaged the Plan’s employee prescription drug benefits program, resulting in Plaintiffs and other Plan participants paying substantially more in premiums and out-of-pocket costs for certain prescription drug benefits than they would have absent Wells Fargo’s mismanagement. Plaintiffs contend this mismanagement constitutes a breach of Wells Fargo’s fiduciary duties to Plan participants in violation of the Employee Retirement Income Security Act (“ERISA”). Wells Fargo moves to dismiss Plaintiffs’ complaint for lack of Article III standing or, alternatively, for failure to state a claim upon which relief can be granted. Because Plaintiffs are unable to show concrete individual harm, causation, and redressability, the Court finds that Plaintiffs lack standing to bring their claims.

FACTUAL BACKGROUND²

I. The Plan

The Plan is an employee welfare benefit plan³ established to provide medical benefits to Wells Fargo employees who choose to enroll. *See* [ECF No. 1](#) ¶ 20. Wells Fargo,

² For purposes of assessing Wells Fargo’s motion to dismiss, the Court must accept the factual allegations in Plaintiffs’ complaint as true. *L.H. v. Indep. Sch. Dist.*, [111 F.4th 886, 892](#) (8th Cir. 2024). As such, the Factual Background here is drawn largely from the complaint.

³ As relevant here, an “employee welfare benefit plan” is “any plan, fund, or program which was . . . established or maintained by an employer . . . for the purpose of providing

as the Plan sponsor and a fiduciary of the Plan, is responsible for appointing and removing the individual administrators of the Plan, among whom are several Wells Fargo executives. *Id.* ¶ 22–23. As such, Wells Fargo retains decision-making authority with respect to the management of the Plan. *Id.* Plaintiffs are each former employees of Wells Fargo and former participants⁴ in the Plan. *Id.* ¶¶ 14–17.

To cover the expenses incurred in administering benefits to Plan participants, Wells Fargo established the Wells Fargo & Company Employee Benefit Trust (the “Trust”). *Id.* ¶ 21. The Trust is funded by a combination of employer and employee contributions, along with unspecified amounts of investment income. *Id.* From 2018 to 2022, Wells Fargo consistently required participants to contribute, in the form of premiums, approximately 25% of the Plan’s costs annually, with Wells Fargo contributing the remaining 75%. *Id.* ¶ 206. Wells Fargo nevertheless retains “sole discretion” to set and modify participant contribution amounts. [ECF No. 31-3 at 9](#); *see also* [ECF No. 31-2 at 22](#) (“The Plan Sponsor may establish different contribution rates for different classes of Participants . . . for any Benefit Option.”). The Trust’s funds, regardless of their source, are considered assets of the Plan. [ECF No. 1 ¶ 21](#).

for its participants or their beneficiaries, through the purchase of insurance or otherwise . . . medical, surgical, or hospital care or benefits, or benefits in the event of sickness, accident, disability, death or unemployment.” [29 U.S.C. § 1002\(1\)](#).

⁴ A “participant” is “any employee or former employee of an employer . . . who is or may become eligible to receive a benefit of any type from an employee benefit plan which covers employees of such employer.” [29 U.S.C. § 1002\(7\)](#).

II. The Plan's Prescription Drug Program

A. Pharmacy Benefit Managers Generally

Many employer-sponsored prescription drug plans, including the Plan, retain third-party service providers called pharmacy benefit managers (“PBMs”) to administer the plans’ prescription drug benefits. *Id.* ¶ 52. PBMs handle the day-to-day administrative tasks for a plan’s prescription drug program, like processing claims, and typically offer other services like negotiating with pharmacies to establish coverage networks and determining which prescription drugs a plan will cover (and the extent to which they are covered). *Id.* ¶¶ 52–53. Generally, when a plan participant is prescribed a drug and fills that prescription at a pharmacy, the participant pays the portion for which she is responsible—like her co-pay or deductible—and the PBM pays the pharmacy the remaining balance and is later reimbursed by the Plan. *Id.* ¶ 53. The overall price of the prescription drug is negotiated by the PBM and the plan fiduciaries, *id.* ¶ 56, while the portion for which the participant is responsible is typically dictated by the terms of the plan, *see, e.g., id.* ¶ 97.

PBMs are typically for-profit entities, and the largest PBMs tend to be publicly traded companies. *Id.* ¶ 54. As such, two dominant PBM models have emerged: (1) “traditional” PBMs, which generate profit through some mix of spread pricing,⁵ rebates

⁵ “Spread pricing” is a practice whereby a PBM negotiates a price with pharmacies for a particular prescription drug that is lower than the price the PBM charges the plan for that drug, then retains the difference as profit. [ECF No. 1](#) ¶ 62. For example, if a PBM negotiates a price of \$10 for a participant’s prescription with the pharmacy, it may (if its

they negotiate with pharmacies, administrative fees charged to the plans they serve, and ownership of their own pharmacies; and (2) “pass-through” PBMs that generate profit through charging administrative fees alone. *Id.* ¶¶ 54–55. According to Plaintiffs, traditional PBMs are incentivized, to some degree, to charge the highest price to which a plan’s administrators will agree for prescription drugs, regardless of the price pharmacies charge the PBM for the same drugs. *Id.* ¶ 65. Plaintiffs assert that traditional PBMs that own their own pharmacies also may be able to represent to plans that they are not engaging in spread pricing which, while technically true, could be misleading since they are effectively negotiating with themselves for pricing. *See id.* ¶ 69. In other words, a PBM-owned pharmacy may quote an artificially high price for a certain drug to the PBM, and the PBM may then represent that it is charging the same price to the plans it serves—that is, with no markup—but the effect is that the plans pay a higher price for the drug, and the PBM generates a windfall. *See id.*

Traditional PBMs and plan fiduciaries negotiate the prices that the plan will pay the PBM for various prescription drugs. *Id.* ¶ 56. Given the sheer volume of prescription drugs available today, however, it would be impractical for PBMs and plan fiduciaries to negotiate pricing for each drug individually, so some PBMs and plan fiduciaries structure their agreements to create formularies⁶ that set prices for groups of drugs by reference to

agreement with the plan at issue permits) charge the plan \$15 for that prescription and retain the \$5 difference. *See id.*

⁶ A “formulary,” in this context, is a list of prescription drugs that a health plan agrees to cover. *See Formulary*, Black’s Law Dictionary (12th ed. 2024).

an external benchmark price. *See id.* ¶ 57. Such benchmarks include the National Average Drug Acquisition Cost (“NADAC”), which is generated by the Centers for Medicare and Medicaid Services using survey data to determine the average cost to pharmacies to acquire certain prescription drugs; and the Average Wholesale Price (“AWP”), which purports to do the same thing as NADAC, but which Plaintiffs allege is inaccurate and susceptible to industry manipulation. *Id.* ¶¶ 58–59.

B. Wells Fargo’s Agreement with Express Scripts, Inc.

Wells Fargo entered an agreement with Express Scripts, Inc. (“ESI”), a traditional PBM, to serve as the Plan’s PBM. *Id.* ¶ 100. ESI, along with CVS Caremark and OptumRx, is one of the “Big 3” PBMs. *Id.* ¶ 86. Wells Fargo did not conduct an open bid process before it decided to retain ESI. *Id.* ¶ 101. Rather, Wells Fargo engaged an employee benefit consultant to identify potential PBM candidates for the Plan. *See id.* ¶ 103. The agreement between Wells Fargo and ESI is not publicly available, but ESI’s standard contract with other companies and plans typically spells out various terms regarding prescription drug pricing, formulary management, pharmacy networks, and administrative services. *Id.* ¶¶ 100, 104. ESI’s standard contract also makes clear that plan sponsors and fiduciaries like Wells Fargo, not ESI, have final authority over decisions relating to plan management and assets. *Id.* ¶ 102.⁷

⁷ Wells Fargo does not dispute the substance of Plaintiffs’ allegations regarding the details of its agreement with ESI.

The Plan’s formulary includes a list of approximately 300 generic drugs that are designated as “preferred alternatives,” meaning participants are encouraged to use those generic versions rather than the brand-name versions. *See id.* ¶ 108. The prices ESI negotiated with the Plan for those drugs, using AWP as a benchmark—rather than NADAC, for example—are substantially higher than the acquisition costs paid by pharmacies. *See id.* ¶¶ 105, 108–09. A comparison between the pharmacy acquisition cost for the 260 “preferred alternative” drugs for which NADAC information is available shows that, on average, ESI charges the Plan more than twice as much as what pharmacies paid to acquire those “preferred alternative” drugs. *Id.* ¶ 109.

The agreement between ESI and the Plan requires Plan participants to acquire so-called “generic-specialty” drugs exclusively from ESI’s wholly owned pharmacy, Accredo. *Id.* ¶ 112. For example, abiraterone acetate, a prescription drug used to treat prostate cancer, is designated as a “generic-specialty” drug in the Plan’s formulary and has an average pharmacy acquisition cost of \$82.80 for a ninety-count prescription. *See id.* ¶ 116. Under the terms of Wells Fargo’s agreement with ESI, however, ESI charges the Plan \$1,881.00 for the same prescription, more than a 2,100% markup over the acquisition cost. *Id.* A Plan participant would be required to pay the full cost for that prescription—that is, \$1,881.00—out of pocket until the participant met his annual deductible. *Id.* ¶ 33. By contrast, an uninsured person filling the same prescription could obtain it from various retail pharmacies for between \$90.50 and \$115.30. *Id.* ¶ 117.

The administrative fees ESI charges to the Plan exceed the fees paid by other large plan sponsors for seemingly comparable or equivalent services. *Id.* ¶ 141. In 2019, the

Plan had about 218,000 participants and paid about \$9.2 million in administrative fees to ESI, or roughly \$42 per participant. *See id.* ¶¶ 140, 205. Just three years later, despite the Plan’s enrollment decreasing to about 189,000 participants in 2022, the Plan paid about \$25.6 million in administrative fees—about \$136 per participant. *Id.* ¶ 141. Wells Fargo acknowledges that the services offered by the Plan were unchanged throughout this period. [ECF No. 30 at 26 n.11](#). For comparison, the Railroad Employees National Health and Welfare Plan, for which ESI is the PBM, paid roughly \$4.25 million in administrative fees for its 214,000 participants in 2022, or about \$20 per participant. [ECF No. 1 ¶ 141](#).

III. Plaintiffs Allege Breach of Fiduciary Duty

While they were enrolled in the Plan, Plaintiffs each paid premiums, co-pays, and out-of-pocket costs related to prescription drugs they purchased under the Plan’s coverage. *See id.* ¶¶ 196–203. Plaintiffs allege that these costs were excessive and that a prudent plan fiduciary would have carefully monitored those costs and taken action to keep them reasonable. *E.g., id.* ¶¶ 223–24. According to Plaintiffs, Wells Fargo could or should have wielded its substantial bargaining power, derived from the size of the Plan, to negotiate better terms, *id.* ¶¶ 8–10; conducted a more diligent and thorough search through an open bidding process for a PBM which may have resulted in a better deal, *id.* ¶ 11; steered participants toward lower-cost alternatives to Accredo for generic-specialty drugs, *see id.* ¶ 10; or retained a PBM structured under a different model, like a pass-through PBM, *id.* ¶¶ 10, 223–24.

Plaintiffs bring claims on behalf of the Plan under [29 U.S.C. § 1132\(a\)\(2\)](#), and individually and on behalf of a putative class of Plan participants under both [29 U.S.C.](#)

§ 1132(a)(2) and (a)(3). *Id.* ¶¶ 221–46. Plaintiffs allege that Wells Fargo’s failure to monitor costs or to proactively seek ways to keep them low constitutes a breach of Wells Fargo’s fiduciary duties under 29 U.S.C. § 1104(a). *See id.* ¶¶ 221–32. Plaintiffs also allege that Wells Fargo breached its fiduciary duties by causing the Plan to engage in prohibited transactions with ESI, a party in interest under ERISA. *See id.* ¶¶ 233–46. Plaintiffs assert that the compensation, including the administrative fees, Wells Fargo agreed to pay ESI was unreasonable, resulting in increased premiums and out-of-pocket costs to Plaintiffs and other Plan participants and losses to the Plan generally. *Id.* ¶¶ 238, 245. Plaintiffs seek various forms of monetary and equitable relief, including recovery of losses to the Plan, restitution, disgorgement, surcharge, and permanent injunctive relief such as removal of the current Plan fiduciaries, replacement of ESI as the Plan’s PBM, and appointment of an independent Plan fiduciary. *Id.* ¶¶ 226, 232.

Wells Fargo denies Plaintiffs’ allegations and moves to dismiss Plaintiffs’ complaint in its entirety under Federal Rule of Civil Procedure 12(b)(1) for lack of standing or, in the alternative, for failure to state a claim upon which relief may be granted under Rule 12(b)(6). ECF No. 28; ECF No. 30 at 1–3.

ANALYSIS

I. Legal Standard

Challenges to a plaintiff’s Article III standing implicate the court’s subject matter jurisdiction and thus are analyzed under Federal Rule of Civil Procedure 12(b)(1). *Mekhail v. N. Mem’l Health Care*, 726 F. Supp. 3d 916, 931 (D. Minn. 2024). A defendant may raise either a “facial” or a “factual” challenge to a court’s jurisdiction under Rule 12(b)(1).

Scott v. UnitedHealth Grp., Inc., 540 F. Supp. 3d 857, 861 (D. Minn. 2021). On a facial challenge “the court restricts itself to the face of the pleadings” and “the non-moving party receives the same protections as it would defending against a motion brought under Rule 12(b)(6).” *Osborn v. United States*, 918 F.2d 724, 729 n.6 (8th Cir. 1990). By contrast, “[i]n a factual attack, the court considers matters outside the pleadings.” *Id.*

Wells Fargo raises a facial challenge to Plaintiffs’ standing, so the Court applies the standard for reviewing motions to dismiss under Rule 12(b)(6).⁸ *See Osborn*, 918 F.2d at 729 n.6. In reviewing such motions, “the court must accept all factual allegations in the complaint as true and draw all inferences in the plaintiff’s favor.” *L.H. v. Indep. Sch. Dist.*, 111 F.4th 886, 892 (8th Cir. 2024) (internal quotation marks omitted) (citation omitted). However, “the Court will not give the plaintiff the benefit of unreasonable inferences . . . and is not bound to accept as true a legal conclusion couched as a factual allegation.” *Harris v. Medtronic Inc.*, 729 F. Supp. 3d 869, 877 (D. Minn. 2024) (internal quotation marks omitted) (citations omitted). To overcome a motion to dismiss, a complaint must contain “enough facts to state a claim to relief that is plausible on its face.” *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007). A complaint need not contain “detailed factual

⁸ Generally, courts may not consider matters outside the pleadings on a motion to dismiss under Rule 12(b)(6). *Enervations, Inc. v. Minn. Mining & Mfg. Co.*, 380 F.3d 1066, 1069 (8th Cir. 2004). However, a court may consider documents that are “necessarily embraced by the complaint,” including documents “whose contents are alleged in a complaint and whose authenticity no party questions, but which are not physically attached to the pleadings.” *Rossi v. Arch Ins. Co.*, 60 F.4th 1189, 1193 (8th Cir. 2023) (citation omitted). Here, the Court need not look further than the pleadings and the Plan documents submitted by Wells Fargo, which are “necessarily embraced by the complaint,” and thus the Court construes Wells Fargo’s motion as a facial attack on Plaintiffs’ standing. *See id.*

allegations,” but it must contain facts with enough specificity “to raise a right to relief above the speculative level.” *Id.* at 555.

II. Article III Standing

“Standing to sue under Article III ‘is the threshold question in every federal case because it determines the power of the court to entertain the suit.’” *Becker v. N.D. Univ. Sys.*, [112 F.4th 592, 595](#) (8th Cir. 2024) (cleaned up) (quoting *Warth v. Seldin*, [422 U.S. 490, 498](#) (1975)). To establish standing, Plaintiffs must plead facts showing they have (1) suffered an injury in fact, (2) that is fairly traceable to the challenged conduct of the defendant, and (3) that is likely to be redressed by a favorable judicial decision. *Arc of Iowa v. Reynolds*, [94 F.4th 707, 710](#) (8th Cir. 2024) (citing *Spokeo, Inc. v. Robins*, [578 U.S. 330, 338](#) (2016)). “Plaintiffs, as the parties invoking federal court jurisdiction, bear the burden of establishing these elements.” *Id.* And “standing is not dispensed in gross,” so Plaintiffs “must demonstrate standing for each claim that they press and for each form of relief that they seek.” *TransUnion LLC v. Ramirez*, [594 U.S. 413, 431](#) (2021).

To establish injury in fact, a plaintiff “must show that he or she suffered ‘an invasion of a legally protected interest’ that is ‘concrete and particularized’ and ‘actual or imminent, not conjectural or hypothetical.’” *Scott*, [540 F. Supp. 3d at 861](#) (quoting *Spokeo*, [578 U.S. at 339](#)). Whether a plaintiff has shown injury-in-fact “often turns on the nature and source of the claim asserted.” *Braden v. Wal-Mart Stores, Inc.*, [588 F.3d 585, 591](#) (8th Cir. 2009) (quoting *Warth*, [422 U.S. at 500](#)). This typically means, practically speaking, that “a plaintiff’s standing tracks his cause of action. That is, the question whether he has a cognizable injury sufficient to confer standing is closely bound up with the question of

whether and how the law will grant him relief.” *Id.* But “[i]t is crucial . . . not to conflate Article III’s requirement of injury in fact with a plaintiff’s potential causes of action, for the concepts are not coextensive.” *Turtle Island Foods, SPC v. Thompson*, [992 F.3d 694, 699](#) (8th Cir. 2021) (citation omitted).

Plaintiffs’ theory of standing is fairly straightforward: (1) Plaintiffs individually were harmed in the form of high out-of-pocket costs and increased monthly premiums for their healthcare coverage, and the Plan was harmed by Wells Fargo causing it to pay excessive fees to ESI; (2) both harms are traceable to Wells Fargo’s purported breaches of fiduciary duty; and (3) the relief Plaintiffs request will both redress the past harms and prevent them from recurring. *See* [ECF No. 38 at 9](#). In challenging Plaintiffs’ pleadings, Wells Fargo largely attacks Plaintiffs’ alleged harm as insufficient to confer standing and asserts that, to the extent Plaintiffs’ harm qualifies as injury-in-fact, the relief Plaintiffs request would not redress it. *See* [ECF No. 30 at 9–20](#).

The Court agrees with Plaintiffs—in theory—that the individual harm they allege could constitute injury-in-fact for standing purposes. But on the actual facts Plaintiffs allege, these Plaintiffs cannot satisfy Article III’s standing requirements because their alleged harm is speculative and, ultimately, not redressable.

A. Breach of Fiduciary Duty Under ERISA

Plaintiffs bring claims under both [29 U.S.C. § 1132\(a\)\(2\)](#) and [\(a\)\(3\)](#). Section 1132(a)(2) provides that a plan participant may bring a civil action “for appropriate relief under section 1109 of this title.” [29 U.S.C. § 1132\(a\)\(2\)](#). Section 1109, in turn, makes fiduciaries of an ERISA-governed plan personally liable for breaches of “any of the

responsibilities, obligations, or duties imposed upon fiduciaries” by ERISA. *Id.* § 1109(a). Among the duties ERISA imposes are the duties to act “solely in the interest of the participants and beneficiaries” of the plan, and to act “with the care, skill, prudence, and diligence” of a prudent person “acting in a like capacity and familiar with such matters.” *Id.* § 1104(a)(1). Fiduciaries are also prohibited from causing a plan to engage in certain transactions with a “party in interest.” *Id.* § 1106(a)–(b). ERISA fiduciaries found liable for breach of fiduciary duty can be required to “make good” any losses to the plan that results from a breach of fiduciary duty, and to “restore to such plan any profits of such fiduciary which have been made through use of assets of the plan by the fiduciary.” *Id.* § 1109(a). Section 1109 also empowers courts to award “such other equitable or remedial relief as the court may deem appropriate, including removal of such fiduciary.” *Id.*

Section 1132(a)(3), meanwhile, provides that a plan participant may bring a civil action to enjoin a plan fiduciary from engaging in any act that violates ERISA or the terms of the plan at issue, or to obtain other equitable relief redressing such violations or enforcing the provisions of ERISA or the terms of the plan. *Id.* § 1132(a)(3). In other words, Section 1132(a)(3) “is a ‘catch-all’ provision that ‘act[s] as a safety net, offering appropriate equitable relief for injuries caused by violations that [§ 1132] does not elsewhere adequately remedy.’” *Thole v. U.S. Bank, Nat’l Ass’n* (“*Thole I*”), [873 F.3d 617, 629](#) (8th Cir. 2017) (alterations in original) (quoting *Soehrlen v. Fleet Owners Ins. Fund*, [844 F.3d 576, 583](#) (6th Cir. 2016)), *aff’d sub nom. Thole v. U.S. Bank N.A.*, [590 U.S. 538](#) (2020).

Whether claims are brought under Section 1132(a)(2) or (a)(3), “[t]here is no ERISA exception to Article III.” *Thole v. U.S. Bank N.A.* (“*Thole II*”), [590 U.S. 538, 547](#) (2020). Thus, “the plaintiffs must show actual injury . . . to fall within the class of plaintiffs whom Congress has authorized to sue under [ERISA].” *Thole I*, [873 F.3d at 630](#).

1. Claims Under [29 U.S.C. § 1132\(a\)\(2\)](#) (Counts I and III)

Key to the standing analysis is whether Plaintiffs have pleaded a concrete and particularized injury that can be remedied by this Court. In the context of Plaintiffs’ allegations here, whether Plaintiffs have established standing requires the Court first to determine whether the Plan is a defined-benefit or a defined-contribution plan. *See Thole II*, [590 U.S. at 540](#) (explaining the “decisive importance” that the plan at issue was a “defined-benefit” plan, as opposed to a “defined-contribution” plan). A defined-benefit plan is “in the nature of a contract.” *Thole II*, [590 U.S. at 542–43](#). Such plans are typically “funded by employer or employee contributions, or a combination of both,” and consist of “a general pool of assets rather than individual dedicated accounts.” *Hughes Aircraft Co. v. Jacobson*, [525 U.S. 432, 439](#) (1999); *see Scott*, [540 F. Supp. 3d at 862](#). “The structure of a defined benefit plan reflects the risk borne by the employer. Given the employer’s obligation to make up any shortfall, no plan member has a claim to any particular asset that composes a part of the plan’s general asset pool.” *Hughes Aircraft*, [525 U.S. at 440](#). Defined-contribution plans, by contrast, “provide[] for an individual account for each participant and for benefits based solely upon the amount contributed to the participant’s account, and any income, expenses, gains and losses.” *Scott*, [540 F. Supp. 3d at 862](#) (quoting [29 U.S.C. § 1002\(34\)](#)).

The key difference, as courts have explained, is that “in a defined-contribution plan, such as a 401(k) plan, the [participants’] benefits are typically tied to the value of their accounts,” *Thole II*, [590 U.S. at 540](#), while “benefits under a defined-benefit plan ‘do not fluctuate with the value of the plan or because of the plan fiduciaries’ good or bad investment decisions,” *Scott*, [540 F. Supp. 3d at 862](#) (quoting *Thole II*, [590 U.S. at 540](#)); *see also Thole II*, [590 U.S. at 543](#) (“The plan participants’ benefits are fixed and will not change, regardless of how well or poorly the plan is managed.”). Thus, “a necessary predicate to a participant bringing broader claims on behalf of [a defined-benefit] plan is a showing of a concrete and particularized injury to the participant herself,” not just the plan, and that individual harm must “affect [the participant’s] benefits” to confer standing to sue. *Scott*, [540 F. Supp. 3d at 865](#); *see also Thole II*, [590 U.S. at 542–43](#).

The Plan in this case is “closely analogous to the defined-benefit plan at issue in *Thole [II]*, as participants are entitled to their contractually defined benefits regardless of the value of the [Plan’s] assets.” *Scott*, [540 F. Supp. 3d at 864](#). In *Scott*, the plaintiffs were participants in a defined-benefit health plan administered by UnitedHealth Group (“UHG”). *Id.* The plaintiffs challenged UHG’s practice of “cross-plan offsetting,” whereby UHG used assets of the plaintiffs’ plan to recoup alleged overpayments made by a different UHG plan in which the plaintiffs were not participants. *See id.* at 859–60. The plaintiffs alleged that this cross-plan offsetting constituted harm to the plan and a breach of UHG’s fiduciary duties under ERISA. *Id.* at 861. As to their individual harm, the plaintiffs asserted that UHG “misus[ed] their payroll contributions” and “caus[ed] them financial injury” when it used the plaintiffs’ plan’s assets to cover another plan’s losses. *Id.*

at 862. The court rejected the plaintiffs' argument, explaining that the plaintiffs relinquished any individual interest in their contributions once those contributions became part of the plan's "general pool of assets," and that "[a] diminution of those assets [did] not affect plaintiffs' entitlement to benefits in any way and therefore [did] not cause plaintiffs any injury." *Id.* (citation omitted). The court, citing *Thole II*, ultimately concluded that "an injury to a plan that does not affect a plaintiff's benefits does not give that plaintiff standing to sue on behalf of the plan." *Id.* at 865.

Wells Fargo relies on *Scott* to assert that Plaintiffs do not plead a concrete injury sufficient to confer standing. Specifically, Wells Fargo emphasizes that Plaintiffs have not alleged that they did not receive all the benefits to which they were entitled while they were members of the Plan. See [ECF No. 30 at 10–12](#). But while instructive, *Scott* is distinguishable from the facts and allegations in this case. In *Scott*, the plaintiffs' theory of individual harm was premised on their allegations that the plan at issue mismanaged plan assets, including the plaintiffs' contributions, but that argument was expressly foreclosed by the Supreme Court's decision in *Thole II*. See *Scott*, [540 F. Supp. 3d at 862–63](#). The *Scott* plaintiffs did not specifically allege that the contributions they were required to pay were excessive, as Plaintiffs do here. And the *Scott* court was explicit that the plaintiffs in that case lacked standing because they had only alleged the defendants' breaches of fiduciary duty "caused injury to the *plan*—and not injury to [the] *plaintiffs themselves*." *Id.* at 861. Importantly, the *Scott* court did not reach the issue of whether "additional or replacement contributions" could satisfy the injury-in-fact requirement for Article III

purposes because the *Scott* plaintiffs “[did] not allege that they personally had to make” such contributions. *See id.* at 863 n.4.

Plaintiffs here avoid that pitfall—at least to some extent. They assert that the contributions and out-of-pocket costs they were required to pay under the Plan’s terms were excessively high given Wells Fargo’s alleged breaches of fiduciary duty. *See, e.g., ECF No. 1* ¶ 208. Unlike the *Scott* plaintiffs, Plaintiffs here do not premise their theory of individual harm *solely* on Wells Fargo’s purported misuse of participant contributions after Plaintiffs relinquished any legal interest in them. And the hypothetical “additional or replacement contributions” discussed in *Scott* are analogous to the excessive contributions Plaintiffs allege here. *See id.* (“[Plaintiffs] paid more in premiums than they would have paid absent [Wells Fargo’s] fiduciary breaches.”).

A more recent Third Circuit case on which Plaintiffs rely, *Knudsen v. MetLife Group, Inc.*, provides a closer analogy. [117 F.4th 570](#) (3d Cir. 2024). There, the plaintiffs were participants in an employee-sponsored defined-benefit health plan that retained a PBM—coincidentally, ESI—to manage its prescription-drug benefits. *Id.* at 573–74. As part of that agreement, ESI negotiated volume discounts and rebates with drug manufacturers, and under the plan’s terms, MetLife was to apply those rebates toward plan expenses. *Id.* at 574. The plaintiffs alleged that MetLife directed the rebates to itself instead and that they would have received “multiple benefits,” including lower contributions and out-of-pocket costs, had MetLife applied the rebates to plan expenses. *Id.* at 574–75. Citing *Thole II*, MetLife argued, and the district court agreed, that “a beneficiary of an ERISA regulated defined-benefit plan has no injury unless the plan participants plead that they did not

receive promised benefits . . . or that there is a substantial likelihood that the plan will default.” *Id.* at 579.

On appeal, the *Knudsen* plaintiffs convincingly distinguished the employee-sponsored health plan in their case with the pension plan at issue in *Thole II*:

[Plaintiffs] point out that benefits in pension plans accrue over years, and once earned, the benefits, i.e., pension payments, are fixed and paid at regular intervals. In contrast, participants in a self-funded health plan pay for their benefits through payroll deductions in the form of premiums, and the plan sponsor can annually change both the amount of the premium (and other out-of-pocket costs) and the benefits to which a participant is entitled.

Id. The Third Circuit agreed with the plaintiffs as a “purely theoretical proposition”:

[W]e decline to hold that *Thole [II]* . . . require[s] dismissal, under Article III, *whenever* a participant in a self-funded healthcare plan brings an ERISA suit alleging that mismanagement of plan assets increased his/her out-of-pocket expenses. While MetLife is correct that sponsors of self-funded health insurance plans, like pension plans, bear all the risk of distributing benefits to beneficiaries, we cannot ignore a more fundamental tenet of injury-in-fact: financial harm, even if only a few pennies, is a concrete, non-speculative injury. A contrary conclusion, would mean that MetLife could charge Plan participants thousands of dollars more in premiums than is allowed under Plan documents, resulting in potential ERISA violations, and Plan participants would have no judicial recourse to seek return of their overpayments. *Thole [II]* . . . command[s] no such result, and in a different case, a plaintiff may well establish such a financial injury sufficient to satisfy Article III.

Id. at 579–80 (citations omitted). Still, despite its theoretical agreement with the plaintiffs’ argument, the Third Circuit concluded that the plaintiffs had not alleged concrete financial harm because “it is speculative that MetLife’s alleged misappropriation of drug rebate money resulted in Plaintiffs paying more for their health insurance or had any effect at all.”

Id. at 582.

The Court agrees with the Third Circuit’s “purely theoretical proposition” in *Knudsen*. *Thole II* controls this case, as it controlled in *Scott*, [540 F. Supp. 3d at 862](#). But the Court does not read *Thole II* to hold, as a matter of law, that a plaintiff suing a fiduciary of an ERISA-governed defined-benefit health plan cannot ever establish standing on a theory of harm premised on excessive out-of-pocket costs. As the *Knudsen* court explained, such a conclusion would lead to absurd results where fiduciaries of defined-benefit plans could flagrantly violate ERISA, up to and including plainly breaching the terms of the plans they serve, while effectively enjoying immunity from any liability so long as participants receive the benefits to which they are entitled. Such an outcome would frustrate ERISA’s core purpose: to “protect contractually defined benefits.” *US Airways, Inc. v. McCutchen*, [569 U.S. 88, 100](#) (2013) (citation omitted); *see also, e.g., Boggs v. Boggs*, [520 U.S. 833, 845](#) (1997) (“The principal object of [ERISA] is to protect plan participants and beneficiaries.”). And more broadly, it would undermine the well-established principle that “[f]or standing purposes, a loss of even a small amount of money is ordinarily an ‘injury.’” *Demarais v. Gurstel Chargo, P.A.*, [869 F.3d 685, 693](#) (8th Cir. 2017) (quoting *Czyzewski v. Jevic Holding Corp.*, [580 U.S. 451, 464](#) (2017)); *cf. Thole II*, [590 U.S. at 547](#) (“There is no ERISA exception to Article III.”).

Unfortunately for Plaintiffs, that is not the end of this Court’s agreement with the *Knudsen* court, and the Third Circuit’s theoretical proposition runs aground when confronted with the facts alleged here, just as it did there. The underlying argument Plaintiffs advance, while different in the specifics, is essentially the same as in *Knudsen*: had Wells Fargo more closely monitored the Plan’s prescription drug costs and negotiated

a better deal with ESI, replaced ESI with a different PBM,⁹ or adopted a different model altogether, the Plan would have paid less in administrative fees and other compensation to ESI, which would have resulted in lower participant contributions and out-of-pocket costs. Plaintiffs' theory appears tempting at first blush, but it withers upon closer scrutiny.

To begin, the connection between what Plan participants were required to pay in contributions and out-of-pocket costs, and the administrative fees the Plan was required to pay ESI, is tenuous at best. Of critical importance here is that the Plan vests Wells Fargo with "sole discretion" to set participant contribution rates. [ECF No. 31-3 at 9](#); *see also* [ECF No. 31-2 at 22](#). The Plan's terms are clear that participant contribution amounts may be affected by several factors having nothing to do with prescription drug benefits, like

⁹ On this point, the Court struggles to see how Wells Fargo selecting ESI as the Plan's PBM could form a basis for a claim of breach of fiduciary duty under ERISA on the facts alleged here. Plaintiffs themselves acknowledge that ESI is one of the "Big 3" PBMs. *See* [ECF No. 1](#) ¶ 86. Even if Wells Fargo had conducted an "open RFP process," as Plaintiffs insist it should have, *id.* ¶ 82, it appears quite plausible that Wells Fargo still would have selected ESI—as many other companies evidently have, *see id.* ¶ 86—leaving Plaintiffs in precisely the same situation. Further, Plaintiffs do not offer any meaningful or relevant comparison between ESI and the other two of the "Big 3" PBMs—CVS Caremark and OptumRx. *See id.* Plaintiffs allege that other large companies generally "use the specialty carve-out model for their prescription-drug plans," which purportedly "offer[s] substantial savings to plans and their participants," and cite two specific companies who implemented such carve-outs in their agreements with CVS Caremark and OptumRx. *Id.* ¶ 90. But these allegations, even accepted as true, are missing critical information. Plaintiffs do not allege facts regarding the relative size and scope of those companies' plans or explain how much those companies' plans saved by implementing those carve-outs. Indeed, Plaintiffs do not clearly or specifically allege that the carve-outs reduced those plan participants' contributions or out-of-pocket costs *at all*. Nor do Plaintiffs offer specific facts relating to *why* those companies chose to implement carve-outs. Ultimately, Plaintiffs' allegation that such a carve-out in Wells Fargo's agreement with ESI necessarily would have resulted in lower contributions and out-of-pocket costs is speculative and conclusory.

whether a participant uses tobacco, whether a participant obtains coverage for her spouse or children in addition to herself, and a participant’s “compensation category.” [ECF No. 31-3 at 9](#). And notwithstanding that Wells Fargo supplied the bulk of Plan funding during the relevant period, *see* [ECF No. 30 at 4 n.1](#), the Plan authorizes Wells Fargo to require participants to fund *all* Plan expenses, not just expenses related to their own individual benefits. *See* [ECF No. 31-2 at 22](#) (emphasis added) (providing that “[p]articipants *shall* be responsible for payment of applicable premiums and contributions to the Plan,” but that “[Wells Fargo] *may* pay such contributions to the Plan”); [ECF No. 31-2 at 22](#) (emphasis added) (“*All fees and expenses* incurred in connection with the operation and administration of the Plan *may be paid out of the Trust or any other Plan asset*”).

Taken together, it is speculative that the allegedly excessive fees the Plan paid to ESI “had any effect at all” on Plaintiffs’ contribution rates and out-of-pocket costs for prescriptions. *Knudsen*, [117 F.4th at 582](#). And Plaintiffs’ attempts to establish a direct connection between their increased costs and the increases in administrative fees paid by the Plan to ESI are unconvincing. For example, Plaintiffs offer comparisons between the purchase prices for certain prescription drugs under the Plan vis-à-vis the prices an uninsured person would pay at retail pharmacies for the same prescriptions or the acquisition costs paid by the pharmacies to obtain those drugs. *See* [ECF No. 1 ¶¶ 114–31](#). But as Wells Fargo notes, those comparisons relate to only 260 of the drugs in the Plan’s formulary, a relatively narrow subset of the “thousands” of drugs in the Plan’s full formulary. [ECF No. 30 at 7](#). And a Plan participant is only responsible for the full out-of-

pocket costs for prescription drugs—whether “preferred alternative,” “generic-specialty,” or otherwise—until the participant meets their annual deductible, after which the Plan covers most of the costs for that participant’s prescription drugs for the remainder of the year. *See* [ECF No. 1 ¶ 33](#). Plaintiffs’ selective allegations regarding the markups on a subset of prescription drugs in the Plan’s formulary, [ECF No. 1 ¶¶ 108–31](#), which itself represents only a subset of the total benefits whose costs Plan participants’ contributions may be used to cover, [ECF No. 31-2 at 22](#), are not sufficient to establish a causal connection between Plaintiffs’ increased costs and ESI’s administrative fees. There are simply too many variables in how Plan participants’ contribution rates are calculated to make the inferential leaps necessary to elevate Plaintiffs’ allegations from merely speculative to plausible. *See Harris*, [729 F. Supp. 3d at 877](#).

Knudsen is instructive on this point as well. There, the plaintiffs asserted they would have received “multiple benefits” had the defendant not breached its fiduciary duties:

First, it may have been consistent with its fiduciary duties for [MetLife] to reduce ongoing contributions on account of the rebates collected by the Plan. *Second*, [MetLife] may have . . . reduced co-pays and co-insurance for pharmaceutical benefits. *Third*, [MetLife] may have distributed rebates to participants in proportion to their contributions to the Plan.

Knudsen, [117 F.4th at 582](#) (alterations in original). The Third Circuit was not convinced, reasoning that “[t]hese allegations readily permit an inference that even if MetLife had not committed ERISA violations, it *may not* have taken any of these listed actions and Plaintiffs’ out-of-pocket costs would have still increased.” *Id.*

Such is the case here. Plaintiffs attempt to avoid *Knudsen*’s conclusion by substituting “may” with “would.” For instance, Plaintiffs allege that “if [Wells Fargo]

stopped causing the Plan to overspend on prescription drugs and related fees by millions of dollars each year[,] employee contributions *would* be lower as well, in order to maintain the same 75-25 split between employer and employee contributions to which [Wells Fargo has] demonstrated [its] commitment.” [ECF No. 1](#) ¶ 207 (emphasis added); *see* [ECF No. 38](#) at 12–13. But this argument assumes that Wells Fargo would maintain the 75-25 employer-employee contribution ratio, and nothing in the Plan *requires* Wells Fargo to do so. *See* [ECF No. 31-3](#) at 9; [ECF No. 31-2](#) at 22. Plaintiffs’ argument also fundamentally misses the point: if Plaintiffs prevailed in this case and received every bit of the relief they request, *see id.* ¶¶ 249–57, Wells Fargo could *still* increase Plan participants’ contribution amounts under the Plan’s terms without any violation of ERISA having occurred. Merely changing “may” to “would” is a semantic sleight of hand that does not make the proposition any more certain or its conclusion any less speculative.¹⁰ *See Horvath v. Keystone Health Plan E., Inc.*, [333 F.3d 450, 457](#) (3d Cir. 2003) (concluding that whether plan savings would have passed to plan participants was “too speculative to serve as the basis for a claim of individual loss”).

Plaintiffs also seem to suggest this Court could alter the terms of the Plan to expressly require Wells Fargo to reduce (or even maintain) participants’ contribution amounts, but the Court is not convinced. The Court is unaware of any mechanism by which

¹⁰ In fact, *Knudsen* characterized the plaintiffs’ allegations in exactly the way Plaintiffs here framed their allegations: “According to Plaintiffs, they *would have* received ‘multiple benefits’ if MetLife had not misallocated drug rebates[.]” *Knudsen*, [117 F.4th at 582](#) (emphasis added).

it could force Wells Fargo to reduce participant contribution rates. Nor have Plaintiffs identified one.¹¹ Whether “surcharge, restitution, or other make-whole equitable relief,” “[r]emoving the Plan’s fiduciary” and “appointing an independent fiduciary,” “[r]emoving and replacing the Plan’s PBM and/or requiring a search for [an] alternative PBM,” or injunctive relief, [ECF No. 1 ¶¶ 251–54](#), Plaintiffs’ theory of redressability stumbles on the same obstacle: Wells Fargo’s “sole discretion” to set participant contribution rates. [ECF No. 31-3 at 9](#). Simply put, while Plaintiffs’ requested relief *could* result in lower contribution rates and out-of-pocket costs, there is no guarantee that it *would*, and “pleadings must be something more than an ingenious academic exercise in the conceivable” to meet the standing threshold. *United States v. Students Challenging Regul. Agency Procs.*, [412 U.S. 669, 688](#) (1973). Plaintiffs’ theory is plainly rooted in speculation and conjecture, and “[s]uch pleadings are not sufficient to support Article III standing.” *Knudsen*, [117 F.4th at 582](#).

While compelling and detailed, Plaintiffs’ allegations are simply too speculative to show concrete individual harm, too tenuous to show causation, and too conjectural to show

¹¹ Reformation, which Plaintiffs do not request, would ostensibly fit the bill, and it is an available remedy under Section 1132(a)(3). *Powell v. Minn. Life Ins. Co.*, [60 F.4th 1119, 1123](#) (8th Cir. 2023). Reformation is only appropriate, however, in instances of mistake or fraud, neither of which Plaintiffs allege here. *See, e.g., Ibson v. United Healthcare Servs., Inc.*, [877 F.3d 384, 389](#) (8th Cir. 2017) (alteration in original) (quoting *Silva v. Metro. Life Ins. Co.*, [762 F.3d 711, 723](#) (8th Cir. 2014)) (“The ‘reformation remedy available under § 1132(a)(3) . . . allow[s] courts to reform contracts that failed to express the agreement of the parties.’”); *CIGNA Corp. v. Amara*, [563 U.S. 421, 440](#) (2011) (“The power to reform contracts (as contrasted with the power to enforce contracts as written) is a traditional power of an equity court . . . and was used to prevent fraud.”).

redressability. Accordingly, Plaintiffs lack Article III standing to sue under [29 U.S.C. § 1132\(a\)\(2\)](#).

2. Claims Under [29 U.S.C. § 1132\(a\)\(3\)](#) (Counts II and IV)

As even Wells Fargo concedes, Plaintiffs' individual claims under Section 1132(a)(3) "do not suffer from" all the same issues as their representative claims on behalf of the Plan under Section 1132(a)(2).¹² [ECF No. 30 at 14](#). Nevertheless, Plaintiffs cannot establish standing under Section 1132(a)(3) both because they have not alleged concrete individual harm and because these Plaintiffs "have no concrete stake in the lawsuit" regarding any prospective injunctive relief. *Thole II*, [590 U.S. 541–42](#).

Section 1132(a)(3) "allows an individual plan participant to seek equitable remedies for breach of fiduciary duty in his [or her] individual capacity." *Knieriem v. Grp. Health Plan, Inc.*, [434 F.3d 1058, 1061](#) (8th Cir. 2006). Recovery under Section 1132(a)(3), however, is limited to traditional equitable remedies "such as injunctive, restitutionary, or mandamus relief." *Id.* (quoting *Kerr v. Charles F. Vatterott & Co.*, [184 F.3d 938, 943](#) (8th Cir. 1999)). Importantly, Section 1132(a)(3) "does not . . . authorize appropriate equitable relief *at large*, but only appropriate equitable relief for the purpose of redressing any violations or . . . enforcing any provisions of ERISA or an ERISA plan." *Peacock v. Thomas*, [516 U.S. 349, 353](#) (1996) (cleaned up) (citation omitted).

¹² Wells Fargo largely focuses its argument on the distinction between "fiduciary" and "settlor" acts, contending that the conduct Plaintiffs challenge—"setting premiums, co-pays, and deductibles"—are settlor functions that are not subject to review under ERISA. [ECF No. 30 at 15–17](#). Wells Fargo does not "explain how this analysis goes to the Court's standing inquiry." *Sigetich v. Kroger Co.*, No. 1:21-cv-697, [2023 WL 2431667](#), at *8 (S.D. Ohio Mar. 9, 2023).

Plaintiffs must show “actual or imminent injury to the Plan itself” that caused injury to the plaintiffs’ interests in the Plan” to establish standing under Section 1132(a)(3). *Thole I*, 873 F.3d at 630 (quoting *Soehrlen*, 844 F.3d at 583). The Supreme Court affirmed that approach in *Thole II*, reasoning that the plaintiffs there lacked standing because they had received all benefits to which they were entitled, and “the outcome of [the] suit would not affect their future benefit[s].” *Thole II*, 590 U.S. at 541. *Thole II* instructs that ERISA plaintiffs must “have [a] concrete stake” in the outcome of the suit, as Article III requires of plaintiffs in all cases. *Id.* at 542; *see also id.* at 547 (“There is no ERISA exception to Article III.”).

Again, *Thole II* controls here, and Plaintiffs clearly do not have a stake in any of the prospective equitable relief they request. They are no longer participants in the Plan, *see ECF No. 1* ¶¶ 14–17, so any changes to the Plan’s structure or administration going forward—like replacing ESI as the Plan’s PBM or removing the Plan’s fiduciaries and appointing an independent fiduciary, *id.* ¶¶ 252–53—will not personally affect them in any way, much less redress the individual harm they allege. *See e.g., DeFazio v. Hollister Emp. Share Ownership Tr.*, 612 F. App’x 439, 441 (9th Cir. 2015) (“The Plan Participants, who have already cashed out of the Plan, lack Article III standing as to redressability vis-à-vis their claims for prospective equitable relief.”); *Trauernicht v. Genworth Fin. Inc.*, No. 3:22-cv-532, 2023 WL 5961651, at *6 (E.D. Va. Sept. 13, 2023) (holding former plan participants lacked standing because “any changes to the process in the future would not affect them, making their claim for prospective injunctive relief non-redressable”); *Peters v. Aetna, Inc.*, No. 1:15-cv-109-MR, 2023 WL 3829407, at *7 (W.D.N.C. June 5, 2023)

(“[T]he Plaintiff’s lack of continued participation in the Mars Plan is fatal to her standing to assert claims for prospective injunctive relief.”); *Savage v. Sutherland Glob. Servs., Inc.*, No. 6:19-cv-6840 EAW, [2024 WL 3982831](#), at *6 (W.D.N.Y. Aug. 28, 2024) (holding “Plaintiffs lack Article III standing to seek prospective relief” because “none of Plaintiffs are still enrolled in the Plan” and “thus are not in danger of any future injury from the selection of ADP as recordkeeper”).

As it relates to Plaintiffs’ request for non-injunctive (that is, retrospective) equitable relief, Plaintiffs do not dispute that they received all the benefits to which they were entitled when they were participants in the Plan, even if they believe they had to pay more for those benefits than they should have. *See, e.g.*, [ECF No. 1 ¶¶ 196–203](#). And as already discussed, Plaintiffs’ allegations of individual harm are speculative at best and insufficient to establish Article III standing. Other courts have reached the same conclusion in similar circumstances—even before *Thole II* was decided. *See Cox v. Blue Cross Blue Shield of Mich.*, [216 F. Supp. 3d 820, 826](#) (E.D. Mich. 2016) (finding no standing to seek “restitution, disgorgement, [and] surcharge” under Section 1132(a)(3) because “[a]t most, it is Plaintiffs’ healthcare plans that suffered concrete and particularized injuries when they paid BCBSM the hidden fees” which was “not concrete or particularized harm to Plaintiffs.”). Further, much of the retrospective equitable relief Plaintiffs request bears the characteristics of monetary or compensatory relief. *See ECF No. 1 ¶¶ 251, 254* (requesting “make-whole” and “monetary” relief). But such relief is not available under Section 1132(a)(3). *See, e.g.*, *Kerr*, [184 F.3d at 943](#) (“[S]ection 1132(a)(3) recovery . . . does not extend to compensatory damages.”); *Mertens v. Hewitt Assocs.*, [508 U.S. 248, 256](#) (1993) (holding plaintiffs could

not seek relief under Section 1132(a)(3) because their claims sought “monetary relief for all losses their plan sustained as a result of the alleged breach of fiduciary duties,” which is the “classic form of *legal relief*”); *Paulsen v. CNF Inc.*, [559 F.3d 1061, 1076](#) (9th Cir. 2009) (finding no standing to sue under Section 1132(a)(3) where plaintiffs requested to be made “whole in the amounts by which their pension benefits have been reduced as a result of [fiduciary] breaches”).

Plaintiffs have no stake in the outcome of this case as it relates to the prospective equitable relief they seek. Nor can they show a concrete and particularized injury sufficient to establish standing to seek retrospective equitable relief, and some of the retrospective equitable relief they request is “foreclosed by Supreme Court precedent.” *Paulsen*, [559 F.3d at 1076](#); *see also Mertens*, [508 U.S. at 256](#). Consequently, Plaintiffs lack standing to pursue their claims under [29 U.S.C. § 1132\(a\)\(3\)](#).¹³

CONCLUSION

The Court is not unsympathetic to Plaintiffs’ concerns. Prescription drug costs are high—even for those who are insured, as forcefully set forth in Plaintiffs’ complaint. Plaintiffs’ frustration is understandable, and this Court will not tell them otherwise.

But however sympathetic the Court may be, it cannot ignore the law. Under ERISA, as interpreted in decisions that bind this Court, Plaintiffs’ allegations are insufficient to establish Article III standing. As a result, Plaintiffs’ complaint must be dismissed.

¹³ Because the Court dismisses Plaintiffs’ complaint for lack of standing, the Court need not address Wells Fargo’s alternative basis for dismissal under Rule 12(b)(6). *See ECF No. 30 at 20–31*.

ORDER

Based on the foregoing, and on all of the files, records, and proceedings in the above-captioned matter, **IT IS HEREBY ORDERED** that:

1. Wells Fargo's Motion to Dismiss ([ECF No. 28](#)) is **GRANTED**; and
2. Plaintiffs' Complaint ([ECF No. 1](#)) is **DISMISSED WITHOUT PREJUDICE**.

LET JUDGMENT BE ENTERED ACCORDINGLY.

Dated: March 24, 2025

s/Laura M. Provinzino

Laura M. Provinzino
United States District Judge

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

SERGIO NAVARRO, THERESA
GAMAGE, DAYLE BULLA, JANE
KINSELLA, and ERICA McKINLEY,
*on their own behalf, on behalf of all
others similarly situated, and on behalf
of the Wells Fargo & Company Health
Plan and its component plans,*

Plaintiffs,

v.

WELLS FARGO & COMPANY,

Defendant.

Case No. 24-cv-3043 (LMP/DLM)

**ORDER GRANTING
DEFENDANT'S
MOTION TO DISMISS**

Kai H. Richter, **Cohen Milstein Sellers & Toll, PLLC, Minneapolis, MN**; Michelle C. Yau and Allison Pienta, **Cohen Milstein Sellers & Toll, PLLC, Washington, D.C.**; Michael B. Eisenkraft, **Cohen Milstein Sellers & Toll, PLLC, New York, NY**; Jamie Crooks and Michael D. Lieberman, **Fairmark Partners LLP, Washington, D.C.**; and Daniel E. Gustafson and Daniel J. Nordin, **Gustafson Gluek PLLC, Minneapolis, MN**, for Plaintiffs.

Russell L. Hirschhorn, Joseph E. Clark, and Sydney L. Juliano, **Proskauer Rose LLP, New York, NY**; and Jeffrey P. Justman and Kiera Murphy, **Faegre Drinker Biddle & Reath LLP, Minneapolis, MN**, for Defendant.

Carl F. Engstrom, **Engstrom Lee, Minneapolis, MN**, for Amicus Curiae Amy B. Monahan.

Plaintiffs Sergio Navarro, Theresa Gamage, Dayle Bulla, and Jane Kinsella (the “Original Plaintiffs”), former employees of Defendant Wells Fargo & Company (“Wells Fargo”) and former participants in the Wells Fargo & Company Health Plan (the “Plan”), filed the initial complaint in this matter, alleging that Wells Fargo breached its fiduciary

duties under the Employee Retirement Income Security Act (“ERISA”) by mismanaging the Plan’s prescription drug benefits program. [ECF No. 1](#). Wells Fargo moved to dismiss the Original Plaintiffs’ complaint for lack of standing and for failure to state a plausible claim for relief. [ECF No. 28](#). Upon review of the initial complaint, this Court found that “[w]hile compelling and detailed, Plaintiffs’ allegations are simply too speculative to show concrete individual harm, too tenuous to show causation, and too conjectural to show redressability.” [ECF No. 57 at 25](#). The Court therefore concluded that the Original Plaintiffs lacked standing and granted Wells Fargo’s motion. *Id.* at 29.

With leave of Court, the Original Plaintiffs filed an amended complaint supplementing their factual allegations, asserting the same claims, and adding Plaintiff Erica McKinley (collectively with the Original Plaintiffs, “Plaintiffs”), who is a former Wells Fargo employee and current Plan participant. [ECF No. 64](#). Wells Fargo moves to dismiss the amended complaint on the same grounds. [ECF No. 77](#). For the reasons discussed here, the Court again concludes upon review of the amended complaint that Plaintiffs have not demonstrated standing to bring their claims, grants Wells Fargo’s motion, and dismisses Plaintiffs’ amended complaint.

FACTUAL BACKGROUND

The factual allegations in Plaintiffs’ amended complaint largely mirror the allegations in the initial complaint. *Compare* [ECF No. 64](#), with [ECF No. 1](#); *see* [ECF No. 64-2](#); *see also* [ECF No. 57 at 2–9](#). The Court will cover the facts alleged in the amended complaint for the benefit of context. In addition, the Court notes that for purposes of assessing Wells Fargo’s motion to dismiss, the Court accepts the factual allegations in

Plaintiffs' amended complaint as true. *Gorog v. Best Buy Co.*, [760 F.3d 787, 792](#) (8th Cir. 2014).

I. The Plan

The Plan is a self-funded employee welfare benefit plan established to provide medical and prescription drug benefits to Wells Fargo employees who choose to enroll. See [ECF No. 64](#) ¶¶ 21–22. Wells Fargo is the sponsor and a fiduciary of the Plan and retains decision-making authority with respect to the Plan's management. *Id.* ¶ 24. The Original Plaintiffs are each former Wells Fargo employees and former Plan participants. *Id.* ¶¶ 14–17. McKinley is also a former Wells Fargo employee, but as of the filing of the amended complaint, she remains a participant in the Plan because she elected to continue her coverage under the Consolidated Omnibus Budget Reconciliation Act (“COBRA”) after her employment with Wells Fargo ended. *Id.* ¶ 18.

Because the Plan is self-funded, its expenses—including payment for participants' covered medical expenses and administrative fees—are shared by Wells Fargo and Plan participants. *Id.* ¶¶ 22, 30. To cover those expenses, Wells Fargo established the Wells Fargo & Company Employee Benefit Trust (the “Trust”). *Id.* ¶ 22. The Trust is funded almost entirely by a combination of Wells Fargo and Plan-participant contributions, and it is responsible for all the Plan's expenses. *Id.* As such, any increases in Plan spending must be covered by increases in contributions to the Trust. See *id.* ¶ 32.

Wells Fargo retains “sole discretion” to set and modify participant contribution amounts. [ECF No. 31-3 at 9](#); see also [ECF No. 31-2 at 22](#) (“The Plan Sponsor may establish different contribution rates for different classes of Participants . . . for any Benefit

Option.”). Between 2018 and 2023, Wells Fargo required Plan participants to contribute approximately 25% of the Plan’s overall costs, with Wells Fargo contributing the remaining 75%. [ECF No. 64](#) ¶ 240.

II. The Plan’s Prescription Drug Program

A. Pharmacy Benefit Managers Generally

Fiduciaries of employer-sponsored health plans like the Plan often contract with third-party pharmacy benefit managers (“PBMs”) to administer their plans’ prescription drug benefits. *See* [ECF No. 64](#) ¶ 53. PBMs offer various services, including processing participant claims; negotiating with pharmacies to establish a plan’s pharmacy networks; managing a plan’s formulary, which is a list of the prescription drugs the plan covers; and negotiating with prescription drug manufacturers to secure rebates or discounts for those manufacturers’ products. *Id.* ¶¶ 49, 53. Generally, when a plan participant obtains a prescription drug from a pharmacy in the plan’s network, the participant pays the portion, if any, for which they are responsible under the terms of their plan (like a co-pay or deductible), the PBM pays the pharmacy for the remainder of the cost as negotiated by the PBM, and the PBM is later reimbursed by the plan. *See id.* ¶¶ 54, 57, 106. In short, PBMs serve as intermediaries between plans (and by extension, plan participants) and pharmacies. *See id.* ¶¶ 53–55.

Two dominant PBM models have emerged: “pass-through” and “traditional” PBMs. *Id.* ¶ 56. Pass-through PBMs generate profit exclusively by charging administrative fees for the services they provide to plans. *Id.*; *see id.* ¶ 73. Traditional PBMs, on the other

hand, generate profit through a combination of “spread pricing,”¹ pharmacy rebates, administrative fees, and ownership of their own pharmacies. *Id.* ¶ 56. Traditional PBMs also negotiate with plan fiduciaries the prices the PBMs will be reimbursed for various prescription drugs. *Id.* ¶ 57. As such, traditional PBMs are incentivized to negotiate with a plan the highest price for a prescription drug to which the plan will agree to maximize the “spread.” *Id.* ¶ 67.

Some PBMs and plan fiduciaries structure their agreements by setting prices for groups of drugs by reference to a benchmark price rather than negotiating the price for each drug individually. *Id.* ¶ 58. One such benchmark, the National Average Drug Acquisition Cost (“NADAC”), tracks the average cost pharmacies pay to obtain many prescription drugs. *Id.* ¶ 59. Another, the “Average Wholesale Price” (“AWP”), purports to do the same thing as NADAC, but according to Plaintiffs, it is not truly representative of actual market prices and is susceptible to industry manipulation. *Id.* ¶ 61.

B. The Plan’s Agreement with Express Scripts, Inc.

Wells Fargo entered an agreement with Express Scripts, Inc. (“ESI”), a PBM that operates under the traditional model and one of the three largest PBMs in the U.S., to serve as the Plan’s PBM. *Id.* ¶¶ 88, 110. Wells Fargo did not conduct an open bid process before retaining ESI but rather engaged a broker which evidently identified and recommended ESI. *See id.* ¶¶ 111, 113. The agreement between Wells Fargo and ESI is not publicly

¹ “Spread pricing” refers to a practice in which a PBM negotiates with a pharmacy a lower price for a particular prescription drug than the price a plan agreed to pay the PBM as part of the plan’s contract with the PBM, then retains the difference as profit. *See ECF No. 64* ¶¶ 57, 64, 66.

available, but ESI's standard contract with other plans suggests that Wells Fargo would have agreed to various terms regarding drug pricing, formulary management, pharmacy networks, and administrative services. *Id.* ¶¶ 110, 114. ESI's standard contract also expressly states that the plan sponsor—here, Wells Fargo—retains discretionary authority and control over decisions relating to plan management. *Id.* ¶ 112.

The Plan's formulary designates approximately 300 of the most commonly prescribed generic drugs as "preferred alternatives," meaning Plan participants are encouraged to use those generic versions rather than their brand-name equivalents. *Id.* ¶¶ 118–19. NADAC information is publicly available for 260 of those drugs. *Id.* ¶ 120. The Plan's formulary uses the AWP as a benchmark, however, and NADAC information for those 260 drugs reveals that the prices Wells Fargo negotiated with ESI for these "preferred alternative" drugs were approximately 115% above the pharmacy acquisition cost on average. *Id.* ¶¶ 115, 121.

The Plan's agreement with ESI also requires Plan participants to acquire so-called "generic-specialty" drugs from ESI's wholly owned mail-order pharmacy, Accredo. *Id.* ¶ 124. NADAC information is publicly available for 38 of the 95 generic-specialty drugs on the Plan's formulary, which shows that the Plan agreed to pay, on average, 383% above the pharmacy acquisition cost for those 38 drugs. *Id.* ¶ 125. In some cases, the prices the Plan agreed to pay ESI for certain generic-specialty drugs exceeds the cost an uninsured person would be required to pay at a retail pharmacy. *See id.* ¶¶ 126–37, 140–43.

After the Original Plaintiffs filed the initial complaint, Wells Fargo "appears to have . . . renegotiated its prices with [ESI] to lower them substantially." *Id.* ¶ 166. As of

the filing of the amended complaint, Wells Fargo “has more favorable pricing on 158 of the 260 drugs” on the Plan’s formulary, and the Plan’s drug prices “are now 11% lower than they were” when the initial complaint was filed. *Id.* In any event, regardless of the type or cost of any particular prescription drug, a Plan participant is required to pay some portion, if not all, of the cost themselves until they meet their annual deductible. *See id.* ¶ 106. After meeting their annual deductible, a participant may still be responsible for some out-of-pocket costs, like coinsurance payments. *See id.*

Separately, the administrative fees the Plan agreed to pay ESI exceed the fees paid by other large plan sponsors for comparable services. *See id.* ¶ 155. In 2022, for example, the Plan had 188,798 participants and paid ESI \$25,639,955 in administrative fees, or \$135.81 per participant. *Id.* ¶ 157. By comparison, the Railroad Employees National Health and Welfare Plan (“RENHWP”), who also contracted with ESI as its PBM that year, had 213,981 participants and paid \$4,250,101 in administrative fees, or \$19.86 per participant. *Id.* The Plan’s and the RENHWP’s respective Form 5500s from that year show two of the same three service codes.² *Id.*

III. Plaintiffs’ Amended Complaint

The essence of Plaintiffs’ amended complaint remains essentially unchanged from the initial complaint, and their allegations can be sorted into three main categories.

² A Form 5500 explains what third-party services were provided to a plan and “discloses the aggregate payments made” by the plan to the service provider—here, ESI. *Matousek v. MidAmerican Energy Co.*, [51 F.4th 274, 279](#) (8th Cir. 2022).

First, Plaintiffs allege that because ESI uses AWP as a benchmark, the Plan agreed to pay to ESI prices for certain drugs that exceed NADAC prices, prices charged by pass-through PBMs, and prices an uninsured person would pay at a retail pharmacy for the same drugs. *See id.* ¶¶ 110, 114–43, 150–54. Plaintiffs contend these prices would have been lower and that they would have paid lower contributions and out-of-pocket expenses had Wells Fargo negotiated prices with ESI based on NADAC, retained a pass-through PBM, or retained a different PBM entirely that did not steer Plan participants to its own pharmacy. *See id.* ¶¶ 71, 108, 115, 121, 150–54, 219–28. Plaintiffs supplement these allegations in the amended complaint by alleging that: (1) other PBMs—and, indeed, ESI—offer drug pricing to other plans that are “based on the lowest of three benchmarks, one of which is NADAC,” *id.* ¶ 60; (2) the “thousands” of other drugs covered by the Plan for which NADAC information is not publicly available mostly are “different dosages or delivery forms” of the drugs identified in the amended complaint, which are the “most commonly prescribed drugs” under the Plan, *id.* ¶¶ 146–47; and (3) Wells Fargo negotiated lower prescription drug prices with ESI after the Original Plaintiffs filed the initial complaint, *id.* ¶ 166.

Second, Plaintiffs allege that Wells Fargo paid excessive administrative fees to ESI. *See id.* ¶¶ 155–62. Plaintiffs assert that if Wells Fargo had “adequately negotiated” with ESI regarding these administrative fees, “the Plan and its participants/beneficiaries would have saved millions of dollars.” *Id.* ¶ 169. Here, Plaintiffs supplement the allegations made in the initial complaint by adding the fees the Plan paid to ESI in 2023 and including

the relevant service codes from the Plan's and comparator plans' 2022 and 2023 Form 5500s. *See id.* ¶¶ 157–61.

Third, Plaintiffs allege that because of the Plan's excessive payments to ESI for administrative services and prescription drugs, they and other Plan participants effectively received "lower wages" or experienced "limited wage growth." *Id.* ¶ 285. Plaintiffs contend that these harms would have been avoided had Wells Fargo more diligently monitored the Plan's prescription drug program. *See id.* These allegations are unchanged from the initial complaint. *Compare id.*, with [ECF No. 1](#) ¶ 181.

Altogether, Plaintiffs allege that Wells Fargo's "inattentiveness to prescription drug costs and other fiduciary failures" caused Plaintiffs to pay more in contributions and out-of-pocket costs than they otherwise would have paid, which Plaintiffs assert constitutes a breach of Wells Fargo's fiduciary duties under [29 U.S.C. § 1104\(a\)](#). *See* [ECF No. 64](#) ¶¶ 229, 282–94. Plaintiffs contend that had Wells Fargo acted as a prudent fiduciary, it could or should have: (1) wielded its "substantial bargaining power" to "demand and obtain substantially better contractual terms" with ESI "relating to prices and the way in which prices are determined" under the Plan, *id.* ¶ 164; (2) "solicit[ed] bids from pass-through PBMs," which "would have made clear that the Plan would save a substantial amount of money for itself and its participants" by contracting with a pass-through PBM instead of entering or renewing its contract with ESI, *id.* ¶ 170; and (3) considered "carving out the specialty-drug program" from its contract with ESI, *id.* ¶ 176. Plaintiffs also allege that Wells Fargo engaged in prohibited transactions under [29 U.S.C. § 1106\(a\)\(1\)](#) because "the compensation Wells Fargo agreed to pay [ESI] was not reasonable." *Id.* ¶¶ 12, 295–309.

Plaintiffs bring claims on behalf of the Plan under 29 U.S.C. § 1132(a)(2), *id.* ¶¶ 282–88, 295–302, and on behalf of a putative class of Plan participants under 29 U.S.C. § 1132(a)(3), *id.* ¶¶ 289–94, 303–09. They seek injunctive and other equitable relief in the form of: (1) removing the Plan’s fiduciaries and appointing an independent fiduciary to run the Plan; (2) removing and replacing ESI as the Plan’s PBM or, alternatively, requiring a search for another PBM to replace ESI; (3) requiring Wells Fargo to “make good to the Plan all losses to the Plan” and to “restore the Plan to the position it would have occupied but for” the alleged fiduciary breaches and prohibited transactions; and (4) awarding “fiduciary surcharge, equitable restitution, and/or other make-whole equitable relief to Plaintiffs” and the putative class they represent. *Id.* ¶¶ 312–16.

PROCEDURAL BACKGROUND

The Original Plaintiffs filed the initial complaint on July 30, 2024, ECF No. 1, and Wells Fargo moved to dismiss the initial complaint for lack of standing and for failure to state a claim, ECF No. 28. On March 24, 2025, the Court entered an order concluding that the Original Plaintiffs had not demonstrated standing, ECF No. 57, and entered judgment dismissing the initial complaint, ECF No. 58.

The Court, however, did not address the Original Plaintiffs’ request—made in a footnote at the end of their brief in opposition to Wells Fargo’s first motion to dismiss, *see* ECF No. 38 at 50 n.26—for an opportunity to amend their complaint in the event the Court granted Wells Fargo’s motion. The Original Plaintiffs subsequently sought the Court’s permission to file a motion for reconsideration of the dismissal order, citing their unaddressed request for leave to amend the initial complaint and contending that the Court

erroneously relied upon abrogated case law in reaching its decision.³ See [ECF No. 59 at 1–2](#). Over Wells Fargo’s objection, see [ECF No. 60](#), the Court vacated the judgment dismissing the initial complaint and granted the Original Plaintiffs leave to file an amended complaint, see [ECF No. 62](#).

Plaintiffs—now including McKinley—filed their amended complaint on May 8, 2025, [ECF No. 64](#), with an expert report attached as an exhibit to support their factual allegations, [ECF No. 64-1](#). Wells Fargo filed a motion to dismiss the amended complaint, [ECF No. 77](#). After Plaintiffs filed their response to Wells Fargo’s motion, but before Wells Fargo filed its reply to Plaintiffs’ response, Professor Amy B. Monahan, an unrelated third party, filed a motion seeking leave to file a brief of amicus curiae, [ECF No. 86](#), and a proposed amicus brief, [ECF No. 88-1](#), in support of Plaintiffs’ opposition to Wells Fargo’s motion.

³ In analyzing the Original Plaintiffs’ claims under [29 U.S.C. § 1132\(a\)\(3\)](#) in the first dismissal order, the Court stated that “much of the retrospective equitable relief Plaintiffs request bears the characteristics of monetary or compensatory relief” and that such relief is “not available” under that provision, relying upon case law from multiple circuits, including the Eighth Circuit, and the Supreme Court. See [ECF No. 57 at 27–28](#). The cases on which the Court relied, however, were decided before the Supreme Court’s decision in *CIGNA Corp. v. Amara*, [563 U.S. 421](#) (2011), which held that equitable remedies that are monetary or compensatory in nature “fall within the scope of the term ‘appropriate equitable relief’” under Section 1132(a)(3). *Id.* at 442; see also *Silva v. Metro. Life Ins. Co.*, [762 F.3d 711, 724](#) (8th Cir. 2014) (acknowledging that “*Amara* changed the law” as the Eighth Circuit “had previously interpreted it” pertaining to equitable remedies available in ERISA cases). Although that portion of the first dismissal order was not exclusively (or even primarily) the basis for the Court’s conclusion that the Original Plaintiffs lacked standing to pursue their Section 1132(a)(3) claims, see [ECF No. 57 at 25–28](#), the Court acknowledges its error.

ANALYSIS

Wells Fargo challenges Plaintiffs' standing under Federal Rule of Civil Procedure 12(b)(1) and the sufficiency of their pleadings under Rule 12(b)(6). *See generally* ECF No. 79. Article III standing is a jurisdictional issue and, accordingly, "is the threshold question in every federal case." *Becker v. N.D. Univ. Sys.*, 112 F.4th 592, 595 (8th Cir. 2024) (quoting *Warth v. Seldin*, 422 U.S. 490, 498 (1975)); *see Carlsen v. GameStop, Inc.*, 833 F.3d 903, 908 (8th Cir. 2016) (citation omitted) ("[I]f a plaintiff lacks standing to sue, the district court has no subject-matter jurisdiction."). The Court therefore must address whether Plaintiffs have demonstrated standing before it may consider whether they have stated plausible claims for relief. *See Brownback v. King*, 592 U.S. 209, 218 (2021).

As discussed above, the Court dismissed the initial complaint in this matter for lack of standing. *See* ECF No. 57 at 12–28. Upon careful consideration of the allegations in the amended complaint and the parties' arguments, the Court concludes that Plaintiffs have not remedied the deficiencies identified in the Court's previous order and dismisses the amended complaint for lack of standing.

I. Legal Standard

Article III of the U.S. Constitution "restricts federal courts to the resolution of cases and controversies." *Davis v. FEC*, 554 U.S. 724, 732 (2008). "For there to be a case or controversy under Article III, the plaintiff must have a 'personal stake' in the case—in other words, standing." *TransUnion LLC v. Ramirez*, 594 U.S. 413, 423 (2021) (citation omitted). To demonstrate standing, a plaintiff must plausibly allege: (1) they suffered an injury in fact; (2) the injury is fairly traceable to the defendant's conduct; and (3) the injury

is likely to be redressed by a favorable judicial decision. *Arc of Iowa v. Reynolds*, 94 F.4th 707, 710 (8th Cir. 2024) (citing *Spokeo, Inc. v. Robins*, 578 U.S. 330, 338 (2016)). To establish a cognizable injury, the plaintiff “must show that he or she suffered ‘an invasion of a legally protected interest’ that is ‘concrete and particularized’ and ‘actual or imminent, not conjectural or hypothetical.’” *Scott v. UnitedHealth Grp., Inc.*, 540 F. Supp. 3d 857, 861 (D. Minn. 2021) (quoting *Spokeo*, 578 U.S. at 339). Plaintiffs, as the parties invoking federal court jurisdiction, bear the burden of establishing these elements, *Spokeo*, 578 U.S. 338, and they must do so “for each claim that they press and for each form of relief that they seek,” *TransUnion*, 594 U.S. at 431.

Because standing implicates a court’s subject-matter jurisdiction, challenges to a plaintiff’s standing are analyzed under Federal Rule of Civil Procedure 12(b)(1). *Mekhail v. N. Mem’l Health Care*, 726 F. Supp. 3d 916, 931 (D. Minn. 2024). The Court’s analysis under Rule 12(b)(1) depends on whether the challenger raises a “facial” or “factual” attack. *Scott*, 540 F. Supp. 3d at 861. In a facial challenge, the Court “restricts itself to the face of the pleadings” and “the non-moving party receives the same protections as it would defending against a motion brought under Rule 12(b)(6).” *Osborn v. United States*, 918 F.2d 724, 729 n.6 (8th Cir. 1990). By contrast, in a factual challenge, the Court “considers matters outside the pleadings.” *Id.* Here, the Court need not look further than the amended complaint and the Plan documents submitted by Wells Fargo, which are “necessarily embraced by the complaint.” *Rossi v. Arch Ins. Co.*, 60 F.4th 1189, 1193 (8th Cir. 2023) (citation omitted). And because “documents ‘necessarily embraced by the complaint’ are not matters outside the pleading,” *Enervations, Inc. v. Minn. Mining & Mfg.*

Co., [380 F.3d 1066, 1069](#) (8th Cir. 2004) (citations omitted), the Court construes Wells Fargo's motion as a facial challenge to Plaintiffs' standing and applies the standard for reviewing motions to dismiss under Rule 12(b)(6), *see Osborn*, [918 F.2d at 729](#) n.6.

The Court accepts the factual allegations in the amended complaint as true and draws all reasonable inferences in Plaintiffs' favor. *Gorog*, [760 F.3d at 792](#). The Court will not, however, give the benefit of "unreasonable inferences," *Brown v. Medtronic, Inc.*, [628 F.3d 451, 461](#) (8th Cir. 2010), and is "not bound to accept as true a legal conclusion couched as a factual allegation," *Ashcroft v. Iqbal*, [556 U.S. 662, 678](#) (2009) (citation omitted). Although the amended complaint need not contain "detailed factual allegations," it must contain facts with enough specificity to state a claim that is "plausible on its face" and to "raise a right to relief above the speculative level." *Bell Atl. Corp. v. Twombly*, [550 U.S. 544, 555, 570](#) (2007).

II. Plaintiffs' Expert Report and Amicus Brief in Support of Plaintiffs

Before turning to the specific issues raised in Wells Fargo's motion to dismiss, the Court first will address whether, and to what extent, it considers Plaintiffs' expert report and Professor Monahan's proposed amicus brief. Wells Fargo asks the Court to disregard or to accord little weight to both filings. *See* [ECF No. 79 at 21–22](#); [ECF No. 91 at 13–14](#).

Beginning with Plaintiffs' expert report, the Court applies the standard for assessing motions under [Federal Rule of Civil Procedure 12\(b\)\(6\)](#) to Wells Fargo's motion for the reasons discussed above, so the Court considers the factual information in Plaintiffs' expert report to the extent it is alleged in the amended complaint. *See* [ECF No. 64 ¶¶ 263–70](#); *see also Rossi*, [60 F.4th at 1193](#) (citation omitted) (explaining that courts deciding a Rule 12(b)

motion may consider “documents whose contents are alleged in a complaint”). The Court accords no weight, however, to the expert report’s conclusory opinions. *See Lerner v. Nw. Biotherapeutics*, [273 F. Supp. 3d 573, 590](#) (D. Md. 2017) (“Plaintiffs may not substitute factual allegations with the speculation of their expert witness.”); *In re MannKind Sec. Actions*, [835 F. Supp. 2d 797, 820](#) (C.D. Cal. 2011) (citation omitted) (“Conclusory allegations and speculation carry no additional weight merely because a plaintiff placed them within the affidavit of a retained expert.”); *see also Fin. Acquisition Partners LP v. Blackwell*, [440 F.3d 278, 285–86](#) (5th Cir. 2006) (noting that considering an expert opinion for purposes of a Rule 12(b)(6) motion “might require ruling on the expert’s qualifications,” which is “inappropriate at the pleading stage”).

As for Professor Monahan’s proposed amicus brief, “[t]here is no formal rule governing the standard by which to evaluate whether to grant a motion requesting leave to file an amicus curiae brief,” and the decision whether to grant or refuse leave is a matter committed to the Court’s discretion. *Larson v. Allina Health Sys.*, No. 17-cv-3835 (SRN/TNL), [2020 WL 583082](#), at *2 (D. Minn. Feb. 6, 2020). The Court has reviewed and considered the proposed amicus brief and Wells Fargo’s arguments in response to it in deciding Wells Fargo’s motion and, in its discretion, grants Professor Monahan’s motion.⁴

III. ERISA Claims

ERISA imposes “twin duties of loyalty and prudence” upon fiduciaries of ERISA-governed plans which require them “to act ‘solely in the interest of [plan] participants and

⁴ The Court considers the proposed brief ([ECF No. 88-1](#)) to be properly filed. Professor Monahan need not re-file her proposed brief as a “final” version.

beneficiaries’ and to carry out their duties ‘with the care, skill, prudence, and diligence under the circumstances then prevailing’ that a prudent [person] ‘acting in a like capacity and familiar with such matters would use.’” *Braden v. Wal-Mart Stores, Inc.*, [588 F.3d 585, 595](#) (8th Cir. 2009) (first alteration in original) (quoting [29 U.S.C. § 1104\(a\)\(1\)](#)). In the first dismissal order, the Court noted the “decisive importance” to the standing analysis of determining whether the Plan is a defined-benefit or defined-contribution plan:

A defined-benefit plan is “in the nature of a contract.” [*Thole v. U.S. Bank N.A.* (“*Thole II*”), [590 U.S. 538, 542–43](#) (2020)]. Such plans are typically “funded by employer or employee contributions, or a combination of both,” and consist of “a general pool of assets rather than individual dedicated accounts.” *Hughes Aircraft Co. v. Jacobson*, [525 U.S. 432, 439](#) (1999); see *Scott*, [540 F. Supp. 3d at 862](#). . . . Defined-contribution plans, by contrast, “provide[] for an individual account for each participant and for benefits based solely upon the amount contributed to the participant’s account, and any income, expenses, gains and losses.” *Scott*, [540 F. Supp. 3d at 862](#) (quoting [29 U.S.C. § 1002\(34\)](#)).

The key difference, as courts have explained, is that “in a defined-contribution plan, such as a 401(k) plan, the [participants’] benefits are typically tied to the value of their accounts,” *Thole II*, [590 U.S. at 540](#), while “benefits under a defined-benefit plan ‘do not fluctuate with the value of the plan or because of the plan fiduciaries’ good or bad investment decisions,” *Scott*, [540 F. Supp. 3d at 862](#) (quoting *Thole II*, [590 U.S. at 540](#)); see also *Thole II*, [590 U.S. at 543](#) (“The plan participants’ benefits are fixed and will not change, regardless of how well or poorly the plan is managed.”). Thus, “a necessary predicate to a participant bringing broader claims on behalf of [a defined-benefit] plan is a showing of a concrete and particularized injury to the participant herself,” not just the plan, and that individual harm must “affect [the participant’s] benefits” to confer standing to sue. *Scott*, [540 F. Supp. 3d at 865](#); see also *Thole II*, [590 U.S. at 542–43](#).

[ECF No. 57 at 14–15](#). The Court concluded that the Plan is “closely analogous to the defined-benefit plan at issue in *Thole [II]*” because Plaintiffs were (or are) “entitled to their contractually defined benefits regardless of the value of the [Plan’s] assets.” *Id.* at 15

(alterations in original) (quoting *Scott*, 540 F. Supp. 3d at 864). Plaintiffs do not dispute—and, if anything, tacitly accept—this conclusion, *see* ECF No. 85 at 45, and the Court sees no reason to depart from it now.⁵

Under Section 1132(a)(2), a plan participant may seek only the relief provided by 29 U.S.C. § 1109. 29 U.S.C. § 1132(a)(2). Section 1109, in turn, provides that plan fiduciaries found to have breached their duties “shall be personally liable to make good to

⁵ Professor Monahan contends that because “welfare plans,” like the Plan, are not “pension plans,” they “are not subject to the legal distinctions between ‘defined benefit’ and ‘defined contribution’ plans that were central to the Supreme Court’s analysis” in *Thole II*. ECF No. 88-1 at 4. It certainly is true that welfare plans are distinct from pension plans in several respects. *See Knudsen v. MetLife Grp., Inc.*, 117 F.4th 570, 579–80 (3d Cir. 2024). Even so, Professor Monahan’s attempt to avoid the import of *Thole II* is unpersuasive.

Although welfare plans do not fall neatly into the defined-benefit or defined-contribution categories, this Court and other courts have concluded that welfare plans like the Plan are “closely analogous to the defined-benefit plan at issue” in *Thole II*. ECF No. 57 at 15 (quoting *Scott*, 540 F. Supp. 3d at 864); *see Smith v. Med. Benefit Adm’rs Grp., Inc.*, 639 F.3d 277, 283 (7th Cir. 2011) (“The plan at issue here . . . is a group health insurance plan, which is the kind of defined benefit plan that . . . typically holds no assets in trust for any individual participant.”); *see also Winsor v. Sequoia Benefits & Ins. Servs., LLC*, 62 F.4th 517, 528 (9th Cir. 2023) (“Although the Tech Benefits Program is not a defined-benefit pension plan, it similarly provides a fixed set of benefits as promised in plan documents.”).

Professor Monahan argues that “the better analogy is to section 401(k) plan fee litigation.” ECF No. 88-1 at 8. But those kinds of cases typically involve defined-contribution plans; indeed, despite contending that the Plan is not subject to the legal distinctions between defined-benefit and defined-contribution plans, the individual cases on which Professor Monahan relies involved defined-contribution retirement plans. *See Hughes v. Nw. Univ.*, 595 U.S. 170, 173 (2022) (involving “two retirement plans” that were “defined-contribution plans”); *Davis v. Wash. Univ. in St. Louis*, 960 F.3d 478, 481 (8th Cir. 2020) (involving a “retirement-savings plan[]” that was “a defined-contribution plan”); *Larson v. Allina Health Sys.*, 350 F. Supp. 3d 780, 788 (D. Minn. 2018) (involving “403(b) and 401(k) Plans” that were “defined contribution plans”). For the reasons discussed in Part III.B of the Analysis, these kinds of cases are distinguishable and inapplicable—and not merely because they involve defined-contribution plans.

[the] plan any losses . . . resulting from each such breach, and to restore to [the] plan any profits . . . which have been made through use of assets of the plan.” 29 U.S.C. § 1109(a). A Section 1132(a)(2) plaintiff “acts ‘in a representative capacity on behalf of the plan as a whole,’ because § 1109 is designed to ‘protect the entire plan,’” and relief under Section 1132(a)(2) therefore must “inure[] to the be benefit of the plan as a whole.” *Pilger v. Sweeney*, 725 F.3d 922, 926 (8th Cir. 2013) (quoting *Mass. Mut. Life Ins. Co. v. Russell*, 473 U.S. 134, 140, 142, 142 n.9 (1985)); *see* 29 U.S.C. § 1109(a). And when a defined-benefit plan is at issue, Section 1132(a)(2) “does not provide a remedy for individual injuries distinct from plan injuries.” *Pilger*, 725 F.3d at 926 (quoting *LaRue v. DeWolff Boberg & Assocs., Inc.*, 552 U.S. 248, 256 (2008)).

By contrast, a participant who brings a claim under Section 1132(a)(3) may seek “to enjoin any act or practice which violates” ERISA or “to obtain other appropriate equitable relief” to redress a violation for which Section 1132 otherwise does not provide an adequate remedy. 29 U.S.C. § 1132(a)(3); *see* *Varity Corp. v. Howe*, 516 U.S. 489, 510–12 (1996) (describing Section 1132(a)(3) as a “‘catchall’ provision[]” which offers “relief for injuries caused by violations that [Section 1132] does not elsewhere adequately remedy”). Such equitable relief may include surcharge—that is, individual “monetary compensation for a loss resulting from a [fiduciary’s] breach of duty.” *CIGNA Corp. v. Amara*, 563 U.S. 421, 441 (2011) (internal quotation marks omitted) (citation omitted).

Whether a plan participant proceeds under Section 1132(a)(2) or (a)(3), “[t]here is no ERISA exception to Article III.” *Thole II*, 590 U.S. at 547. Accordingly, to recover for breach of fiduciary duty under ERISA, the participant “must show actual injury,” both

individually and to the plan. *Thole v. U.S. Bank, Nat'l Ass'n*, [873 F.3d 617, 630](#) (8th Cir. 2017); *see Amara*, [563 U.S. at 444](#) (holding that relief under Section 1132(a)(3) is available “only upon a showing of actual harm” caused by a fiduciary’s breach of duty).

Plaintiffs present the same theory of standing now as they did initially: (1) Plaintiffs individually were injured by paying higher contributions for their insurance coverage and out-of-pocket costs for their prescription drugs than they should have, and the Plan was injured by Wells Fargo causing it to pay inflated prices for prescription drugs and excessive administrative fees; (2) those injuries are traceable to Wells Fargo’s purported fiduciary breaches, namely Wells Fargo’s failure to closely monitor the Plan’s prescription drug costs and to negotiate a better deal with ESI; and (3) the injuries will be redressed and prevented from recurring by the relief Plaintiffs seek. *See* [ECF No. 85 at 17–32](#). As discussed below, despite the supplemented factual allegations in Plaintiffs’ amended complaint, their theory of standing—whether premised on higher contributions or increased out-of-pocket costs—still falls short for essentially the same reasons the Court previously identified: “their alleged harm is speculative and, ultimately, not redressable.” [ECF No. 57 at 12](#).

A. Participant Contributions

“Of critical importance” to the Court’s analysis in the first dismissal order was that the Plan vests Wells Fargo with “sole discretion” to set participant contribution rates. [ECF No. 57 at 20](#) (quoting [ECF No. 31-3 at 9](#)); *see also* [ECF No. 31-2 at 22](#). Not only that, but participant contribution amounts “may be affected by several factors having nothing to do with prescription drug benefits, like whether a participant uses tobacco, whether a participant obtains coverage for her spouse or children in addition to herself, and a

participants’ ‘compensation category.’” [ECF No. 57 at 20–21](#) (quoting [ECF No. 31-3 at 9](#)). The Court noted that “the Plan authorizes Wells Fargo to require participants to fund *all* Plan expenses, not just expenses related to their own individual benefits,” but the Plan does not require *any* contribution from Wells Fargo, “notwithstanding that Wells Fargo supplied the bulk of Plan funding during the relevant period.” [ECF No. 57 at 21](#); *see* [ECF No. 31-2 at 22](#) (providing that “[p]articipants *shall be* responsible for payment of applicable premiums and contributions to the Plan,” but that Wells Fargo “*may* pay such contributions to the Plan” (emphasis added)). Finally, the Court observed that “Plaintiffs’ selective allegations regarding the markups on a subset of prescription drugs in the Plan’s formulary” represented “only a subset of the total benefits whose costs Plan participants’ contributions may be used to cover” were “not sufficient to establish a causal connection between Plaintiffs’ increased costs and ESI’s administrative fees.” [ECF No. 57 at 22](#). As a result, the Court concluded that “it is speculative that the allegedly excessive fees” or allegedly higher prices for prescription drugs paid by the Plan to ESI “had any effect at all on Plaintiffs’ contribution rates.” *Id.* at 21 (internal quotation marks omitted) (citation omitted).

Nothing in Plaintiffs’ amended complaint meaningfully addresses, much less cures, these issues. As an initial matter, Plaintiffs “d[o] not allege that they were denied any health benefits promised under the Plan, nor d[o] they allege that the Plan was insolvent or otherwise incapable of continuing to provide covered health benefits.” *Gonzales de Fuente v. Preferred Home Care of N.Y. LLC*, [858 F. App’x 432, 434](#) (2d Cir. 2021). Instead, they assert that had Wells Fargo negotiated a better deal with ESI or retained a different PBM

altogether, the Plan's spending would have decreased, which necessarily would have reduced the amount they were required to pay in contributions. See [ECF No. 85 at 12–15](#). But “these allegations are general in nature and do not solve the variable of [Wells Fargo’s] discretion in setting employee contribution rates.” *Winsor v. Sequoia Benefits & Ins. Servs., LLC*, [62 F.4th 517, 524](#) (9th Cir. [2023](#)).

Plaintiffs rely heavily on their allegation that “Wells Fargo intentionally set participant contributions at 25–26% of overall Plan health care costs,” [ECF No. 85 at 23](#) (quoting [ECF No. 64 ¶ 240](#)), which “inherently cause[s]” participant contributions to “rise and fall in lockstep with Plan spending,” *id.* This is superficially seductive. It seems possible that if the price of drugs from the PBM goes down, the participants’ contributions would go down by the same amount. But this gets precisely at the core of the problem with Plaintiffs’ theory: Plaintiffs’ contributions are used to cover *overall* Plan expenses, not specifically or exclusively their prescription drug benefits or ESI’s administrative fees. It is not a one-to-one relationship. And the Plan documents clearly show that “participant contribution amounts may be affected by several factors having nothing to do with prescription drug benefits.” [ECF No. 57 at 20–21](#). As the Court explained before, “[t]here are simply too many variables in how Plan participants’ contribution rates are calculated” to infer that Wells Fargo’s payments to ESI for prescription drug payments or administrative fees were the but-for cause of any increases in Plaintiffs’ required contributions. *Id.* at 22; see *Winsor*, [62 F.4th at 524–25](#) (holding plaintiffs failed to plead injury-in-fact because their allegation that the employer set contributions “based on overall premium costs” was not plausible given the employer’s “broad discretion” to set employee

contribution rates, which were calculated based on “various factors and discussion” rather than “a specific formula or set of factors”); *see also Knudsen v. MetLife Grp., Inc.*, [117 F.4th 570, 574, 581–82 \(3d Cir. 2024\)](#) (holding it was “speculative” that the employer’s “alleged misappropriation of drug rebate money,” which plan documents provided were to be applied to plan expenses, “resulted in Plaintiffs paying more for their health insurance or had any effect at all”); *Horvath v. Keystone Health Plan E., Inc.*, [333 F.3d 450, 457 \(3d Cir. 2003\)](#) (concluding that whether plan savings would pass to plan participants was “too speculative to serve as the basis for a claim of individual loss”).

Further, there is no plausible allegation in the amended complaint to suggest that this exercise of Wells Fargo’s total discretion to set participant contribution rates violates the terms of the Plan. *See Gonzalez de Fuente*, [858 F. App’x at 433–34](#) (quoting *US Airways, Inc. v. McCutchen*, [569 U.S. 88, 101 \(2013\)](#)) (“ERISA . . . requires fiduciaries to discharge their duties ‘in accordance with the documents and instruments governing the plan’ rather than any particular accounting formula.”). The Court previously noted that it does not read *Thole II* “to hold, as a matter of law, that a plaintiff suing a fiduciary of an ERISA-governed defined-benefit health plan cannot ever establish standing on a theory of harm premised on excessive . . . costs.” [ECF No. 57 at 19](#). But that reading of *Thole II* is contingent upon there being some specific underlying misconduct—for example, “breaching the terms of the plan[],” *id.*—that can be plausibly connected to the purported harm. There are no allegations from which the Court can infer such misconduct occurred here, much less that it was the but-for cause of Plaintiffs’ alleged injury. *See Knudsen*,

117 F.4th at 581–82; *cf. McCutchen*, 569 U.S. at 100 (explaining that ERISA protects “contractually defined benefits”).

The addition of McKinley as a Plaintiff does not change the analysis. It is true that McKinley’s status as a current Plan participant would make certain prospective relief available to her that would not be available to the Original Plaintiffs—assuming, of course, that she could demonstrate a cognizable injury. *See* ECF No. 85 at 21; ECF No. 57 at 26–27. To that point, Plaintiffs emphasize that because McKinley is a participant in the Plan through COBRA, she is required to pay “both the employer share and the employee share” of premium contributions, ECF No. 64 ¶ 18, which must “be based on total plan expenses,” ECF No. 85 at 22 (first citing ECF No. 64 ¶ 258; and then citing 29 U.S.C. § 1164(2)). But that fact does not move the needle here given the discretion the Plan confers on Wells Fargo to set contribution amounts. What is of critical importance here, again, is that the Plan “vests Wells Fargo with ‘sole discretion’ to set participant contribution rates.” ECF No. 57 at 20. And the Plan documents permit Wells Fargo to require *all* Plan participants—not just those who, like McKinley, are participants through COBRA—to pay contributions sufficient to cover *all* Plan expenses, with no requirement that Wells Fargo make any contributions. *See* ECF No. 31-2 at 22. If Wells Fargo exercised its discretion in this manner and chose to cease its own contributions, that would almost assuredly increase participant contributions, but it would not, by itself, constitute a violation of ERISA. *See* Gonzalez de Fuente, 858 F. App’x at 433–34; Knudsen, 117 F.4th at 582. Further, Plaintiffs do not dispute that McKinley’s contributions were calculated based on estimated Plan expenses as required by COBRA. *See* 42 U.S.C. § 1164(2). Plaintiffs instead merely

speculate that a decrease in the Plan’s prescription drug expenses or ESI’s administrative fees necessarily would have resulted in lower contributions. This again overlooks that the Plan’s overall expenses account for more than those specific line items and that participant contributions are “affected by several factors having nothing to do with prescription drug benefits.” [ECF No. 57 at 20–21](#). As with the others, McKinley cannot show “actual or imminent injury to the Plan itself” that causes injury to her interests in the Plan to establish standing. *Id.* at 26 (citation omitted). And there is no allegation that McKinley did not get all the benefits to which she was entitled. *See* [ECF No. 64 ¶ 228](#); *see also* [Scott, 540 F. Supp. 3d at 862](#) (finding ERISA plaintiffs had not demonstrated injury because they did “not allege that they have been denied any benefits to which they are entitled”).

Finally, Plaintiffs’ theory of redressability does not demonstrate that “it is likely, as opposed to merely speculative, that the injury will be redressed by a favorable decision.” *Friends of the Earth, Inc. v. Laidlaw Env’t Servs. (TOC), Inc.*, [528 U.S. 167, 180–81](#) (2000). As noted, Plaintiffs contend that Plan expenses necessarily would have been reduced and that they consequently would have been required to pay less in contributions if Wells Fargo had negotiated a better deal with ESI or retained a different PBM. *See* [ECF No. 85 at 12–15](#). But as the Court already explained, Plaintiffs’ argument “assumes that Wells Fargo would maintain the 75-25 employer-employee contribution ratio” even though “nothing in the Plan *requires* Wells Fargo to do so.” [ECF No. 57 at 23](#); *cf. Pendleton v. QuikTrip Corp.*, [567 F.3d 988, 993](#) (8th Cir. 2009) (“Whether an employee is entitled to benefits under ERISA is controlled by the plan documents and not the customs of a company.”). Plaintiffs dismiss this reasoning as “legally irrelevant,” [ECF No. 85 at 29](#), but they do not “explain

how a court could place [Wells Fargo's or ESI's] ill-gotten profits directly into plaintiffs' pockets when plaintiffs have not alleged how a court could identify the discrete profits supposedly owed to them, given [Wells Fargo's] discretion in setting employee contribution amounts and the manner in which [Wells Fargo] exercised this discretion," *Winsor*, [62 F.4th at 526](#) (internal quotation marks omitted). Nor do Plaintiffs advance any persuasive argument that ERISA authorizes the Court to order Wells Fargo to lower participant contribution amounts prospectively when the Plan's terms give Wells Fargo the exclusive authority to set those amounts.⁶ And even if the Court ordered Wells Fargo to remit a one-time payment to the Plan to remedy any purported past overcharges, nothing would prevent Wells Fargo from "offset[ing] its own contributions" going forward "while making no reduction to the contributions it require[s]" from Plaintiffs. *Id.* at 527; *see also Horvath*, [333 F.3d at 457](#).

For these reasons, the Court concludes that Plaintiffs' allegations relating to excessive participant contributions are too speculative and conjectural to confer standing.

B. Out-of-Pocket Costs

Plaintiffs' theory of standing as it pertains to out-of-pocket costs fails for essentially the same reasons, but it presents additional issues worth addressing. Plaintiffs' theory is rooted in their assertion that they were required to pay higher prices for certain prescriptions than pharmacies paid, on average, to acquire those drugs. *See* [ECF No. 64](#)

⁶ Although reformation is an available remedy in equity, it has traditionally been "used to prevent fraud." *Amara*, [563 U.S. at 440](#). Plaintiffs raise no allegations of fraud or that Wells Fargo (or ESI, for that matter) provided "false or misleading information" relating to the Plan. *Id.*

¶¶ 220, 222, 224, 226, 228. While these allegedly excessive costs are more readily quantifiable, Plaintiffs' argument is, in effect, another way of asserting injury on the basis that Plaintiffs "might have received" better or different benefits than what they were promised under the Plan's terms, which is insufficient to confer standing. *See Gonzalez de Fuente*, 858 F. App'x at 433–34; *cf. Burgio & Campofelice, Inc. v. N.Y. State Dep't of Lab.*, 107 F.3d 1000, 1007 (2d Cir. 1997) (quoting *Alessi v. Raybestos-Manhattan, Inc.*, 451 U.S. 504, 511 (1981)) ("Under ERISA, 'private parties, not the Government, control the level of benefits.'"). Again, Plaintiffs do not allege that they did not receive the benefits to which they were entitled under the Plan or that the Plan was ever at risk of insolvency or inability to provide participant benefits. *See Gonzalez de Fuente*, 858 F. App'x at 434; *Scott*, 540 F. Supp. 3d at 862. This is important because, as already discussed, the Plan is "closely analogous" to a defined-benefit plan in which "participants are entitled to their *contractually defined* benefits regardless of the value of the [Plan's] assets." *Scott*, 540 F. Supp. 3d at 864 (emphasis added); *see Thole II*, 590 U.S. at 542–43. There is no allegation that Plaintiffs' benefits were ever diminished or that they were required to pay more than they were promised or what is authorized by the Plan's terms. *See Scott*, 540 F. Supp. 3d at 863; *see also Gonzalez de Fuente*, 858 F. App'x at 433–34; *cf. McCutchen*, 569 U.S. at 100 (explaining that ERISA protects "contractually defined benefits").

The cases on which Plaintiffs rely are distinguishable either because they involved defined-contribution plans, were later abandoned, or did not involve ERISA claims. For instance, Plaintiffs rely on *Braden v. Wal-Mart Stores* to support their argument that the allegedly excessive prices they were required to pay for certain prescription drugs

constitute a cognizable injury. [ECF No. 85 at 19](#). In that case, the Eighth Circuit held that the plaintiff, a participant with an individual investment account in his employer’s defined-contribution 401(k) plan, had standing under ERISA to sue for breach of fiduciary duty because of his employer’s alleged mismanagement of the plan, including allegations that the plan fiduciaries agreed to pay excessive fees to a third-party service provider and failed to wield the plan’s “substantial bargaining power” to secure more favorable and cost-effective benefits. *See Braden*, [588 F.3d at 589–90, 592](#). The crucial distinction, however, is that the plaintiff in *Braden* alleged that his employer’s mismanagement resulted in losses both to the plan itself and to the value of his specific, individual investment account—that is, one of his benefits under the plan. *See id.* Plaintiffs here do not allege that their *benefits* under the Plan were diminished; they allege only that they and the Plan should have paid less for those benefits. *See* [ECF No. 64 ¶¶ 220, 222, 224, 226, 228](#). Even assuming as true that the Plan’s assets diminished because of Wells Fargo’s alleged mismanagement and overpayments to ESI, that would constitute an injury only to the Plan, not to Plaintiffs, because Plaintiffs “do not have any claim” to the Plan’s assets. *Scott*, [540 F. Supp. 3d at 863](#); *see Jacobson*, [525 U.S. at 439–40](#) (explaining that a defined-benefit plan “consists of a general pool of assets” and that “no plan member has a claim to any particular asset that composes a part of the plan’s general asset pool”). Instead, Plaintiffs’ “only claim is to receive the benefits to which they are entitled” under the Plan, *Scott*, [540 F. Supp. 3d at 863](#), and Plaintiffs do not dispute that they received their benefits, *see* [ECF No. 64 ¶¶ 219–28](#).

Plaintiffs also rely on *Lewandowski v. Johnson & Johnson* (“*Lewandowski I*”), No. 24-cv-671 (ZNQ) (RLS), [2025 WL 288230](#) (D.N.J. Jan. 24, 2025), where the court was confronted with nearly identical allegations. *See id.* at *1–2. The court in that case concluded that the plaintiff had “suffered an injury-in-fact” based on her assertion that she “pa[id] higher prices for drugs” under her employer’s health plan, “causing her to pay more out-of-pocket.” *Id.* at *5; *see* [ECF No. 85 at 18](#). That court nevertheless dismissed the plaintiff’s claim for lack of standing because it concluded her alleged injury was not redressable.⁷ *Lewandowski I*, [2025 WL 288230](#), at *5. After granting the plaintiff leave to amend her complaint, however, that court later dismissed her claims again for lack of standing and adopted this Court’s reasoning in the earlier dismissal order entered in this case, including as it relates to the remaining standing elements. *See Lewandowski v. Johnson & Johnson* (“*Lewandowski II*”), No. 24-cv-671 (ZNQ) (RLS), [2025 WL 3296009](#), at *4–7 (D.N.J. Nov. 26, 2025) (“This Court finds *Navarro* persuasive and applies that court’s reasoning.”).

Plaintiffs also cite *Blue Cross & Blue Shield of N.C. v. Rite Aid Corp.*, [519 F. Supp. 3d 522](#) (D. Minn. 2021), which held that the plaintiffs had alleged an injury in fact by pleading that they were “overcharged” for prescription drugs. *Id.* at 532; *see* [ECF No. 85](#)

⁷ For context, the court in *Lewandowski I* found the plaintiff’s injury was not redressable because she had “reached her prescription drug cap for each year she assert[ed]” in her complaint. [2025 WL 288230](#), at *5. As a result, the court concluded that even if the defendants “were to reimburse [her] for her out-of-pocket costs on a given drug—that is, the higher amount of money she spent as a result of Defendants’ breaches—that money would be owed to her insurance carrier to reimburse it for its expenditures on *other* drugs that same year.” *Id.*

at 18. But that case is inapposite because it did not involve ERISA in any way; rather, it dealt with allegations by various insurance companies that a retail pharmacy company “fraudulently inflated” the prices for certain prescription drugs. *Blue Cross & Blue Shield*, [519 F. Supp. 3d at 532](#). As a result, the insurance companies allegedly paid more for those drugs than the amount the insurance companies should have paid based on a formula the parties had contractually negotiated. *Id.* Plaintiffs here raise no allegations of fraud or that Wells Fargo and ESI calculated the Plan’s drug prices using a method that was not authorized or disclosed by the Plan.

To be sure, the price comparisons alleged in Plaintiffs’ complaint are staggering. See [ECF No. 64 ¶¶ 125–37, 140–43](#). But it fundamentally cannot be the case that participants in a plan like the one at issue here are injured any time the contractually defined benefits to which they are entitled are available at lower cost to non-participants, absent any express promise by the plan fiduciary to provide those benefits at that lower cost or any specific allegations that the fiduciary’s misconduct diminished those benefits or rendered the plan unable to provide them. See *Scott*, [540 F. Supp. 3d at 863–65](#); *Gonzalez de Fuente*, [858 F. App’x at 434](#). That is, at bottom, the premise upon which Plaintiffs’ allegations rest but “pleadings must be something more than an ingenious academic exercise in the conceivable” to meet the Article III standing threshold. *United States v. Students Challenging Regul. Agency Procs.*, [412 U.S. 669, 688](#) (1973); see also *Iqbal*, [556 U.S. at 678](#) (quoting *Twombly*, [550 U.S. at 557](#)) (“Where a complaint pleads facts that are ‘merely consistent with’ a defendant’s liability, it ‘stops short of the line between possibility and plausibility of entitlement to relief.’” (internal quotation marks omitted)).

As a result, the Court concludes that Plaintiffs' allegations are insufficient to confer standing, and their amended complaint is dismissed.⁸ See *Lewandowski II*, 2025 WL 3296009, at *6–7; *Knudsen*, 117 F.4th at 582 (holding that pleadings rooted in speculation and conjecture “are not sufficient to support Article III standing”).

ORDER

Based on the foregoing, and on all the files, records, and proceedings in this matter,

IT IS HEREBY ORDERED that:

1. Professor Amy B. Monahan's Motion for Leave to File a Brief of Amicus Curiae (ECF No. 86) is **GRANTED**;
2. Wells Fargo's Motion to Dismiss the Amended Class Action Complaint (ECF No. 77) is **GRANTED**; and
3. Plaintiffs' Amended Complaint (ECF No. 64) is **DISMISSED** for lack of jurisdiction.

LET JUDGMENT BE ENTERED ACCORDINGLY.

Dated: March 3, 2026

s/Laura M. Provinzino

Laura M. Provinzino
United States District Judge

⁸ Because the Court dismisses Plaintiffs' amended complaint for lack of standing, the Court need not address Wells Fargo's alternative basis for dismissal under Rule 12(b)(6). See *Brownback*, 592 U.S. at 218 (quoting *Steel Co. v. Citizens for a Better Env't*, 523 U.S. 83, 101–02 (1998)) (“[A] court cannot issue a ruling on the merits ‘when it has no jurisdiction’ because ‘to do so is, by very definition, for a court to act ultra vires.’”).

UNITED STATES DISTRICT COURT
District of Minnesota

Sergio Navarro, Theresa Gamage, Dayle
Bulla, Jane Kinsella, Erica McKinley,

Plaintiffs,

v.

Wells Fargo & Company,

Defendant.

JUDGMENT IN A CIVIL CASE

Case Number: 24-cv-3043 LMP/DLM

Jury Verdict. This action came before the Court for a trial by jury. The issues have been tried and the jury has rendered its verdict.

Decision by Court. This action came to trial or hearing before the Court. The issues have been tried or heard and a decision has been rendered.

IT IS ORDERED AND ADJUDGED THAT:

1. Professor Amy B. Monahan's Motion for Leave to File a Brief of Amicus Curiae (ECF No. 86) is **GRANTED**;
2. Wells Fargo's Motion to Dismiss the Amended Class Action Complaint (ECF No. 77) is **GRANTED**; and
3. Plaintiffs' Amended Complaint (ECF No. 64) is **DISMISSED** for lack of jurisdiction.

Date: 3/3/2026

KATE M. FOGARTY, CLERK



UNITED STATES DISTRICT COURT DISTRICT OF MINNESOTA

Warren E. Burger Federal
Building and U.S. Courthouse
316 North Robert Street
Room 100
St. Paul, MN 55101

Diana E. Murphy
U.S. Courthouse
300 South Fourth Street
Room 202
Minneapolis, MN 55415

Gerald W. Heaney Federal
Building and U.S. Courthouse
and Customhouse
515 West First Street
Duluth, MN 55802

Edward J. Devitt U.S.
Courthouse and Federal
Building
118 South Mill Street
Fergus Falls, MN 56537

CIVIL NOTICE

The appeal filing fee is \$605.00. If you are indigent, you can apply for leave to proceed in forma pauperis, ("IFP").

The purpose of this notice is to summarize the time limits for filing with the District Court Clerk's Office a Notice of Appeal to the Eighth Circuit Court of Appeals or the Federal Circuit Court of Appeals (when applicable) from a final decision of the District Court in a civil case.

This is a summary only. For specific information on the time limits for filing a Notice of Appeal, review the applicable federal civil and appellate procedure rules and statutes.

Rule 4(a) of the Federal Rules of Appellate Procedure (Fed. R. App. P.) requires that a Notice of Appeal be filed within:

1. Thirty days (60 days if the United States is a party) after the date of "entry of the judgment or order appealed from;" or
2. Thirty days (60 days if the United States is a party) after the date of entry of an order denying a timely motion for a new trial under [Fed. R. Civ. P. 59](#); or
3. Thirty days (60 days if the United States is a party) after the date of entry of an order granting or denying a timely motion for judgment under [Fed. R. Civ. P. 50\(b\)](#), to amend or make additional findings of fact under [Fed. R. Civ. P. 52\(b\)](#), and/or to alter or amend the judgment under [Fed. R. Civ. P. 59](#); or
4. Fourteen days after the date on which a previously timely Notice of Appeal was filed.

If a Notice of Appeal is not timely filed, a party in a civil case can move the District Court pursuant to [Fed. R. App. P. 4\(a\)\(5\)](#) to extend the time for filing a Notice of Appeal. This motion must be filed no later than 30 days after the period for filing a Notice of Appeal expires. If the motion is filed after the period for filing a Notice of Appeal expires, the party bringing the motion must give the opposing parties notice of it. The District Court may grant the motion, but only if excusable neglect or good cause is shown for failing to file a timely Notice of Appeal.

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MINNESOTA**

SERGIO NAVARRO, THERESA
GAMAGE, DAYLE BULLA, JANE
KINSELLA, and ERICA MCKINLEY, on
their own behalf, on behalf of all others
similarly situated, and on behalf of the Wells
Fargo & Company Health Plan and its
component plans,

Plaintiffs,

v.

WELLS FARGO & COMPANY,

Defendant.

Case No. 0:24-cv-03043-LMP-DLM

PLAINTIFFS' NOTICE OF APPEAL

Plaintiffs Sergio Navarro, Theresa Gamage, Dayle Bulla, Jane Kinsella, and Erica McKinley hereby appeal to the United States Court of Appeals for the Eighth Circuit from the final judgment in the above-captioned action entered on March 3, 2026 ([Dkt. 100](#)), and the Court's underlying Orders dated March 3, 2026 ([Dkt. 99](#)) and March 24, 2025 ([Dkt. 57](#)).

Dated: April 1, 2026

Respectfully Submitted,

/s/ Kai H. Richter

Kai H. Richter MN Bar No. 0296545
COHEN MILSTEIN SELLERS & TOLL,
PLLC
400 South 4th Street #401-27
Minneapolis, MN 55415
Telephone: (612) 807-1575
krichter@cohenmilstein.com

Michelle Yau (*pro hac vice*)
Allison Pienta (*pro hac vice*)
COHEN MILSTEIN SELLERS & TOLL,
PLLC
1100 New York Ave. NW, Eighth Floor
Washington, D.C. 20005
Telephone: (202) 408-4600
myau@cohenmilstein.com
apienta@cohenmilstein.com

Michael Eisenkraft (*pro hac vice*)
COHEN MILSTEIN SELLERS & TOLL,
PLLC
88 Pine Street, 14th Floor
New York, New York 10005
Telephone: (212) 838-7797
meisenkraft@cohenmilstein.com

Jamie Crooks (*pro hac vice*)
Michael Lieberman (*pro hac vice*)
FAIRMARK PARTNERS, LLP
1001 G Street NW, Suite 400 East
Washington, DC 20001
Telephone: (619) 507-4182
jamie@fairmarklaw.com
michael@fairmarklaw.com

Daniel E. Gustafson
Daniel J. Nordin
GUSTAFSON GLUEK PLLC
Canadian Pacific Plaza
120 South 6th Street, Suite 2600
Minneapolis, MN 55402
Telephone: (612) 333-8844
dgustafson@gustafsongluek.com
dnordin@gustafsongluek.com

*Attorneys for Plaintiffs and
the Proposed Class*



**UNITED STATES
DISTRICT COURT
DISTRICT OF MINNESOTA**

**Warren E. Burger Federal
Building and U.S. Courthouse**
316 North Robert Street
Room 100
St. Paul, MN 55101

**Diana E. Murphy
U.S. Courthouse**
300 South Fourth Street
Room 202
Minneapolis, MN 55415

**Gerald W. Heaney Federal
Building and U.S. Courthouse
and Customhouse**
515 West First Street
Duluth, MN 55802

**Edward J. Devitt U.S.
Courthouse and Federal
Building**
118 South Mill Street
Fergus Falls, MN 56537

TRANSMITTAL OF APPEAL

Date: April 2, 2026

To: U.S. COURT OF APPEALS, 8TH CIRCUIT

From: mmp, U.S. District Court-Minnesota

In Re: District Court Case No. 24-cv-3043 LMP/DLM

Eighth Circuit Case No.: Not yet assigned

Case Title: Navarro et al v. Wells Fargo & Company et al

The statutory filing fee has:

been paid, receipt number: AMNDC-12844397

not been paid as of

IFP is is not pending

been waived because:

Application for IFP granted

USA filed appeal

Length of Trial: N/A

Was a court reporter utilized? Yes No

If yes, please identify the court reporter: Lynne Krenz