



August 2025

ERISA forfeitures and class action lawsuits

Introduction

Historically, many retirement plans have allocated unvested former participant contributions, or “forfeited funds,”¹ to reduce future employer contributions or to benefit current plan participants.² The Internal Revenue Service (IRS) has supported this practice, allowing the use of forfeitures to (1) reduce employer contributions, (2) pay reasonable plan administrative expenses, or (3) be reallocated to other participants, provided the plan document authorizes such uses.³ However, current litigation focuses on whether using forfeitures to reduce employer contributions aligns with ERISA’s fiduciary duty requirements,⁴ particularly since ERISA’s plain text does not explicitly address this issue.

This article discusses two key developments in ERISA forfeiture litigation. First, there has been a noticeable increase in class action lawsuits related to ERISA forfeitures. Second, different federal courts are variously interpreting cases with similar fact situations and allegations. For example, on May 24, 2024, the US District Court for the Southern District of California issued its first ruling on these claims in *Perez-Cruet v. Qualcomm Inc.*, where the court denied a motion to dismiss, allowing the case to proceed.⁵ A few weeks later, on June 17, 2024, the US District Court for the Northern District of California dismissed the plaintiff’s complaint in *Hutchins v. HP Inc.*, though it granted leave to amend.⁶ On February 5, 2025, plaintiff’s first amended complaint in *Hutchins v. HP Inc* was dismissed without

¹ Kellie Mejdrich, “Rash Of 401(k) Forfeiture Suits Approach First Hurdles,” *Law360*, April 11, 2024, <https://www.law360.com/articles/1824324>.

² Ashley Johnson and Jennafer Tryck, “Dueling Calif. Rulings Offer Insight On 401(k) Forfeiture Suits,” *Law360*, July 17, 2024, <https://www.law360.com/articles/1855084>.

³ Treas. Reg. § 1.401-7(a), <https://www.law.cornell.edu/cfr/text/26/1.401-7>.

⁴ The Employee Retirement Income Security Act of 1974 (ERISA) is a federal law that sets minimum standards for most voluntarily established retirement and health plans in the private sector to protect individuals enrolled in these plans. See US Department of Labor, “Employee Retirement Income Security Act (ERISA),” accessed August 28, 2024, <https://www.dol.gov/general/topic/retirement/erisa>.

⁵ Sidley Austin LLP, “U.S. District Court Issues First Ruling on ERISA Claims Challenging Use of 401(k) Plan Forfeitures,” May 28, 2024, <https://www.sidley.com/en/insights/newsupdates/2024/05/us-district-court-issues-first-ruling-on-erisa-claims-challenging-use-of-401k-plan-forfeitures>.

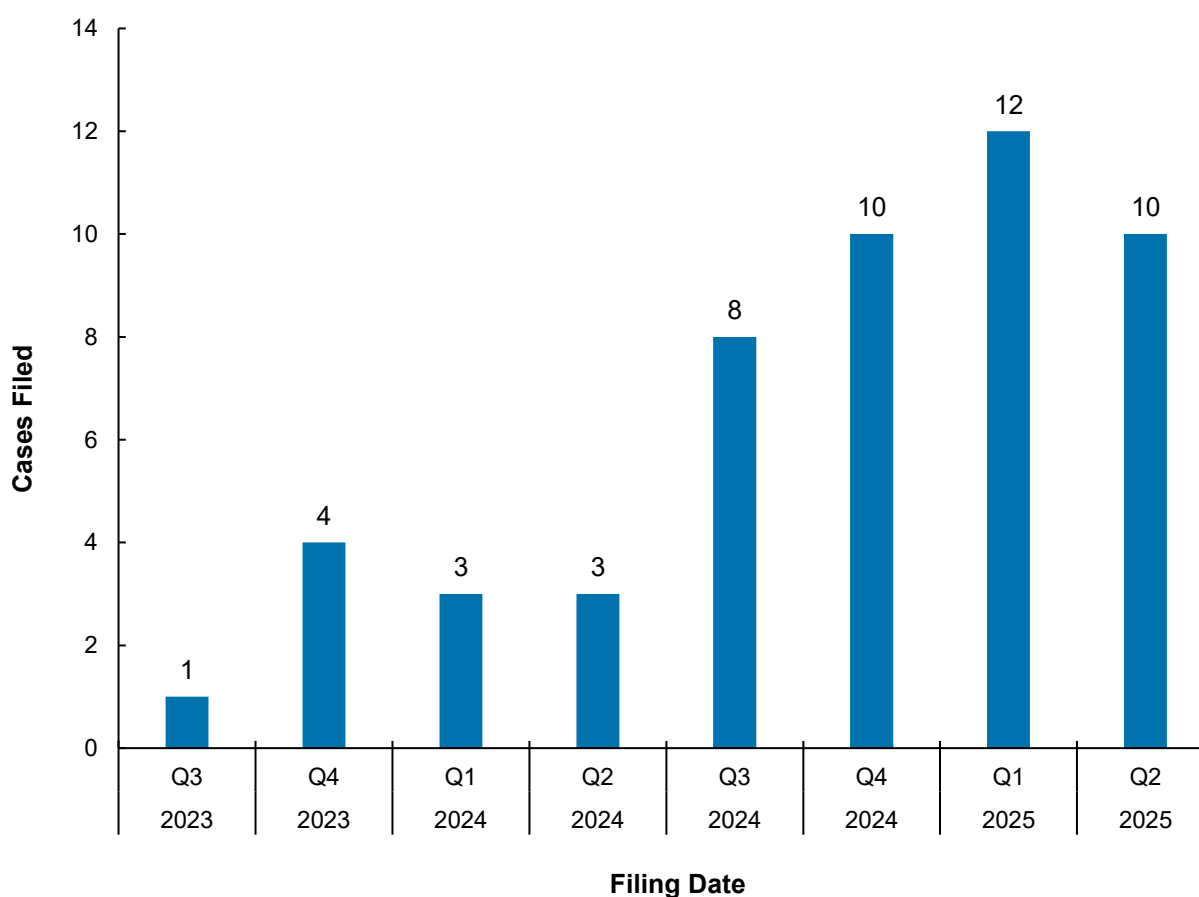
⁶ Blake Crohan, “Why Calif. Courts Are Split On ERISA Forfeited Contributions,” *Law360*, July 30, 2024, <https://www.law360.com/articles/1862372>.

leave to amend.⁷ These contrasting rulings shed light on the evolving legal landscape and judicial approaches to ERISA forfeiture claims.

Lawsuits filed over the past two years

Based on readily available data, Figure 1 shows that at least 51 ERISA class action lawsuits focusing on forfeited funds were filed between September 1, 2023, and June 30, 2025.⁸ Figure 1 indicates an uptick in filings. Notably, 10 or more cases were filed in each respective quarter between Q4 2024 and Q2 2025. This increase is substantial: 40 cases were filed in the four most recent quarters (Q3 2024–Q2 2025), compared with 11 cases during the preceding four quarters (Q3 2023–Q2 2024). This represents an approximate 264% jump in case filings between the two periods.

Figure 1: ERISA class action lawsuits on forfeited funds filed by quarter⁹



⁷ <https://law.justia.com/cases/federal/district-courts/california/candce/5:2023cv05875/420868/71/>.

⁸ *Matula v. Wells Fargo & Co.*, *Barragan v. Honeywell Int'l Inc.*, *Halter v. Providence Health & Servs.*, *Shulak v. BMO Fin. Corp.*, and *Mowry v. Albertsons Cos.* were transferred to different venues during the review period, resulting in duplicate listings. *Garner v. Northrop Grumman Corp.* and *Clouse v. Northrop Grumman Corp.* were consolidated in the Eastern District of Virginia on June 4, 2025, and are therefore treated as a single case. As a result, the analysis includes 51 unique cases.

⁹ Data sourced from Lex Machina. Cases were filtered using filing dates between September 1, 2023, and June 30, 2025.

Figure 2 shows the distribution of the 51 lawsuits across federal district courts. There is a concentration of cases in California and New York, with 12 and five cases, respectively, representing approximately 33% of the total filings. Many lawsuits are filed in jurisdictions that align with the defendant companies' headquarters, which helps explain the observed regional patterns. During the earlier period (Q3 2023–Q2 2024), a large share of the defendants were California-based companies, resulting in a concentration of filings in California district courts. In contrast, case filings in the more recent period (Q3 2024–Q2 2025) are more geographically dispersed, with a noticeable uptick in cases filed in New York. This shift corresponds with an increase in lawsuits against companies headquartered in New York.

Figure 2: Distribution of lawsuits by federal district court

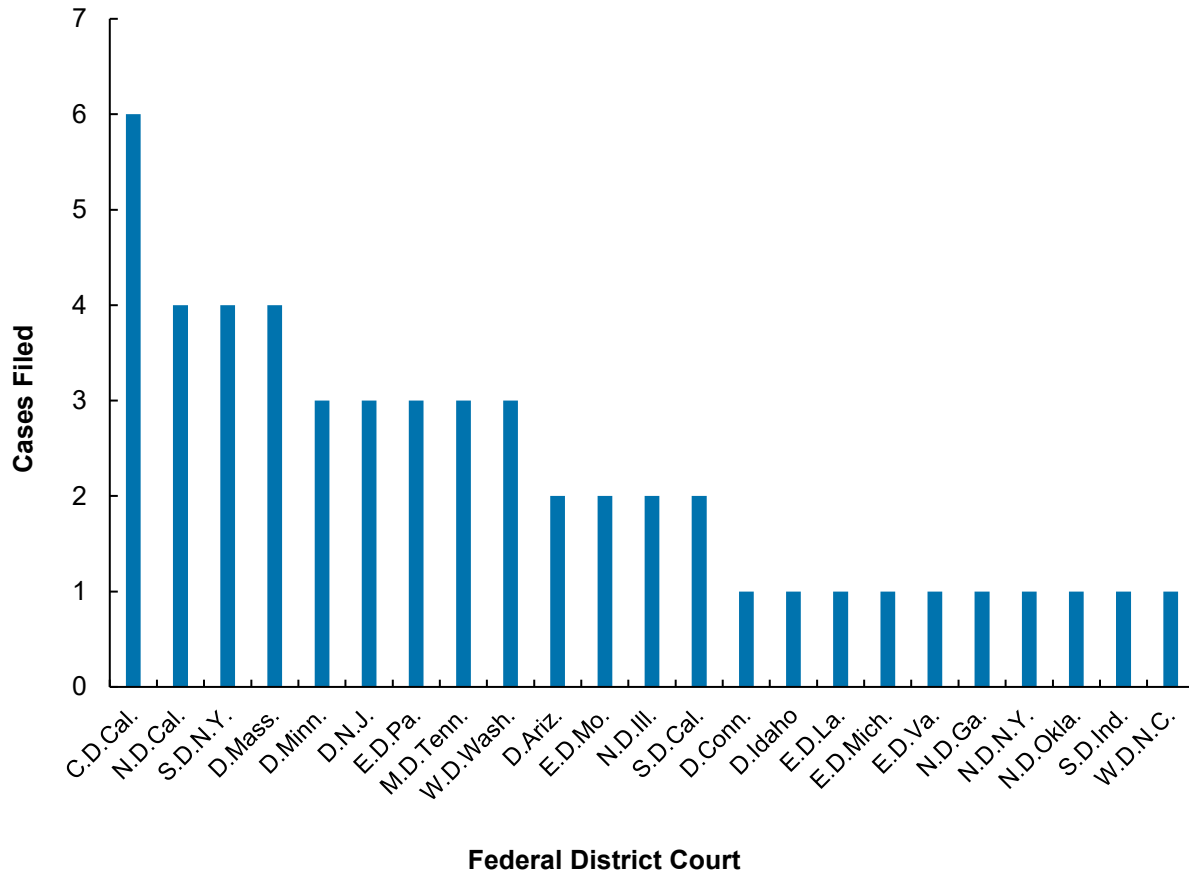
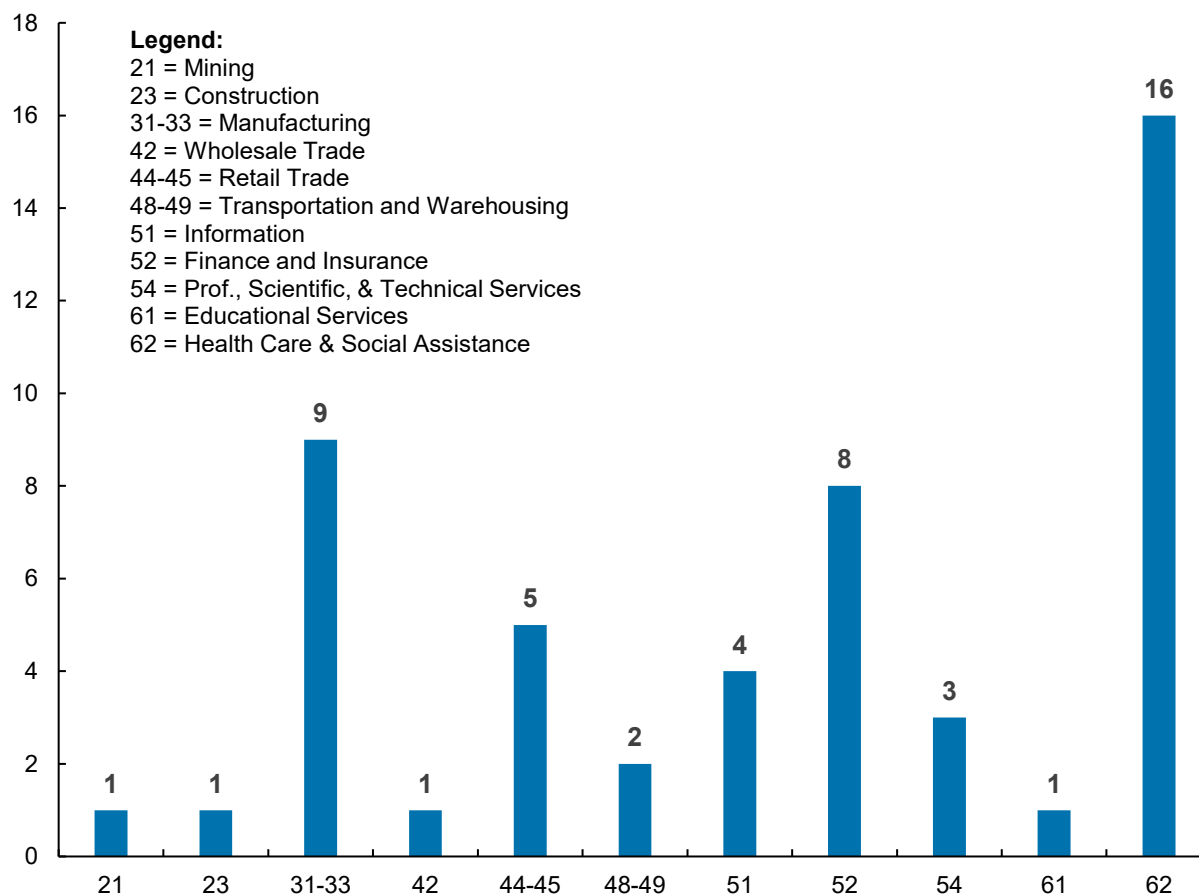


Figure 3 indicates that most cases involve firms in the Health Care and Social Assistance (North American Industry Classification System (NAICS) 62) and Manufacturing (NAICS 31–33) sectors, with 16 and nine cases filed, respectively. Finance and Insurance (NAICS 52), Retail Trade (NAICS 44–45), and several other industries also appear frequently, indicating the broad reach of these lawsuits.

Figure 3: Distribution of lawsuits by NAICS industry code (defendant firms)



Forfeited funds case themes

There are overlapping themes among the forfeited funds litigations, with most cases alleging the misuse of forfeited 401(k) funds, breaches of the fiduciary duties of loyalty and prudence, and violations of ERISA's anti-inurement and prohibited transaction provisions. However, certain claims are unique, such as failure to monitor fiduciaries or failure to furnish requested documents.¹⁰

Most defendants have responded to complaints by explaining that their respective plan documents explicitly allow the use of forfeitures to offset employer contributions, meaning their actions were consistent with plan terms and therefore do not constitute a breach of fiduciary duties. In addition, most defendants explain that the use of forfeited funds to offset employer contributions is explicitly permitted by US Treasury regulations. Specifically, guidance from the Treasury and Congress supports provisions in defined contribution plans allowing forfeited employer contributions to offset future employer contributions or administrative expenses. Proposed 2023 Treasury regulations further clarify that

¹⁰ Most cases relate to 401(k) plans. One case (*Nado v. John Muir Health*) relates to a 403(b) plan. A 401(k) plan is "a defined contribution, individual account, employee pension benefit plan under 29 U.S.C. § 1002(2)(A) and § 1002(34) and is subject to the provisions of ERISA pursuant to 29 U.S.C. § 1003(a)." See, e.g., First Amended Complaint, *Hutchins v. HP Inc.*, No. 5:23-cv-05875 (N.D. Cal. Jan. 4, 2024), at 2. A 403(b) plan is a tax-advantaged defined contribution retirement plan under 29 U.S.C. § 1002(34), specifically for employees of nonprofits and public schools.

forfeitures may pay administrative costs, reduce employer contributions, or increase other participants' benefits in accordance with plan terms.¹¹

Finally, in most cases, defendants argue that decisions regarding the use of forfeitures are settlor functions, which are administrative decisions made by the plan sponsor when establishing or amending a plan, and are not subject to ERISA's fiduciary standards. Plaintiffs, however, argue that any decisions to use forfeited funds for the employer's matching contributions rather than to pay the plan administrative expenses involved the management of plan assets, making them subject to fiduciary obligations.¹²

Recent court judgments

The court rulings on the defendants' motions to dismiss have varied widely, even within the same federal court district, underscoring the uncertainty with respect to future litigation in this area. The cases are currently at different stages, with instances where motions to dismiss have been denied or granted, or the case has settled. In cases where dismissal was granted, some were dismissed without prejudice—meaning they may be refiled, leaving the door open for renewed litigation. Table 1 provides a summary of cases with either a court ruling or a settlement so far.

The remainder of this section highlights lawsuits with different court rulings involving Intuit, Qualcomm, HP, and Honeywell, which all allege breaches of fiduciary duty. The major claim in these cases is that even though the language in the plan documents permits the use of forfeitures to offset employer contributions, using the forfeited funds solely to reduce the company's contributions, rather than to cover plan expenses, benefits the company at the expense of the plan and its participants.¹³

Table 1: Cases with either a court ruling or a settlement

Case	Case outcome	Court
<i>Hutchins v. HP Inc.</i>	Dismissed without leave to amend	N.D.Cal.
<i>Dimou v. Thermo Fisher Sci. Inc.</i>	Dismissed with leave to amend	S.D.Cal.
<i>Madrigal v. Kaiser Found. Health Plan, Inc.</i>	Dismissed with leave to amend	C.D.Cal.
<i>Sievert v. Knight-Swift Transp. Holdings Inc.</i>	Dismissed with prejudice	D.Ariz.
<i>McWashington v. Nordstrom Inc.</i>	Dismissed with prejudice	W.D.Wash.
<i>Barragan v. Honeywell Int'l Inc.</i>	Dismissed without prejudice	D.N.J.
<i>McManus v. The Clorox Co.</i>	Motion to dismiss denied	N.D.Cal.
<i>Perez-Cruet v. Qualcomm Inc.</i>	Motion to dismiss denied	S.D.Cal.
<i>Prattico v. Mattel, Inc.</i>	Motion to dismiss denied	C.D.Cal.
<i>Rodriguez v. Intuit Inc.</i>	Settled	N.D.Cal.

¹¹ Crohan, "Why Calif. Courts Are Split On ERISA Forfeited Contributions."

¹² Mejdrich, "Rash Of 401(k) Forfeiture Suits Approach First Hurdles."

¹³ See First Amended Complaint, *Hutchins v. HP Inc.*, at 6; Complaint, *Rodriguez v. Intuit Inc.*, at 6; Complaint, *Barragan v. Honeywell Int'l Inc.*, at 4–5; Complaint, *Perez-Cruet v. Qualcomm Inc.*, at 5–6.

***Perez-Cruet v. Qualcomm Inc.* (motion to dismiss denied)**

In the complaint filed in October 2023, the plaintiff alleged that Qualcomm violated its fiduciary duties by using forfeited funds to reduce future employer contributions instead of paying administrative expenses. It is alleged that in 2021, Qualcomm used forfeited funds to reduce its contributions to the plan by \$1.22 million, while plan participants collectively paid over \$954,000 in expenses. The plaintiff further claimed that the unvested funds were assets of the plan, arguing that ERISA prohibits Qualcomm from using these funds for its own benefit.

Qualcomm filed a motion to dismiss, arguing that its actions complied with Treasury regulations, which explicitly allow forfeitures to reduce future employer contributions, and claimed that using forfeitures in this manner is lawful and consistent with the terms of the plan. On May 24, 2024, the Southern District of California denied Qualcomm's motion to dismiss, allowing the case to proceed. The court noted that the plaintiff had sufficiently alleged that Qualcomm's use of forfeitures to reduce its own contributions, rather than to cover administrative expenses, potentially breached ERISA's fiduciary duties of loyalty and prudence. Additionally, the court found plausible claims for violations of ERISA's anti-inurement and prohibited transaction provisions.

In February 2025, the judge granted the parties' joint motion to stay, pending the Ninth Circuit decision in *Hutchins v. HP Inc.* (see below).

***Hutchins v. HP Inc.* (motion to dismiss granted without leave to amend)**

In the complaint filed in November 2023, the plaintiff similarly alleged that HP violated its fiduciary duties by using forfeited 401(k) funds to reduce its future contributions rather than to cover plan participants' administrative expenses. The plaintiff claimed that a prudent and loyal fiduciary would have used the forfeited funds to lower the plan participants' expenses, which amounted to more than \$2 million in 2021.

In response, HP filed a motion to dismiss, arguing that the use of forfeitures to offset employer contributions is explicitly allowed under both the plan's terms and IRS regulations. HP contended that forfeitures could be applied toward employer contributions and that these actions do not constitute a fiduciary breach because they comply with the plan documents and relevant laws.

On June 17, 2024, the Northern District of California granted HP's motion to dismiss the case but allowed the plaintiff to amend the complaint. This decision was based on the court's finding that ERISA does not require fiduciaries to use forfeited funds to pay plan expenses and that the plaintiff's claims were overly broad, effectively attempting to extend ERISA's fiduciary duties beyond what is mandated by law. The court also noted that both Congress and the Treasury have indicated that plan forfeitures can be used in the manner HP chose, making the plaintiff's claims implausible.

The case was dismissed, but the plaintiff submitted an amended complaint a month later, on July 17, 2024. The amended complaint sharpens its focus by emphasizing HP's significant financial capacity, including more than \$3 billion in cash reserves, to argue against the necessity of using forfeitures to offset contributions.¹⁴ It elaborates on alleged fiduciary misconduct by detailing HP's failure to investigate or to consult independent advisers when allocating forfeitures and by highlighting alleged

¹⁴ First Amended Complaint, *Hutchins v. HP Inc.*, No. 5:23-cv-05875 (N.D. Cal. Jan. 4, 2024), at 7.

conflicts of interest.¹⁵ Additionally, the amended complaint simplifies the scope by removing the HP Inc. Plan Committee as a defendant and instead focusing the allegations solely on HP Inc.¹⁶

On February 5, 2025, the court granted HP's motion to dismiss plaintiff's first amended class action complaint without leave to amend, stating that the plaintiff failed to plausibly allege that HP's use of 401(k) forfeitures to reduce employer contributions—as permitted by the plan—violated its ERISA fiduciary duties.¹⁷ Following this dismissal, the plaintiff appealed to the Ninth Circuit Court of Appeals.

Barragan v. Honeywell Int'l Inc. (motion to dismiss granted without prejudice)

The plaintiff alleged that Honeywell violated its fiduciary duties by using unvested funds forfeited by former employees to reduce future company contributions by approximately \$23.5 million between 2018 and 2022, instead of covering the \$26 million in plan expenses, which were ultimately charged to participants. The complaint asserted violations of ERISA's fiduciary duties of loyalty and prudence, the anti-inurement rule, and prohibited transaction provisions.

However, in December 2024, a New Jersey district judge dismissed the suit, finding that Honeywell's actions were consistent with the terms of the plan, which permitted the use of forfeitures to offset employer contributions.¹⁸ The crux of the plaintiff's allegations is that anytime a fiduciary is given the option to use forfeited amounts to either reduce employer contributions or pay administrative costs, the fiduciary must choose the latter. The court found the plaintiff's theory too broad and implausible, citing the reasoning of *Hutchins v. HP Inc.*¹⁹

The plaintiff subsequently filed an amended complaint in January 2025.

Rodriguez v. Intuit Inc. (settled)

In the complaint filed in October 2023, the plaintiff alleged that Intuit breached its fiduciary duties under ERISA by using forfeited 401(k) funds to reduce future employer matching contributions rather than to pay administrative expenses. The complaint claims that from 2018 to 2021, Intuit reallocated most forfeited funds for its benefit, using a total of \$15.2 million of forfeitures to offset employer contributions and almost none of the forfeited funds to pay the \$3.1 million plan expenses.

Rodriguez argued that this violated ERISA's anti-inurement provision, which prohibits the use of plan assets for the benefit of the employer. Additionally, the plaintiff claimed that Intuit's actions constituted prohibited transactions under ERISA because forfeitures should have been used to benefit plan participants by covering administrative costs, not reducing employer liabilities.

In response, Intuit moved to dismiss the case, arguing that its use of forfeitures complied with both the plan's terms and IRS guidelines. Intuit contended that forfeiture allocations are a "settlor decision" rather than a fiduciary duty. The Northern District of California partially denied Intuit's motion to dismiss in February 2024, allowing the claims related to breaches of fiduciary duty and prohibited transactions

¹⁵ *Id.* at 6–7.

¹⁶ *Id.* at 1.

¹⁷ Order Granting Motion to Dismiss First Amended Complaint, *Hutchins v. HP Inc.*, No. 5:23-cv-05875 (N.D. Cal. Feb. 5, 2025).

¹⁸ Patrick Hoff, *Honeywell Escapes Ex-Employee's 401(k) Forfeiture Suit*, December 20, 2024, <https://www.law360.com/articles/2276529>.

¹⁹ Opinion, *Barragan v. Honeywell Int'l Inc.*, No. 2:24-cv-04529 (D.N.J. Dec. 19, 2024).

to proceed, but dismissing claims against the plan's administrative committee and for failure to monitor fiduciaries.

In April 2025, Intuit agreed to settle this lawsuit for approximately \$2 million.

Potential damages on allegations of misusing forfeitures to offset employer contributions

The settlement in *Rodriguez v. Intuit Inc.*, the first case of its kind to settle, can shed some light on the potential scale of damages in this type of ERISA case. This case settled for about \$2 million, which is around 63% of the plan expenses plaintiff alleged could have been covered by forfeitures.²⁰

Table 2 presents summary statistics across the ongoing cases²¹ on plan expenses that were not paid by forfeitures, forfeitures used to offset company contributions, and the ratio of plan expenses not covered by forfeitures to forfeitures used to offset company contributions. The median total plan expenses not covered by forfeitures is \$7.03 million (mean \$17 million). The median total forfeitures used to offset company contributions is \$13.6 million (mean \$37 million). The median ratio is 0.7 (mean 1.72). Specifically, 26 of the 42 cases have a ratio less than 1, indicating that in about 62% of the cases, total plan expenses not covered by forfeitures are lower than the forfeitures used to offset company contributions. This suggests that, in these cases, potential damages related to allegations of misusing forfeitures to offset company contributions instead of paying plan expenses should be based on the amount of the uncovered plan expenses, not the total amount of forfeitures to offset company contributions.

Table 2: Summary statistics

	Case count	Min.	25th Pctl	50th Pctl	75th Pctl	Max.	Mean	Std. Dev.
Total plan expenses not covered by forfeitures (\$M)	42	1.39	3.32	7.03	19.70	102.00	17.00	22.10
Total forfeitures used to offset company contributions (\$M)	42	0.40	3.97	13.60	28.80	349.00	37.00	67.80
Ratio of plan expenses not covered by forfeitures to forfeitures used to offset company contributions	42	0.04	0.35	0.70	1.51	27.67	1.72	4.31

Notes: Author calculation. Data from case complaints and Form 5500. For each case, total plan expenses not covered by forfeitures and total forfeitures used to offset company contributions are summed up respectively across complaint years where data for both variables is available. For each case, the ratio is calculated by dividing the total uncovered plan expenses by the total forfeitures used for company contributions.

²⁰ Patrick Hoff, *Intuit Strikes \$2M Deal To Wrap Up 401(k) Forfeiture Suit*, May 16, 2025, <https://www.law360.com/articles/2341575>.

²¹ Cases include those that haven't ever received a court ruling or those with motion to dismiss denied.

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