

No. 25-590

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In the Supreme Court of the United States

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JERRY ALDRIDGE, ET AL.,  
PETITIONERS

v.

REGIONS BANK,  
RESPONDENT

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ON PETITION FOR A WRIT OF CERTIORARI  
TO THE U.S. COURT OF APPEALS  
FOR THE SIXTH CIRCUIT

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**PETITIONERS' REPLY BRIEF**

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**REPLY BRIEF**

Under 29 U.S.C. § 1132(a)(3), an ERISA beneficiary may seek “appropriate equitable relief” to “redress” violations of the “terms of the[ir] plan.” This Court has explained that “equitable relief” “refer[s] to those categories of relief that were *typically* available in equity” during the days of the “divided bench.” *Mertens v. Hewitt Assocs.*, 508 U.S. 248, 256 (1993). And in *CIGNA Corp. v. Amara*, 563 U.S. 421, 442 (2011), it characterized “surcharge” as a “remedy against a trustee” that, “prior to the merger of law and equity,” was not only typically available in equity, but “exclusively equitable.”

Consistent with this understanding, six courts of appeals recognize surcharge as an available remedy under § 1132(a)(3). The Fourth and Sixth Circuits, however, have rejected that view and dismissed *Amara*’s analysis as “dicta” in conflict with *Mertens*. App. 33a–34a. Both the panel below and other courts have acknowledged this divide. App. 33a; *Aramark Servs., Inc. Grp. Health Plan v. Aetna Life Ins. Co.*, 162 F.4th 532, 544 (5th Cir. 2025). And Respondent’s effort to sidestep it by claiming that it is not a fiduciary, but a “non-fiduciary trustee,” BIO at 25, fails twice over: first, because a trustee is—by definition—a fiduciary, Restatement (Second) of Trusts §§ 2–3; and second, because surcharge has long been an available remedy “against a trustee,” *Amara*, 563 U.S. at 442—which Respondent admits it is.

The implications of this conflict are undeniably consequential. If the Fourth and Sixth Circuits are right, then courts in twenty-eight states have been improperly awarding monetary relief to ERISA plaintiffs. On the

other hand, if Petitioners have the better argument, then the Sixth Circuit wrongly prevented them from seeking millions in lost benefits.

This case provides an ideal opportunity to resolve a broad, entrenched, and important conflict among the courts of appeals on the first question presented. And as the second question underscores, the Sixth Circuit's approach risks creating a remedial vacuum where neither federal nor state law can provide relief for plan mismanagement. The Court should grant review on both questions and reverse.

**I. THE COURTS OF APPEALS ARE DEEPLY SPLIT ON WHETHER SURCHARGE IS AVAILABLE UNDER § 1132(a)(3).**

Respondent all but acknowledges that a conflict exists “regarding the availability of surcharge.” BIO at 1. It observes—repeatedly—that there is “confusion” among the courts of appeals, *id.* at 1, 17; identifies the six circuits that “allow plaintiffs to seek surcharge as an equitable remedy,” *id.* at 17; and discusses the two that have “take[n] a different approach,” *id.* at 18–19. The primary argument it marshals against review is to point to *Montanile v. Board of Trustees*, 577 U.S. 136 (2016). That decision, it says, “squarely resolved th[e] confusion by confirming that *CIGNA*’s discussion” of surcharge was “dicta” and that “surcharge is therefore *not* available under” § 1132(a)(3). *Id.* at 1, 18–19. In the years since, Respondent claims, “the circuit courts have corrected course.” *Id.* at 18.

1. Yet by Respondent’s own lights, that has not happened. Six circuits have addressed surcharge post-*Montanile*. Four—the Second, Fifth, Ninth, and Eleventh Circuits—recognize it as a potential § 1132(a)(3) remedy. *Id.* at 20–22. Two do not. *Id.* at 19.

2. Against this context, Respondent advances a narrower argument: review remains unnecessary, it insists, because the courts which recognize surcharge have not “wrestle[d] [with] this Court’s holding in *Montanile*.” *Id.*

That contention is not well taken. To start, if four courts of appeals have issued published decisions that—as Respondent claims—ignore or flout Supreme Court precedent, that circumstance would counsel in favor of, not against, review. *See* S. Ct. R. 10(c).

More importantly, several circuits have expressly considered *Amara* and *Montanile* and have taken different sides on the same question. Indeed, Respondent admits the Fifth Circuit has “disagreed with the approach adopted by the Fourth and Sixth Circuits.” BIO at 21. That court has explained that “*Montanile* offers us no reason to reconsider” its prior rule recognizing “surcharge as a potential remedy under § 502(a)(3).” *Aramark*, 162 F.4th at 543–44. The Second Circuit too has discussed *Montanile* and held that surcharge remains a form of “relief that [was] typically available in equity.” *Trs. of N.Y. State Nurses Assoc. Pension Plan v. White Oak Global Advisors, LLC*, 102 F.4th 572, 602–04 (2d Cir. 2024). Even by Respondent’s logic, then, *Montanile* did not resolve the conflict. It sharpened it.

Respondent’s suggestion that this Court defer review until other courts explicitly “wrestle” with *Montanile* is

unpersuasive. There is no magic words requirement to Rule 10. That rings particularly true here because *Montanile* “said *nothing* about *Amara*’s discussion of the equitable surcharge remedy.” *Aramark*, 162 F.4th at 544 (emphasis added). Instead, as Judge Heytens has explained, all it did was “reject[] a litigant’s broad reading of *Amara* that would have all but overruled *Mertens*.” *Rose v. PSA Airlines, Inc.*, 80 F.4th 488, 506 (4th Cir. 2023) (Heytens, J., concurring in part and dissenting in part) (cleaned up).

*Montanile* thus clarified that *Amara* did not overrule *Mertens*. But it did not say *Amara* was “inconsistent with” *Mertens*, much less that these cases were irreconcilable. *Id.* The Fourth and Sixth Circuits are the only two courts of appeals to have read *Montanile* in this way. Others have considered *Montanile* and rejected that understanding. *See Aramark*, 162 F.4th at 543–44. And there is little reason to await further percolation to consider a decade-old decision that (1) said nothing about surcharge, (2) did not overrule *Amara*, and (3) broke no new doctrinal ground, but merely “reaffirmed” that a preexisting approach remains “unchanged.” BIO at 19. At bottom, surcharge is available today in six courts of appeals, and unavailable in two others. That entrenched divide is ripe for this Court’s consideration.

## **II. THIS CASE IS AN EXCELLENT VEHICLE FOR REVIEW.**

The panel below squarely decided the surcharge question, by holding that “§ 1132(a)(3) does not permit plan participants to seek monetary relief from fiduciaries

for the losses that they suffer.” App. 37a–38a. This rule, it explained, “forecloses the Participants’ request for monetary relief.” App. 38a. Their request, however, would not have been so foreclosed had they sued in a circuit which recognizes “that ERISA plan participants may seek this type of monetary award.” App. 33a. That difference makes this case an ideal candidate for review.

1. Respondent claims “this case does not implicate” a split because the courts that recognize surcharge “dr[aw] the line at *fiduciary* status”—and it is not a fiduciary, but a “non-fiduciary trustee.” BIO at 23–25.

That contention is contrary to the holding of the Sixth Circuit, which both identified the conflict and weighed in on it. App. 33a–34a. It also makes no sense. There is no such thing as a “non-fiduciary trustee.” A “trust” is a “fiduciary relationship with respect to property,” and the “person holding property in trust is the trustee”—which makes a trustee the paradigmatic fiduciary. Restatement (Second) of Trusts §§ 2–3. Moreover, as *Mertens* makes clear, ERISA “expand[ed] the universe,” by defining fiduciary not only “in terms of formal trusteeship, but in *functional* terms of control and authority over the plan.” 508 U.S. at 262. In other words, some ERISA fiduciaries are not trustees. But all trustees are ERISA fiduciaries.

*Amara* reinforces this point, by describing surcharge as a “remedy” awarded in equity “against a trustee.” 563 U.S. at 442. It then explains that an ERISA beneficiary may seek surcharge against an ERISA fiduciary because the latter is “*analogous* to a trustee.” *Id.* (emphasis added). But here there is no need to analogize, because Respondent is indisputably the Trustee of a trust maintained for Petitioners’ benefit. App. 9a–10a. Under

such facts, a surcharge claim could have been brought against Respondent in equity. It can also be brought now.

2. Even if ERISA fiduciary status were critical, Respondent more than checks that box. The statutory text provides that a fiduciary is any person who “has any discretionary authority” over “the administration of” a plan or who “exercises any authority or control respecting management or disposition of [plan] assets.” 29 U.S.C. § 1002(21)(A).

Here, Respondent was “instructed” to “undertake the day-to-day administration of the Plans.” App. 10a. It was “authorized” to “dispose of any securities or property”; to “settle, compromise or submit to arbitration any claims”; and to “do all acts and to execute and deliver all instruments as in [its] judgment . . . may be necessary.” Dist. Ct. Dkt. 19-3 at 6–7. Respondent did not, in short, have some “discretionary authority.” It had “sole discretion” over the Plans’ assets. *Id.* at 3.

3. The fundamental mistake Respondent makes is to conflate legal status—*i.e.*, what a fiduciary is—with an exemption to the duties and obligations that attach to that status—*i.e.*, what claims a beneficiary may bring against a fiduciary. These are not one and the same.

As this Court has observed, ERISA is “an enormously complex and detailed statute,” with a “carefully crafted and detailed enforcement scheme.” *Mertens*, 508 U.S. at 254, 262. That precision matters here. Section 1002(21)(A) defines fiduciary status. A separate provision in a separate part of the Act, § 1101(a)(1), defines top-hat plans and exempts them from §§ 1101–1114. That means a top-hat plan participant cannot bring a claim for breach of fiduciary duty under § 1104; for a

prohibited transaction under § 1106; or for delegating responsibility to a person prohibited from holding the position under § 1111.

But Petitioners are not bringing any such claims. They seek relief under § 1132(a)(3), which provides “appropriate equitable relief” as “redress” for “violations” of the “terms” of an ERISA plan. Section 1132(a)(3) is not among the exemptions included in § 1101(a)(1). And if Congress wanted to specify that the trustees of a top-hat plan are not fiduciaries at all, it could have easily done so—by expanding § 1101(a)(1)’s breadth, amending § 1132(a)(3), or narrowing the definition of fiduciary in § 1002(21)(A). It did none of those things.

That is no accident. When drafting ERISA, Congress drew “from the common law of trusts.” *Varity Corp. v. Howe*, 516 U.S. 489, 496 (1996). As noted, that body of law defines a trustee as a fiduciary. It also provides that the settlor of a trust may “relieve[]” the trustee “of liability for breach of trust,” including for breaches of the duties of care and loyalty. Restatement (Second) of Trusts § 222(1). This feature parallels § 1101(a)(1), which exempts top-hat plans from the duties of “care, skill, prudence, and diligence” outlined in § 1104. Yet as the Restatement explains, these exculpatory “provisions are strictly construed, and the trustee is relieved of liability only to the extent to which it is clearly provided.” *Id.* cmt. 1. Relieving a trustee of certain duties (as § 1101(a)(1) does for § 1104) does not exempt it from having to answer to other obligations elsewhere (such as those in § 1132). Nor does it destroy the trustee’s fiduciary status. That relationship arises from holding and managing property

for the benefit of another, not from the particular set of duties imposed.

These tenets demonstrate why Respondent's reliance on *Holloman v. Mail-Well Corp.*, 443 F.3d 832 (11th Cir. 2006), and *Goldstein v. Johnson & Johnson*, 251 F.3d 433 (3d Cir. 2001), is misplaced. *Holloman* concluded that a top-hat plan participant could not bring claims "for breach of fiduciary duties under ERISA"—a point that neither is in dispute nor answers the question here. 443 F.3d at 842.

*Goldstein*, to be sure, held that the top-hat plan defendant there was not a fiduciary. 251 F.3d at 443. But Petitioners have not found, and Respondent has not identified, any other court of appeals that has followed that conclusion. And *Goldstein* is readily distinguishable. *Amara* characterized surcharge as a remedy against a trustee, 563 U.S. at 442—and here, there is both a trust and a trustee. There was neither in *Goldstein*. Instead, the plaintiff sued a non-trustee administrator, for "benefits [that] were paid directly out of [the company's] operating revenues." 251 F.3d at 438. Nor did *Goldstein* involve a § 1132(a)(3) claim, much less address the scope of equitable relief. It instead examined the "standard of review" due to an administrator's interpretations for a claim under § 1132(a)(1)(B). *Id.* at 441. There is little reason for the Court to hesitate over a decision that has not been followed by any other circuit, did not involve a trust, did not examine the question presented, and is materially distinguishable from the circumstances here.

4. Respondent's remaining vehicle arguments can be addressed in short order. It claims Petitioners have not identified a relevant violation of the Plans. BIO at 30. "[N]either party . . . addressed this predicate question"

before the Sixth Circuit, and the panel did not consider it an obstacle to answering the question presented. App. 32a. Nor does it counsel against review by this Court. As the petition outlines, the plan terms provide that, on termination, the Plans shall “pay a lump sum Actuarial Equivalent value of any retirement benefits due to Participants.” See D. Ct. Dkt. 19-1 at 18; Pet. at 26. Petitioners allege that Respondent “failed to inform them of this right to a payout,” and so Petitioners did not “take [the] lump-sum payouts” owed to them. App. 10a. Respondent’s brief does not engage with this language, and the reason why is plain: If Petitioners’ allegations hold true, then they have identified a “violation[.]” of “the terms of the plan,” and are seeking “equitable relief” as “redress”—just as § 1132(a)(3) provides.

Respondent also suggests that, because this case involves a top-hat plan, the panel’s ruling “applies only” to “executives and management employees,” and “will not affect ordinary workers.” BIO at 29. Untrue. The Sixth Circuit did not cabin its ruling in such a manner. It held broadly that “§ 1132(a)(3) does not permit plan participants to seek monetary relief from fiduciaries for the losses that they suffer.” App. 37a–38a. And courts in the Sixth Circuit have applied this rule to find that beneficiaries of a 401(k) plan “cannot seek a surcharge remedy,” *All. Coal, LLC v. Smith*, 2026 WL 353029, at \*8 (E.D. Ky. Feb. 9, 2026)—precisely the “ordinary workers” Respondent claims are unaffected.

Finally, there is no reason to wait for a better vehicle. Respondent asserts that, after the Fifth Circuit resolves a petition for rehearing in *Aramark*, “that case would likely provide a more appropriate opportunity for this

Court to consider the question presented.” BIO at 25 n.3. Not so. This case comes to the Court following final judgment. App. 39a. *Aramark* arises in an interlocutory posture, with some claims in Texas district court and others in “quasi-parallel litigation” in Connecticut district court. 162 F.4th at 536 n.6. It involves separate questions over the Federal Arbitration Act. *Id.* at 537–41. And significantly, the Fifth Circuit assumed “at this early stage” that the defendant was a fiduciary, while acknowledging both that the defendant had vowed to “vigorously dispute” its “fiduciary status” in later proceedings and that these arguments would be “reviewable for a future panel[] with a more fulsome view of the merits.” *Id.* at 541 n.42.

Ultimately, none of Respondent’s vehicle arguments held water for the Sixth Circuit. None preclude review by this Court.

### III. THE DECISION BELOW IS INCORRECT.

Shorn of its split and vehicle arguments, Respondent’s substantive defense of the panel’s decision is weak. It repeats the argument that *Amara* conflicts with *Mertens* and that, “in *Montanile*, the Court itself explicitly disavowed *CIGNA*’s dicta.” BIO at 27. *Montanile* did not do that. It did not mention surcharge and did not overrule *Amara*. And in *Liu v. SEC*, 591 U.S. 71, 79 (2020), this Court referenced *Mertens*, *Amara*, and *Montanile* together, with no indication that these decisions were irreconcilable.

*Liu* also demonstrates why *Amara* got it right. There, this Court explained that a request for “disgorgement”

resembles an “accounting for profits,” a form of relief that would have been sought in equity. 591 U.S. at 79–81. Disgorgement therefore falls “comfortably within ‘those categories of relief that were *typically* available in equity.’” *Id.* at 84–85 (quoting *Mertens*, 508 U.S. at 256). And as Professor Bray notes, an accounting for profits represents only one side of the ledger. If “the trustee’s mismanagement didn’t lead to profits, but instead to losses,” equity could and did award a mirror-image remedy: “surcharge.” Bray Br. at 3. Put another way, if an accounting for profits is typically equitable under *Mertens*, then so is its counterpart.

The petition discusses *Liu* at length. Pet. at 24–26. The brief in opposition does not discuss it at all. Instead, faced with the losses Petitioners incurred, Respondent suggests Petitioners should have “add[ed] contractual protections” to their top-hat plan. BIO at 6. They did. The relevant documents specify that any disputes shall be “construed according to the laws of the State of Alabama,” and Petitioners brought a breach-of-contract claim under Alabama law. Dist. Ct. Dkt. No. 19-3 at 18. But the Sixth Circuit rejected that effort, ruling that “a breach-of-contract suit” is preempted “whenever it implicates the ‘relations among the traditional ERISA plan entities,’” which it read to include “plan beneficiaries, sponsors, and administrators.” App. 25a–26a.

That holding underscores why the Court should grant both questions presented. The first involves a split falling in the heartland of this Court’s review. And the second reveals the consequences of letting that conflict go unresolved: a law-free zone, where plaintiffs cannot obtain “equitable relief” under federal law despite

requesting a remedy that was “exclusively equitable” during the divided bench, and cannot seek relief under state law for protections they bargained for. Far from “promot[ing] the interests of employees,” *Shaw v. Delta Air Lines*, 463 U.S. 85, 90 (1983), that rule would leave them “empty-handed”—the very outcome Congress enacted ERISA to prevent, *Lockheed Corp. v. Spink*, 517 U.S. 882, 887 (1996).

#### CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

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March 17, 2026