

20-4081

Soto v. Disney Severance Pay Plan, et al.

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In the
United States Court of Appeals
For the Second Circuit

August Term, 2020

(Argued: June 22, 2021 Decided: February 16, 2022)

Docket No. 20-4081

NANCY J. SOTO,

Plaintiff–Appellant,

–v.–

DISNEY SEVERANCE PAY PLAN, INVESTMENT AND ADMINISTRATIVE
COMMITTEE OF THE WALT DISNEY COMPANY SPONSORED QUALIFIED BENEFIT
PLANS AND KEY EMPLOYEES DEFERRED COMPENSATION AND RETIREMENT
PLAN, THE WALT DISNEY COMPANY,

*Defendants–Appellees.**

B e f o r e :

CARNEY, SULLIVAN, and BIANCO, *Circuit Judges.*

* The Clerk of Court is directed to amend the caption to conform to the above.

1 Plaintiff-Appellant Nancy J. Soto, a former employee of The Walt Disney
 2 Company (“Disney”), alleges that Disney improperly denied her severance benefits
 3 upon her termination for physical illness that rendered her unable to work. She brings
 4 claims against Defendants-Appellees Disney, the Disney Severance Pay Plan, and the
 5 Plan Administrator, under Section 502(a)(1)(B) & (a)(3) of the Employee Retirement
 6 Income Security Act of 1974 (“ERISA”), 29 U.S.C. § 1132(a)(1)(B) & (a)(3), alleging that
 7 the Plan Administrator improperly determined that she did not experience a qualifying
 8 “Layoff” as required for severance benefits. We conclude that, because the operative
 9 Amended Complaint does not plausibly allege that the interpretation of “Layoff” and
 10 resulting denial of severance benefits to Soto were arbitrary and capricious, the District
 11 Court (Nathan, J.) did not err in dismissing Soto’s claims.

12 AFFIRMED.

13
 14 Judge Sullivan dissents in a separate opinion.

15
 16 DAVID S. PREMINGER, Keller Rohrbach L.L.P., New York, NY,
 17 *for Plaintiff-Appellant.*

18
 19 SHAILEE DIWANJI SHARMA (Andrew A. Ruffino, Robert S.
 20 Newman, *on the brief*), Covington & Burling LLP, New
 21 York, NY & Washington, D.C., *for Defendants-*
 22 *Appellees.*

23 CARNEY, *Circuit Judge:*

24 Plaintiff-Appellant Nancy J. Soto is a former employee of The Walt Disney
 25 Company (“Disney”). After a stroke and other serious medical issues left her unable to
 26 work, Disney terminated her employment. Although Disney paid Soto disability
 27 benefits, it did not pay her severance benefits under the Disney Severance Pay Plan (the
 28 “Plan”). The Plan Administrator—the Investment and Administrative Committee of

1 The Walt Disney Company Sponsored Qualified Benefit Plans and Key Employees
 2 Deferred Compensation and Retirement Plan (the “Committee”)—determined that Soto
 3 was ineligible for severance because she had not experienced a qualifying “Layoff” as
 4 defined in the Plan. Soto subsequently brought claims against Defendants-Appellees
 5 Disney, the Plan, and the Plan Administrator under Section 502(a)(1)(B) & (a)(3) of the
 6 Employee Retirement Income Security Act of 1974 (“ERISA”), 29 U.S.C. § 1132(a)(1)(B)
 7 & (a)(3). She alleges that the Plan Administrator improperly denied her severance by
 8 deciding that, as defined by the Plan, a “Layoff” excluded a termination based on
 9 disability. We conclude that the Amended Complaint does not plausibly plead that this
 10 interpretation of “Layoff” and the resulting denial of severance benefits to Soto were
 11 arbitrary and capricious. The District Court therefore did not err in dismissing the
 12 claims. We accordingly affirm its judgment.

13 BACKGROUND

14 I. ERISA § 502(a)(1)(B) & (a)(3)

15 Section 502 of ERISA authorizes “participant[s]” in an employee benefit plan to
 16 bring a civil action (i) “to recover benefits due to [them] under the terms of [their] plan,”
 17 *see* ERISA § 502(a)(1)(B), 29 U.S.C. § 1132(a)(1)(B), and (ii) “to obtain other appropriate
 18 equitable relief . . . to redress . . . violations or . . . enforce any provisions of” ERISA or
 19 “the terms of the plan,” *see* ERISA § 502(a)(3), 29 U.S.C. § 1132(a)(3). A qualifying “plan”
 20 subject to ERISA is any “employee welfare benefit plan or an employee pension benefit
 21 plan.” 29 U.S.C § 1002(3). There is no dispute that ERISA governs the Plan.

II. Soto's Complaint¹

In 2019, Soto brought suit against Disney, the Plan, and the Plan Administrator after her claim for severance benefits was denied.² The operative Amended Complaint (the "Complaint") asserted two sets of claims relevant on appeal: first, that Soto was due a severance payment of \$44,277 under the Plan, *see* ERISA § 502(a)(1)(B), 29 U.S.C. § 1132(a)(1)(B) (Counts I and II); and second, that the Plan language should be reformed to conform with certain requirements of ERISA, *see* ERISA § 502(a)(3), 29 U.S.C. § 1132(a)(3) (Count V). On appeal, Soto does not challenge the dismissal of the other counts of the Complaint.

The Complaint alleges that Soto was a longtime employee of Disney. In 2016 and 2017, she experienced a severe stroke and other medical problems, which left her disabled and unable to work. In January 2018, Disney formally terminated Soto's employment. Although Disney paid Soto sick pay, short-term illness benefits, and long-term disability benefits, it did not pay her severance benefits under the Plan. In June 2018, Soto applied for Plan benefits. Soto's application was denied because she was deemed not to have experienced a qualifying "Layoff" as required for Plan eligibility.

¹ On appeal from a grant of a motion to dismiss, we draw the factual narrative from the Amended Complaint, materials incorporated by reference into the complaint, and matters of which judicial notice may be taken, including relevant statutes and regulations. *See Goel v. Bunge, Ltd.*, 820 F.3d 554, 559 (2d Cir. 2016).

² Although the Complaint includes unidentified members of the Committee as defendants, these John Does are not parties to this appeal. For convenience, we refer to Defendants-Appellees as "Defendants."

1 A. The Plan Terms

2 The Plan is incorporated by reference into the Complaint. It “provides severance
3 benefits” to “Eligible Employees” of the Plan “Sponsor,” Disney. App’x at 26, 38. To
4 qualify for these benefits, individuals must satisfy three conditions: they must (1) be an
5 “Eligible Employee,” (2) be notified in writing that they are a Plan “Participant,” and
6 (3) have experienced a “Layoff.” *Id.* at 29.

7 The Plan defines “Layoff” as:

8 The involuntary termination of employment of an Eligible Employee
9 from the Company, except for reasons of poor performance or
10 misconduct as determined by the Company [Disney] in its sole and
11 absolute discretion. Notwithstanding the foregoing, in no event will an
12 involuntary termination of employment be considered a Layoff if such
13 involuntary termination does not qualify as a “separation of service”
14 within the meaning of Section 409A of the Code and Treasury Regulation
15 1.409A-1(h).

16 *Id.* at 28.

17 The Plan confers discretion on the Plan Administrator to interpret and apply
18 Plan terms. Section 8(b) of the Plan (“Plan Interpretation and Benefit Determination”)
19 explains:

20 The Plan is administered and operated by the Plan Administrator, who
21 has complete authority, in its sole and absolute discretion, to construe
22 the terms of the Plan (and any related underlying documents or policies),
23 to interpret applicable law, to make findings of fact and to determine the
24 eligibility for, and amount of, benefits due under the Plan to
25 Participants[.]

26 *Id.* at 36. Other sections of the Plan set out standards for how the Plan Administrator
27 should exercise its discretion in construing Plan terms. For instance, Section 4(g)
28 (“Integration With Other Payments”) states that:

29 benefits under this Plan are not intended to duplicate such benefits as
30 workers’ compensation[,], wage replacement benefits, disability benefits,
31 pay-in-lieu-of-notice, severance pay, or similar benefits under other

benefit plans Should such other benefits . . . be payable, benefits payable to a Participant under this Plan will be offset [T]he Plan Administrator, in its sole discretion, will determine how to apply this provision and may override other provisions of this Plan in doing so.

Id. at 32.

Section 7(h)(iv) (“General 409A Compliance”) explains that severance benefits paid under the Plan are not intended to be taxable deferred compensation to the employee pursuant to Section 409A of the Internal Revenue Code. *See* 26 U.S.C § 409A(a)(1) (treating as taxable certain “deferred” compensation under employer benefit plans). To that end, the Plan Administrator is directed to interpret Plan terms in conformance with Section 409A and its exemptions from taxation:

[I]t is intended that the Plan comply with the provisions of section 409A of the Code, and the Plan shall be construed and applied by the Plan Administrator in a manner consistent with this intent. Any provision that would cause any amount payable under the Plan to be includible in the gross income of a[n] Employee under section 409A(a)(1) of the Code shall have no force or effect.

App’x at 35; *see, e.g.*, 26 C.F.R. § 1.409A-1(b)(9)(iii) (Section 409A regulation providing that, where a “separation pay [i.e., severance] plan . . . provides for separation pay only upon an *involuntary* separation from service,” payments under that plan are not taxable “defer[red] compensation” under Section 409A (emphasis added)).

Reflecting the principle that the Plan should conform with Section 409A, the definition of “Layoff” expressly incorporates a Section 409A regulation defining “separation from service”: “[I]n no event will an involuntary termination of employment be considered a Layoff if such involuntary termination does not qualify as a ‘separation of service’” under 26 C.F.R § 1.409A-1(h). App’x at 28. “Separation from service” in turn is defined under that regulation as a “termination of employment” in which “the employer and employee reasonably anticipate[] that no further services would be performed.” 26 C.F.R. § 1.409A-1(h)(1)(i)-(ii). A related Section 409A

1 regulation, 26 C.F.R. § 1.409A-1(n)(1), defines an “*involuntary* separation from service”
 2 as a “separation from service [i.e., a termination of employment] due to the
 3 independent exercise of the unilateral authority of the” employer “where the
 4 [employee] was willing and able to continue performing services.” *Id.* (emphasis
 5 added).

6 B. Denial of Soto’s Claim for Severance

7 Soto’s claim for severance benefits was denied in two letters incorporated by
 8 reference into the Complaint. In the first letter, dated August 13, 2018, the Plan
 9 Administrator determined that Soto had not met two of the three eligibility
 10 requirements under the Plan: she had neither experienced a qualifying “Layoff” nor
 11 received notice that she was a Plan “Participant” because she did not satisfy the
 12 “Layoff” requirement. *See App’x at 79.* The Plan Administrator explained that Soto’s
 13 termination based on an “inability to return to work on account of her disabling illness”
 14 fell outside the Plan definition of “Layoff.” *Id.* It further explained that, while these
 15 circumstances qualified Soto to receive sick pay, short-term illness benefits, and long-
 16 term disability benefits, they did not qualify her to receive severance benefits under the
 17 Plan terms.

18 In the second letter, dated November 21, 2018, a Subcommittee of the Plan
 19 Administrator upheld the denial of severance benefits. The Subcommittee agreed with
 20 the Plan Administrator’s reasoning in the prior letter that Soto had not experienced a
 21 qualifying “Layoff” or received notice that she was a Plan “Participant.” As the second
 22 letter explained, because “Ms. Soto’s employment with the Company ended on account
 23 of her inability to return to work following a disabling illness,” such “circumstances did
 24 not constitute a ‘Layoff’ for purposes of Plan eligibility.” *Id.* at 41. Nor did Soto “meet
 25 the separate requirement for Plan eligibility in that she was never informed in writing
 26 by the Company that the circumstances of her separation of employment qualified her

1 for Plan benefits.” *Id.*

2 C. Soto’s Theory of the Case

3 The Complaint pleads both claims for damages and equitable relief. Soto first
 4 alleges that she is entitled to severance benefits of approximately \$44,277, arguing that
 5 the Plan Administrator erred in concluding that she did not meet the “Layoff” or notice
 6 eligibility requirements (Counts I and II). App’x at 48, 50; *see also id.* at 54 (Am. Compl.
 7 ¶ 45). With respect to the “Layoff” requirement, the Complaint alleges that “Plaintiff’s
 8 Termination was a ‘Layoff’ within the Plan’s unambiguous definition of that term.
 9 Alternatively, if the term Layoff is found to be ambiguous, Defendants’ interpretation of
 10 the term Layoff is arbitrary and capricious.” *Id.* at 50 (Am. Compl. ¶ 23); *see also id.* at 51,
 11 53 (Am. Compl. ¶¶ 34, 41). With respect to the notice requirement, the Complaint
 12 pleads that, because Soto did not receive notice solely on the ground that she had not
 13 experienced a “Layoff,” “Disney must notify her of her entitlement to benefits” under a
 14 correct interpretation of that term. *Id.* at 50 (Am. Compl. ¶ 26). In the alternative, Soto
 15 seeks equitable relief (Count V) to “reform” the Plan “to comply with ERISA[’s]”
 16 requirements that a plan contain certain information and be written in a manner for the
 17 average participant to understand, as well as with “Plaintiff’s reasonable understanding
 18 of [the Plan] terms.” *Id.* at 55 (Am. Compl. ¶ 57). The Complaint alleges that “as
 19 reformed[,] Plaintiff should be granted benefits” under the Plan. *Id.* (Am. Compl. ¶ 57).

20 III. **Procedural History**

21 Soto filed this action in May 2019. After Defendants moved to dismiss the
 22 original complaint, but before that motion was adjudicated, Soto amended her
 23 complaint. Defendants moved again to dismiss. As the parties were briefing that second
 24 motion, Soto filed the operative Complaint, which the District Court deemed the subject
 25 of the pending motion to dismiss.

1 On November 9, 2020, the District Court granted Defendants' motion to dismiss.
 2 See *Soto v. Disney Severance Pay Plan*, No. 19 Civ. 4048, 2020 WL 6564721 (S.D.N.Y. Nov.
 3 9, 2020).³ The District Court held that "Plaintiff has pled herself out of court" because
 4 the Complaint "admits" that Soto did not receive notice of her eligibility under the Plan
 5 as required for severance benefits. *Id.* at *3. Because the absence of such notice was
 6 sufficient for dismissal, the District Court did not reach the separate issue of whether
 7 Soto had plausibly alleged that the Plan Administrator erred in concluding she did not
 8 experience a qualifying "Layoff." *Id.* at *7. Soto timely appealed.

9 DISCUSSION

10 We review *de novo* the grant of a motion to dismiss under Federal Rule of Civil
 11 Procedure 12(b)(6). *Testa v. Becker*, 910 F.3d 677, 682 (2d Cir. 2018). Although we
 12 "accept[] all factual allegations in the complaint as true and draw[] all reasonable
 13 inferences in the plaintiff's favor," *id.*, we must dismiss a claim if a plaintiff "plead[s]
 14 himself out of court by alleging facts which show that he has no claim," *Official Comm. of*
 15 *Unsecured Creditors of Color Tile, Inc. v. Coopers & Lybrand, LLP (Color Tile)*, 322 F.3d 147,
 16 167 (2d Cir. 2003). "We may affirm on any ground the record supports, and are not
 17 limited to the reasons expressed by the district court." *Laurent v. PricewaterhouseCoopers*
 18 *LLP*, 794 F.3d 272, 273 n.1 (2d Cir. 2015).

19 I. Soto's Claims for Benefits (Counts I and II)

20 We affirm the dismissal of Soto's claims for severance benefits under ERISA
 21 § 502(a)(1)(B), 29 U.S.C. § 1132(a)(1)(B), but for a different reason than relied on by the

³ Unless otherwise noted, in quotations from case law, this Opinion omits all alterations, brackets, citations, emphases, and internal quotation marks.

District Court.⁴ We conclude that the Complaint does not plausibly allege that the Plan Administrator was arbitrary and capricious in denying Soto severance benefits on the ground that she did not experience a qualifying “Layoff.” To the contrary, the Complaint pleads facts evincing that the Plan Administrator’s determination was reasonable and must be upheld. *See Color Tile*, 322 F.3d at 167 (requiring dismissal where plaintiff “alleg[es] facts . . . show[ing] that he has no claim”).

A. The Complaint Pleads the Conditions Triggering Arbitrary and Capricious Review of the Plan Administrator’s Decisions

We begin by explaining why Soto’s claims are subject to an arbitrary and capricious standard. It has long been established under ERISA that, “where (as in this case) the relevant plan vests its administrator with discretionary authority over benefits decisions . . . the administrator’s decisions may be overturned only if they are arbitrary and capricious.” *Roganti v. Metro. Life Ins. Co.*, 786 F.3d 201, 210 (2d Cir. 2015). Thus, arbitrary and capricious review is proper for decisions involving the exercise of the administrator’s discretion, as when it interprets ambiguous plan terms. But when an administrator is interpreting unambiguous plan terms, we generally apply a *de novo* standard of review because “unambiguous language leaves no room for the exercise of discretion.” *O’Neil v. Ret. Plan for Salaried Emps. of RKO Gen., Inc.*, 37 F.3d 55, 59 (2d Cir. 1994).

⁴ As discussed, the District Court dismissed Soto’s claims because the Complaint concedes that Soto did not receive notice of eligibility. *See Soto*, 2020 WL 6564721, at *3. But Soto’s theory is that Defendants *improperly* withheld notice under an incorrect view that she did not experience a “Layoff.” At bottom, Soto’s claims turn on the propriety of the Plan Administrator’s interpretation of “Layoff.” Accordingly, we must decide whether the Complaint plausibly alleges that this interpretation, and the consequent denial of severance benefits to Soto, were improper.

1 The Complaint and materials that it incorporates by reference show that the Plan
 2 Administrator is vested with the discretion to determine whether an employee
 3 experienced a qualifying “Layoff” and is eligible for severance benefits. Section 8(b) of
 4 the Plan contains the unequivocal language conferring this discretion: the Plan is
 5 “administered and operated by the Plan Administrator, *who has complete authority, in its*
 6 *sole and absolute discretion*, to construe the terms of the Plan . . . , to interpret applicable
 7 law, to make findings of fact and to determine the eligibility for, and amount of,
 8 benefits due under the Plan[.]” App’x at 36 (emphasis added); *see, e.g., Roganti*, 786 F.3d
 9 at 205 n.2 (finding sufficient for conferral of discretion plan language that authorizes
 10 administrator to “determine[] in its discretion that the applicant is entitled to” benefits).

11 We further conclude that the term “Layoff” is ambiguous, thereby requiring the
 12 Plan Administrator to use its discretion to determine whether the term applies in Soto’s
 13 circumstances. “Whether [plan] language is ambiguous is a question of law” for the
 14 court, turning on whether the language is reasonably “capable of more than one
 15 meaning” within the “context of the entire” plan. *Fay v. Oxford Health Plan*, 287 F.3d 96,
 16 104 (2d Cir. 2002).

17 The Plan defines “Layoff” as “[t]he involuntary termination of employment . . .
 18 except for reasons of poor performance or misconduct as determined by the Company
 19 [Disney] in its sole and absolute discretion,” subject to a substantive limitation: that,
 20 “[n]otwithstanding the foregoing” general definition, the phrase “involuntary
 21 termination of employment” may in no event “be considered a Layoff if such
 22 involuntary termination does not qualify as a ‘separation of service’ within the meaning
 23 of Section 409A of the Code and Treasury Regulation 1.409A-1(h).” *See* App’x at 28; 26
 24 C.F.R. § 1.409A-1(h)(1)(i)-(ii) (defining “termination of employment” as the
 25 circumstance when “the employer and employee reasonably anticipated that no further

services would be performed"). Consistency with this regulation is therefore a necessary condition for identifying a qualifying "Layoff."

It is not, however, a sufficient condition because the Plan further leaves the phrase "*involuntary* termination of employment" undefined. We find this phrase ambiguous as to whether it embraces a termination based on disability. On the one hand, an "involuntary termination" may be interpreted broadly to mean any circumstance in which an employee does not affirmatively choose to leave work but is forced to do so by external circumstances, such as physical disability. *See, e.g., Involuntary*, Oxford English Dictionary Online, <https://www.oed.com/viewdictionaryentry/Entry/99193> (defining "involuntary" as "not done . . . by choice"). But on the other hand, the phrase may reasonably be interpreted more narrowly to refer to circumstances in which an employee would otherwise continue working but for the termination forced upon her by the employer. Such a termination is "involuntary" because it is opposed to the employee's choice to continue working. Implicit in the employee having such a choice is that she is able to continue working. This second interpretation is narrower than the first because the obstruction to the employee's choice is not *any* external circumstance, but a circumstance mainly within the employer's own control and discretion.

Considering an "involuntary termination" in the "context of the entire" Plan reinforces this ambiguity. *See Fay*, 287 F.3d at 104 ("Language is ambiguous when it is capable of more than one meaning when viewed objectively by a reasonably intelligent person who has examined the context of the entire agreement."). Section 7(h)(iv) of the Plan instructs that the Plan "shall be construed and applied by the Plan Administrator in a manner consistent with" "the provisions of section 409A of the [Internal Revenue] Code." App'x at 35. A regulation promulgated under Section 409A, 26 C.F.R. § 1.409A-1(n)(1), defines an "involuntary" "termination of employment" as one arising from "the

1 independent exercise of the unilateral authority of the [employer] to terminate the
 2 [employee's] services, . . . where the [employee] was willing *and able* to continue
 3 performing services.”⁵ *Id.* (emphasis added). So, notwithstanding the broad meaning
 4 that an “involuntary termination of employment” might bear, this regulation—with
 5 which the Plan requires the Plan Administrator to comply in construing Plan terms, *see*
 6 App'x at 35—supports the narrower interpretation that the phrase excludes a
 7 termination based on disability.

8 Further reinforcing the view that the phrase, considered in context, is ambiguous
 9 is Section 4(g) of the Plan (“Integration With Other Payments”). *Id.* at 32. In outlining
 10 Plan benefits, Section 4(g) provides that “benefits under this Plan are not intended to
 11 duplicate . . . disability benefits.” *Id.* This provision suggests that an “involuntary
 12 termination” excludes a termination arising from disability. But Section 4(g) also
 13 provides a mechanism for offsetting Plan benefits by any amounts paid for certain listed
 14 benefits, including disability benefits: “[B]enefits under this Plan are not intended to
 15 duplicate such benefits as workers’ compensation[,], wage replacement benefits,
 16 disability benefits, pay-in-lieu-of-notice, severance pay, or similar benefits under other
 17 benefit plans Should such other benefits . . . be payable, benefits payable to a
 18 Participant under this Plan will be offset.” *Id.* This offset mechanism might suggest that
 19 the Plan covers terminations based on disability and anticipates offsetting such benefits
 20 in the event that similar disability benefits are paid out under other plans. Alternatively,
 21 however, the offset mechanism might simply be a failsafe to prevent overlap between
 22 Plan benefits and certain other listed benefits that are more likely to be duplicative than

⁵ Regulation 1.409A-1(n) defines an “involuntary separation from service,” and a
 “separation from service” in turn is defined as a “termination of employment.” 26 C.F.R.
 § 1.409A-1(h)(1)(i)-(ii) & (n)(1). Thus, Regulation 1.409A-1(n) in effect is defining an
 “involuntary termination of employment”—the same phrase found in the Plan definition of
 “Layoff.”

1 disability benefits, such as “severance pay . . . under other benefits plans [and]
 2 severance programs.” *Id.* Indeed, Section 4(g) sets out an illustrative list of benefits,
 3 including disability benefits, to identify them as benefits that the Plan is *not* intended to
 4 duplicate. But the offset mechanism refers back to this whole list for ease, even though
 5 the list may be overinclusive of the types of benefits that the offset mechanism is
 6 expected to cover. Section 4(g) therefore reasonably may be read to cut either for or
 7 against the Plan’s coverage of termination based on disability.

8 In light of the ambiguity of “Layoff” read as defined by the Plan and in the
 9 overall context of the Plan, the Complaint evinces that the Plan Administrator must
 10 exercise its discretion in construing this term, and its interpretation is subject to
 11 arbitrary and capricious review.⁶

⁶ Our dissenting colleague would find the terms “Layoff” and “involuntary termination” unambiguous as used in the Plan. For the reasons set out in the text, we respectfully disagree. The incorporation of Section 409A terms, regulations, and constraints into the Plan’s directives with regard to determining qualifying “Layoffs” is not as straightforward as the Dissent conceives. These embedded references to multi-layered provisions of the Internal Revenue Code effectively remove the relevant Plan terms from the type of “plain meaning” analysis for which the Dissent advocates; they create ambiguity and commit interpretation and application of the operative Plan provisions to the discretion of the Plan Administrator. Further, although the Dissent points out hypothetical circumstances in which the Plan administrator might deny an applicant’s request for severance pay under the interpretations adopted here, we think the hypothetical is overdrawn: factual differences that would emerge in a real life scenario could well diminish the likelihood of such anomalous results, in the exercise of the Plan Administrator’s reasoned discretion. Finally, the dissent acknowledges that the Plan’s benefit offset provisions also likely mean that the ultimate result for Soto of our Court’s adopting the dissent’s “no-ambiguity” approach probably “wouldn’t amount to much” and would be a “pyrrhic victory.” Dissent at 9. To us, this recognition offers further confirmation that our reading of the Plan is consistent with the general, overall intentions of the Plan as reflected in its language and as carried out by the Plan Administrator in Soto’s case when it declined to provide her a notice of eligibility.

B. The Complaint Pleads the Reasonable Bases for the Plan Administrator's Interpretation of "Layoff" and Denial of Severance Benefits

For the Complaint to state a claim upon which relief may be granted, it must plead that the Plan Administrator's interpretation of "Layoff" and consequent denial of severance benefits to Soto were arbitrary and capricious. *See Roganti*, 786 F.3d at 201, 211, 217 (explaining that arbitrary and capricious review entails "assessing the reasonableness" of an administrator's decision in a "highly deferential" manner such that a decision may be overturned only if it is "without reason, unsupported by substantial evidence or erroneous as a matter of law"). Far from pleading that the Plan Administrator's determinations were without reason, the Complaint and incorporated materials evince the reasoned bases for the determinations. As a result, Soto does not have a viable claim.

The pleadings demonstrate that the Plan Administrator reasonably interpreted "Layoff" to exclude a termination based on disability consistent with Section 409A of the Internal Revenue Code. As discussed, Section 7(h)(iv) of the Plan (entitled "General 409A Compliance") mandates that Plan terms be interpreted to "comply with the provisions of [S]ection 409A of the [Internal Revenue] Code." App'x at 35. Regulation 1.409A-1(n)(1), promulgated to effectuate Section 409A, in turn defines an "involuntary" "termination of employment" — the same phrase in the definition of "Layoff" — as *excluding* a termination based on disability: such a termination occurs only when an employee who "was willing and *able to continue performing services*" is terminated by the employer's "unilateral authority." 26 C.F.R. § 1.409A-1(n)(1) (emphasis added).⁷ Because the Plan requires compliance with Section 409A, the Plan

⁷ Soto argues that because the definition of "Layoff" expressly references only Regulation 1.409A-1(h)(1) (defining "termination of employment") and not Regulation 1.409A-1(n)(1) (defining "involuntary" termination of employment), we cannot consider the latter

1 Administrator acted reasonably in selecting an interpretation of “Layoff” consistent
2 with this section.

3 The Plan makes clear that this consistency is important to ensure that severance
4 benefits are not deemed taxable “deferred” compensation under Section 409A, 26 U.S.C.
5 § 409A(a)(1). As the Plan instructs, “[a]ny provision that would cause any amount
6 payable under the Plan to be includible in the gross income of a[n] Employee under
7 section 409A(a)(1) of the Code shall have no force or effect.” App’x at 35. Thus, the Plan
8 “shall be construed and applied by the Plan Administrator in a manner consistent with
9 this intent.” *Id.* Significantly, Section 409A regulations exempt from taxation certain
10 benefit payments, and the applicability of such exemptions turns on whether the
11 benefits are paid upon an “involuntary separation from service [i.e., termination of
12 employment].” *See, e.g.*, 26 C.F.R. § 1.409A-1(b)(4) & (d)(1) (exempting from taxation
13 benefits that are paid within a certain timeframe defined with reference to whether
14 there was an “involuntary separation from service”)⁸; *see also id.* § 1.409A-1(b)(9)(iii)

regulation in interpreting “Layoff.” *See* 26 C.F.R. § 1.409A-1(h)(1)(ii) & (n)(1). This argument is without merit. The Plan Administrator is directed to ensure that Plan terms conform with Section 409A overall, not just with Regulation 1.409A-1(h)(1) referenced in the definition of “Layoff.” *See* App’x at 35. Furthermore, the definition of “Layoff” requires that an “involuntary termination of employment” be interpreted at a minimum consistent with the meaning of “termination of employment” in Regulation 1.409A-1(h)(1). But the definition in no way permits the Plan Administrator to ignore other Section 409A regulations, particularly not the highly relevant interpretation of an “involuntary” termination of employment in Regulation 1.409A-1(n)(1).

⁸ As Disney explains, the Plan is designed to conform with this “short-term deferral” exemption in 26 C.F.R. § 1.409A-1(b)(4), applying to benefits paid within a short timeframe after the benefits vest and are no longer subject to “a substantial risk of forfeiture.” *See* Disney Br. at 23-24 n.7. At what point there is no longer a “substantial risk of forfeiture” depends on whether severance benefits are paid upon an “involuntary separation from service.” 26 C.F.R. § 1.409A-1(d)(1). Consequently, proper application of the short-term deferral exemption turns on interpreting “involuntary separation from service” in a way that is consistent with Regulation 1.409A-1(n)(1).

(exempting from taxation certain severance benefits that are paid “only upon an involuntary separation from service”). Such provisions highlight the necessity for the Plan Administrator to interpret an “involuntary” termination of employment consistently with Section 409A to ensure that Plan benefits will receive the intended tax treatment under the Plan.

Because we conclude that the Plan Administrator had reasoned bases for its interpretation of “Layoff” and consequent denial of severance benefits, Soto’s claims challenging the denial of these benefits are not viable. *See Roganti*, 786 F.3d at 217 (an administrator’s “decision is intended to be final—within the bounds of the highly deferential arbitrary-and-capricious standard—and not merely an input with the potential to assist the Court in making the ultimate determination” of eligibility). We affirm the dismissal of these claims.

II. Reformation Claim (Count V)

We also affirm the dismissal of Soto’s reformation claim in Count V. Section 502(a)(3) of ERISA, 29 U.S.C. § 1132(a)(3), authorizes a plan “participant, beneficiary, or fiduciary . . . to obtain . . . appropriate equitable relief,” including reformation of a severance benefits plan. *See Laurent v. PricewaterhouseCoopers LLP*, 945 F.3d 739, 748 (2d Cir. 2019) (Section “502(a)(3) authorizes district courts to grant equitable relief—including reformation—to remedy violations of subsection I of ERISA, even in the absence of mistake, fraud, or other conduct traditionally considered to be inequitable.”).

As we found in the prior section, Soto has not plausibly alleged that she is a Plan “participant” entitled to bring a claim for equitable relief. 29 U.S.C. § 1132(a)(3). This is because she has not plausibly alleged that the Plan Administrator acted arbitrarily or capriciously in determining that she failed to meet the eligibility requirements for Plan participation. Nor has Soto claimed to be a “beneficiary” or “fiduciary” of the Plan.

1 Accordingly, under the plain terms of Section 1132(a)(3), Soto does not have a viable
2 claim for reformation.

3 **CONCLUSION**

4 We have considered Soto's remaining arguments on appeal and find in them no
5 basis for reversal.⁹ The judgment of the District Court is **AFFIRMED**.

⁹ In light of Soto's previous opportunities to amend her pleading and the bases for our decision, permitting further amendment of the Complaint would be futile. We accordingly deny Soto's request for leave to further amend. *Chunn v. Amtrak*, 916 F.3d 204, 208 (2d Cir. 2019) ("Leave to amend may be denied if the proposed amendment would be futile.").