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UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

Timothy Scott, Patricia Gilchrist, Karen Fisher, Gerald Klein, Helen Maldonado-Valtierra, and Dan Koval, on behalf of themselves and all others similarly situated,

Plaintiffs,

vs.

AT&T Inc., AT&T Services, Inc., and the AT&T Pension Benefit Plan,

Defendants.

Case No. 3:20-cv-07094-JD

DEFENDANTS' REPLY IN SUPPORT OF THE MOTION TO TRANSFER VENUE OR DISMISS THE AMENDED COMPLAINT

Date: April 8, 2021
Time: 10:00 a.m.
Judge: Hon. James Donato
Action Filed: October 12, 2020

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Defendants' motion addresses two threshold issues concerning Plaintiffs' Amended Complaint: the proper venue and the plausibility of Plaintiffs' claims against certain Defendants.

With respect to transfer, the presence of members of a putative nationwide class action in a particular venue is not sufficient to override the interests of justice, convenience, and fairness that are served by transferring the case to a more convenient forum. Here, the Plan is administered in Dallas and all of the relevant conduct at issue in Plaintiffs' Amended Complaint arose within the Northern District of Texas. Under those circumstances, the presence of a couple of named Plaintiffs within this forum is not a sufficient basis for venue, and the interests of justice overwhelmingly favor transfer to the Northern District of Texas.

Nor have Plaintiffs stated proper claims against certain Defendants. Plaintiffs do not allege that the corporate holding company AT&T Inc. played any role in the disputed pension calculations, nor do they adequately explain how AT&T Services, Inc. ("AT&T Services") performed a fiduciary act. And while Plaintiffs attempt to seek the equitable remedy of plan reformation, Plaintiffs brush past Ninth Circuit precedent precluding such relief in the circumstances presented by this case. If not transferred, this Court should limit Plaintiffs' claims to causes of action that comport with ERISA.

Finally, although beyond the scope of Defendants' motion, Plaintiffs insist that Defendants have somehow conceded the parties' underlying dispute. Opp. 1. For avoidance of doubt, Plaintiffs are wrong, as Defendants will demonstrate at the appropriate time.

I. The Case Should be Transferred to the Northern District of Texas

The interests of justice and considerations of convenience and fairness call for transfer to the Northern District of Texas.

a. Plaintiffs' Forum Choice Is Not Entitled to Unlimited Deference

Plaintiffs insist that this Court must defer to Plaintiffs' choice of forum. But the Supreme Court has long cautioned against such boundless deference:

> where there are hundreds of potential plaintiffs, all equally entitled voluntarily to invest themselves with the … cause of action and all of whom could with equal show of right go into their many home courts, the claim of any one plaintiff that a forum is appropriate merely because it is his home forum is considerably weakened.

Koster v. (Am.) Lumbermens Mut. Casualty Co., 330 U.S. 518, 524 (1947). Honoring this pronouncement, courts in this District start from the premise that "mechanistic adherence" to "the traditional rule that plaintiff's choice of forum should be granted substantial deference" is "inappropriate in a class action in which plaintiffs are dispersed" outside of the chosen forum. *Baird v. Cal. Faculty Ass'n*, 2000 WL 516378, at *2 (N.D. Cal. Apr. 24, 2000).[1]

Here, Plaintiffs elect to represent an undefined number of Plan participants in a putative nationwide class, arguing that the individuals impacted are so numerous that their claims satisfy the numerosity requirement of Rule 23. Am. Compl. ¶ 101. Plaintiffs' claim to venue in this District is based entirely on the presence of *two* Plan participants here. Plaintiffs do not claim that any consequential facts relevant to the lawsuit are connected to this District, nor do they deny that all material events took place in the Northern District of Texas, where the Plan is administered and the decisions about class members' benefits were made.

Plaintiffs' position thus tees up a clear legal issue for this Court to resolve. If a court must defer to the plaintiffs' choice of forum in a class action, irrespective of other considerations, then the case should stay; but if the plaintiffs' choice of forum is entitled to less deference, then all of the balancing factors here weigh in favor of transferring venue to the Northern District of Texas. Precedent supports Defendants' interpretation of the correct standard.

Indeed, Plaintiffs' choice of a California forum is particularly suspect because the two named Plaintiffs who reside in this District (and the third who resides elsewhere in California) are unlikely to qualify as class representatives. *See* Br. 7-9. Plaintiffs suggest that defenses to the California Plaintiffs' claims are "misplaced" and "irrelevant" to the transfer motion, but they are wrong. Opp. 1. The ability of the California Plaintiffs to pursue their claims is essential to the Court's determination of whether a California court is an equitable venue for this nationwide

[1] *See also Johns v. Panera Bread Co.*, 2008 WL 2811827, at *2 (N.D. Cal. July 21, 2008); *Hoefer v. U.S. Dep't of Commerce*, 2000 WL 890862, at *2 (N.D. Cal. June 28, 2000). Plaintiffs' opposition puts great weight on the statement in *Reyes v. Bakery and Confectionary Union and Indus. Int'l Pension Fund*, 2015 WL 1738269 (N.D. Cal. Apr. 9, 2015) that "a plaintiff's choice of forum is accorded great deference in ERISA cases" but noticeably leaves out the *Reyes* court's acknowledgment that "[o]n the other hand, 'when an individual brings a derivative suit or represents a class, the named plaintiff's choice of forum is given less weight.'" *Id.* at *3.

dispute. *See Reyes*, 2015 WL 1738269, at *3. Moreover, as Plaintiffs stress (Opp. 6), if this case should move forward as a certified class, a class representative takes on fiduciary responsibility for the case on behalf of absent class members. Thus, consideration of the adequacy of the California Plaintiffs at this point in the litigation is both highly relevant and timely.[2]

As explained in Defendants' opening brief, Plaintiff Klein signed a release of his ERISA claims upon the termination of his employment with AT&T. *See* Dkt. No. 36-6, Stone Decl. ¶¶ 12-14. His participation in this case is thus foreclosed. *See Stanley v. George Washington Univ.*, 394 F. Supp. 3d 97, 107-10 (D.D.C. 2019), *aff'd*, 801 Fed. App'x 792 (D.C. Cir. 2020). A claim "relating to vested benefits," as Plaintiffs characterize Mr. Klein's claims (Opp. 8), is not the same as a claim "*for* any vested benefits," which is the type of ERISA claim carved out by the release. Stone Decl. ¶ 13, Ex. AA at 7. The latter arises under 29 U.S.C. § 1102(a)(1)(B), which Plaintiffs do not invoke in the Amended Complaint. Nothing in Mr. Klein's release forfeited the vested benefits he is entitled to receive under the terms of the Plan and that he began receiving in 2019. Am. Compl. ¶ 30; *see also Licciardi v. Kropp Forge Div. Employees' Ret. Plan*, 990 F.2d 979, 982 (7th Cir. 1993) ("the anti-alienation provision was not intended to bar the settlement of disputes over pension rights"). Instead, Mr. Klein has asserted claims involving a hypothetical recovery.

Plaintiffs' response to the untimeliness of the claims by Plaintiffs Gilchrist and Scott fares no better. The only justification that Plaintiffs have summoned to explain why they filed their ERISA claims late is that they cannot be expected to have known that their joint and survivor annuities were not actuarially equivalent to a single life annuity. But under ERISA, Plaintiffs' claims of a statutory violation accrue no later than when they begin receiving benefits. Br. 8 (discussing case law). There is no dispute that Plaintiffs Gilchrist and Scott began receiving their

[2] Plaintiffs' argument that the evidence submitted regarding Defendants' defenses to the adequacy of the California Plaintiffs cannot be considered on a motion to dismiss (Opp. 8) is puzzling. The evidence goes to Defendants' transfer motion only, and Plaintiffs do not contest Defendants' other extrinsic evidence supporting their transfer motion about the operation of the Plan. In fact, courts routinely rely on extrinsic evidence to resolve such motions. *See, e.g.*, *Noriesta v. Konica Minolta Business Solutions U.S.A., Inc.*, 2019 WL 6482222, at *5 (C.D. Cal. July 8, 2019). Plaintiffs cite no authority to the contrary. Opp. 8-9.

benefits more than four years before filing suit. *See* Am. Compl. ¶¶ 28-29.[3] As to their breach of fiduciary duty claims, Plaintiffs Gilchrist and Scott cannot contest that they were fully aware outside of the three-year limitations period that their joint and survivor annuities were not equal to 100% of their single-life annuities. Plaintiffs allege that they received written disclosures about that very fact at the time that they chose their form of benefits, which logically had to be more than four years before filing suit. *See* Am. Compl. ¶ 96.

The weight accorded to Plaintiffs' choice of forum is further diminished by: (1) the limited relationship between their contacts with the forum and their claims, (2) the location of relevant events in a different forum, and (3) the chosen forum's reasonable lack of substantial interest in this dispute where all the material events occurred outside of the forum. *See Lou v. Belzberg*, 834 F.3d 730, 739 (9th Cir. 1987); *Catch Curve, Inc. v. Venali, Inc.*, 2006 WL 4568799, at *2 (C.D. Cal. Feb. 27, 2006); *Cung Le v. Zuffa, LLC*, 108 F. Supp. 3d 768, 779 (N.D. Cal. 2015); *Silva v. Aviva PLC*, 2016 WL 1169441, at *5 (N.D. Cal. Mar. 25, 2016).

All three considerations establish that Plaintiffs' choice to file suit in the Northern District of California should be given little weight. Plaintiffs do not dispute that the challenged calculations applying Plan-based actuarial equivalence assumptions took place at AT&T's headquarters in Texas. And Plaintiffs' attenuated argument (Opp. 6-7) that communications about Plan-related information to Plaintiffs living in this forum supports their venue decision is nonsensical because they challenge the application of actuarial factors, not Plan communications.

Plaintiffs' further argument that AT&T's consumer business in the state of California warrants deference to Plaintiffs' choice of forum is frighteningly far-fetched. Opp. 6 & n.4. As a threshold concern, Plaintiffs fail to specify which Defendant purportedly conducts business in the state of California. Recognizing, of course, that some AT&T entities operate retail stores or provide telecommunications services in the District (and undoubtedly in every urban location throughout the country), Plaintiffs point to no evidence demonstrating that the AT&T entities who were named

[3] The filing of the amended complaint in the earlier *Eliason* matter did not toll the statute of limitations to save Mr. Scott's ERISA claims, as Plaintiffs claim (Opp. 9 n.6). *Francisco v. Emeritus Corp.*, 2018 WL 6070942, at *2-3 (C.D. Cal. Jan. 10, 2018).

as Defendants in *this* lawsuit are engaged in any commerce in this forum whatsoever. In fact, the only evidence in the record is to the contrary. *See* Stone Decl. ¶ 3 (AT&T Inc. is a holding company). Plaintiffs present no concrete evidence reflecting the extent of Defendants' contacts with this forum; vague claims about purportedly extensive contacts do not suffice.[4]

Even assuming that Defendants had contacts with this District, Plaintiffs present no evidence that those contacts are meaningful to their claims. In *Rafton v. Rydex Series Funds*, 2010 WL 2629579, at *1, 3 (N.D. Cal. June 29, 2010), a case Plaintiffs cite, the court held that the defendants exposed themselves to being sued in the forum because the conduct that was central to the lawsuit's claims – violation of the securities laws through the dissemination of false and misleading prospectuses and other documents – occurred in the forum. Nowhere in their opposition do Plaintiffs dispute that all Plan-related decisions, including the application of the joint and survivor annuity factors at issue, were made elsewhere. The other case Plaintiffs cite to establish sufficient contacts—*Bakhtiar v. Info. Res., Inc.*, 2018 WL 1014616, at *2 (N.D. Cal. Feb. 22, 2018)—is also distinguishable, as the *Bakhtiar* plaintiffs alleged employee misclassification under federal and California state law. *Id.* at *1-2. California law is not at issue here.

Finally, any interest this forum might have in addressing the case is outweighed by the Northern District of Texas's interest in resolving a dispute over an ERISA plan generated and administered in its jurisdiction. *See Neil v. Zell*, 2008 WL 11342700, at *3 (C.D. Cal. Nov. 17, 2008) (transferring case to Illinois where the ESOP plan was administered, most of the evidence was found, and the operative agreements called for the application of Illinois law).

b. The Remaining Factors Favor Transfer

It is no accident that courts routinely conclude that "[l]itigation should proceed where the case finds its center of gravity," as doing so provides greater ease of access to relevant witnesses and evidence. *Johns*, 2008 WL 2811827, a *5 (quoting *Hoefer*, 2000 WL 890862, at *3); *Clark v. Sprint Spectrum L.P.*, 2010 WL 5173872, at *3 (N.D. Cal. Dec. 15, 2010) (the convenience to

[4] Moreover, Plaintiffs do not argue that a significant portion of the putative class resides in or has a connection with California, and Plaintiffs cannot dispute that *all* Plan participants have contacts with the Northern District of Texas, where the Plan was conceived and is administered.

witnesses is the most important factor in the transfer analysis). Defendants know of *no* witnesses or evidence pertaining to these claims that can be found in the Northern District of California, and Plaintiffs do not suggest otherwise. Conversely, all material witnesses and documentary evidence are located in either Dallas, Texas, where all decisions relating to Plan administration take place, or in Boston, Massachusetts and Raleigh, North Carolina, where Fidelity, the Plan's recordkeeper, performs the benefits calculations at issue here. *See* Stone Decl. ¶¶ 6-10.

Plaintiffs do not contest that evidence bearing on their claims can be found only outside of this forum. Opp. 7. Nonetheless, they argue that the California-based Plaintiffs will be unfairly inconvenienced by transfer to Texas. But it is well-known that plaintiffs in most class actions play an inconsequential role. That is particularly true here, where Plaintiffs do not claim—nor can they—to have been involved in the conduct complained of, nor to have played any role in Plan administration. Indeed, the Amended Complaint mentions California only as the residence of certain Plaintiffs. *See* Am. Compl. ¶¶ 28-30.

Plaintiffs' claim that "[n]o Plaintiffs live in the Northern District of Texas" (Opp. at 6) is defied by their own allegation. They allege that Plaintiff Maldonado-Valtierra resides in Irving, Texas, which is situated within the Northern District of Texas. *See* Am. Compl. ¶ 32; Ross Decl. ¶ 2, Ex. A (showing that Irving, Texas is part of the Northern District of Texas's Dallas Division).[5] The presence of a named Plaintiff in the Northern District of Texas assures Plaintiffs' convenient access to the forum. And while there rarely is a need for a class representative to appear in court other than perhaps for trial, as the case is currently situated some Plaintiffs will have to travel to attend court, so transfer to the Northern District of Texas just changes the Plaintiffs who are purportedly inconvenienced. Same is true as to Plaintiffs' attorneys; only two of five reside in California. So while transfer to the Northern District of Texas may inconvenience different attorneys or plaintiffs, it does not increase their inconvenience any more than the current posture of the case. In sum, Plaintiffs have not presented a real-world concern that litigation costs will be

[5] In their opening brief (at 7), Defendants inadvertently referenced Lindie Lawrence, also a resident of the Northern District of Texas, who was dismissed for lack of standing by Judge Kim during the first iteration of this lawsuit.

shifted to them if this case is transferred to the venue of the challenged conduct. *See Hendricks v. StarKist Co.*, 2014 WL 1245880, at *5 (N.D. Cal. Mar. 25, 2014); *see also Koster*, 330 U.S. at 524 (in order to "outweigh the inconvenience the defendant may have shown," a class representative who has sued in her home forum must present a "real showing of convenience").

Lastly, Plaintiffs suggest (Opp. 7) that the costs of litigating in an inconvenient forum should be shifted to Defendants. That argument ignores the established public policy of protecting pension funds from improper litigation expense. *See Conkright v. Frommert*, 559 U.S. 506, 517 (2010) ("Congress sought 'to create a system that is [not] so complex that . . . litigation expenses . . . unduly discourage employers from offering [ERISA] plans in the first place.'"); *Moore v. Local Union 569 of Int'l Bhd. of Elec. Workers*, 28 F.3d 107 (9th Cir. 1994) ("The purpose of ERISA is to protect the beneficiaries of pension plans. This purpose is not served by allowing employee trust funds to be depleted in the defense of unreasonable and vexatious claims."). Forcing the Plan to shoulder the burden of litigating Plaintiffs' claims in a distant forum with no connection to the conduct at issue, particularly in the absence of inconvenience to Plaintiffs from a change in forum, collides head-on with Congress' intent to protect plan sponsors from unpredictable costs.

II. AT&T Inc. Has No Place in this Lawsuit

Plaintiffs' theory is that they were harmed by the application of joint and survivor factors that reduced their benefits to less than the actuarial equivalent of their normal retirement benefit. *See, e.g.*, Am. Compl. ¶¶ 67-69, 81. Throughout, Plaintiffs allege that it is the plan administrator (AT&T Services) that calculated those benefits, "impermissibly pa[id] Plan participants less than the actuarial equivalent of their ERISA-protected retirement benefits," and "caused . . . Plan participants to forfeit their ERISA-protected benefits." *Id.* ¶¶ 116, 127. Plaintiffs do not allege any involvement by AT&T Inc. in that process and, indeed, it had none. *See* Stone Decl. ¶¶ 4, 9.

In an effort to save their claims, Plaintiffs argue that AT&T Inc., as the plan sponsor, has the authority to correct any alleged violation of ERISA because an ERISA plan, when established, must provide a procedure for its amendment. *See* 29 U.S.C. § 1102(b)(3). But that is not grounds to state anything more than a nominal claim against a defendant, and Plaintiffs cite no cases holding that a plan sponsor is a proper defendant simply because plaintiffs seek amendment of plan terms

as relief. Section 502(a)(3) does not give rise to a claim where other relief is available, and Plaintiffs' own claim against AT&T Services under Section 502(a)(3) to amend the Plan's terms provides an adequate remedy. *See Varity Corp. v. Howe*, 516 U.S. 489, 512 (1996) (Section 502(a)(3)'s "'catchall' provisions act as a safety net, offering appropriate equitable relief for injuries caused by violations that § 502 does not elsewhere adequately remedy"). If the Court should embrace Plaintiffs' claims, an order instructing AT&T Services, in its role as plan administrator, to calculate participants' joint and survivor annuities differently would provide the relief Plaintiffs seek. A duplicative claim against AT&T Inc. is contrary to *Varity* and its progeny.[6]

III. Plaintiffs' Fiduciary Breach Claim Against AT&T Services Is Wrong

In their opening brief, Defendants explained that merely because an entity is designated as a fiduciary, that does not subject it to fiduciary responsibility for acts which are not fiduciary in nature. Such is the case with AT&T Services, which is undeniably a plan fiduciary, but not engaged in a fiduciary act in calculating Plaintiffs' benefits. Br. 10-12. Plaintiffs' own authority expressly disclaims their overbroad conception of fiduciary status: in *Dawson-Murdock v. Nat'l Counseling Grp., Inc.*, 931 F.3d 269 (4th Cir. 2019), the court explained that it was

> not suggesting that a plan administrator and named fiduciary (serving in those dual roles) will be subject to suit for breach of fiduciary duty as to all plan-related actions. For example . . . there is no liability for breach of fiduciary duty if the challenged conduct of the plan administrator and named fiduciary is not fiduciary in nature, as there . . . can be no breach of a nonexistent fiduciary duty.

Id. at 278 n.13. Plaintiffs' claim that "[s]erving as the named fiduciary is sufficient to render AT&T Services a fiduciary for purposes of a breach of fiduciary duty claim" (Opp. 12) is simply wrong.

Plaintiffs do not challenge the law Defendants cite in their opening brief establishing that "merely calculating benefits, without more, does not establish fiduciary status under ERISA." *Lebhan v. Nat'l Farmers Union Uniform Pension Plan*, 828 F.3d 1180, 1186 (10th Cir. 2016); *see* 29 C.F.R. § 2509.75-8(D)(2). Instead, Plaintiffs incongruently argue that this regulation (and, presumably, related case law) does not apply to AT&T Services because, as the named fiduciary,

[6] Plaintiffs' reliance on *Laurent v. PriceWaterhouseCoopers LLP*, 794 F.3d 272 (2d Cir. 2015) to state a claim against AT&T Inc. lends no support. That case did not address whether the plan sponsor was a proper defendant for purposes of amending the plan.

it had "all powers necessary to interpret . . . the Plan." Opp. 12 n.7. But that hardly establishes that the conduct at issue constituted a fiduciary act. Plaintiffs fail to even argue that AT&T Services exercised the requisite discretion or control in the calculation of Plaintiffs' benefits, which conclusively depended on Plan terms, or that it interpreted the Plan in so doing. Instead, Plaintiffs argue only that AT&T Services was necessarily acting in a fiduciary capacity in the calculation of participants' benefits. Opp. 12-13. Labels and conclusions do not state a plausible claim. *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555 (2007).[7]

IV. Plaintiffs Fail to State a Claim for Reformation

Binding Ninth Circuit law leaves no room for doubt: "reformation is proper only in cases of fraud and mistake." *Skinner v. Northrop Grumman Retirement Plan B*, 673 F.3d 1162, 1166 (9th Cir. 2012); *see also Gabriel v. Alaska Elec. Pension Fund*, 773 F.3d 945, 962 (9th Cir. 2014). Defendants demonstrated in their opening brief that Plaintiffs have not alleged fraud or mistake, and Plaintiffs do not argue otherwise.

Disregarding the law of this Circuit, Plaintiffs ask the Court to adopt a different pleading standard from a different jurisdiction. In *Laurent v. PriceWaterhouseCoopers LLP*, the Second Circuit adopted a broader standard that permits reformation without allegations of fraud or mistake. 945 F.3d 739, 748 (2d Cir. 2019). The Second Circuit's novel interpretation of the reformation remedy is out of step with the Ninth Circuit and other circuit courts that have considered the bounds of the reformation remedy. *See Morales v. Intelsat Global Serv. LLC*, 554 Fed. App'x 4, 5 (D.C. Cir. 2014); *Silva v. Metro Life Ins. Co.*, 762 F.3d 711, 723 (8th Cir. 2014); *Cross v. Bragg*, 329 Fed. App'x 443, 454 (4th Cir. 2009).

Tacitly acknowledging that fraud is a requirement for reformation under Ninth Circuit law, Plaintiffs try to argue around it. Opp. 15. Under Plaintiffs' sweeping interpretation of the pleading requirement, which they based on a 1963 Supreme Court case involving an irrelevant federal statute, any alleged breach of a fiduciary duty could satisfy the necessary element of fraud for

[7] Contrary to Plaintiffs' position, courts can and do rule on fiduciary status on a Rule 12(b)(6) motion. *See, e.g.*, *Bafford v. Northrop Grumman Corp.*, 2020 WL 70834, at *5-6 (C.D. Cal. Jan. 7, 2020).

reformation. Oddly, Plaintiffs' opposition make no mention of the more recent and relevant opinion in *CIGNA Corp. v. Amara*, 563 U.S. 421, 440-41 (2011), in which the Supreme Court recognized three equitable remedies available under § 1132(a)(3) for a breach of fiduciary duty. Reformation, the Court noted, might be an appropriate remedy where the trial court found that the employer intentionally deceived participants about the value of their pension benefits. *Id.* at 431, 440-41. There is no such allegation, let alone supporting facts, in Plaintiffs' Amended Complaint.

Plaintiffs' other authority fares no better. *See Pearce v. Chrysler Grp. LLC Pension Plan*, 893 F.3d 339, 349 (6th Cir. 2018) (explaining that "constructive fraud in the ERISA context" involves an information asymmetry, a misrepresentation of benefits, and a reliance on that misrepresentation); *Osberg v. Foot Locker, Inc.*, 138 F. Supp. 3d 517, 557 (S.D.N.Y. 2013) (fraud "consists of obtaining an undue advantage by means of some act or omission which is unconscientious or a violation of good faith," such as the deliberately false and misleading communications at issue) (citation omitted).[8] Plaintiffs make no allegations of fraud necessary to support a request for reformation, and rewriting Plan terms is not a remedy to be enforced lightly. *See, e.g.*, *U.S. Airways, Inc. v. McCutchen*, 569 U.S. 88, 91 (2013).

CONCLUSION

For the reasons above and in the memorandum in support of the motion, this case should be transferred or dismissed.

Dated: March 11, 2021

Respectfully submitted,

By: s/ *Nancy G. Ross*
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Attorneys for Defendants

[8] Plaintiffs also ignore binding Ninth Circuit case law cited in Defendants' opening brief which recognizes that breach of fiduciary duty claims pleading fraud must comply with the heightened pleading standards of Federal Rule of Civil Procedure 9(b). *See Concha v. London*, 62 F.3d 1493, 1502-033 (9th Cir. 1995).

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Case No. 3:20-cv-07094-JD

DECLARATION OF NANCY . ROSS IN SUPPORT OF DEFENDANTS' REPLY IN SUPPORT OF THE MOTION TO TRANSFER VENUE OR DISMISS THE AMENDED COMPLAINT

Date: April 8, 2021
Time: 10:00 a.m.
Judge: Hon. James Donato
Action Filed: October 12, 2020

I, Nancy G. Ross, hereby declare as follows:

1. I am an attorney with the law firm of Mayer Brown LLP, attorneys of record for Defendants in the above-captioned matter. If called upon as a witness, I could and would competently testify to the facts set forth below, as I know them to be true based on my own personal knowledge.

2. Attached as Exhibit A is a true and correct copy of the results of a search for "Irving" in the U.S. District Court, Northern District of Texas's "Court Locator" program (available at www.txnd.uscourts.gov/court-locator). The search was conducted on March 10, 2021.

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge and belief. Executed on March 11, 2021.

/s/ *Nancy G. Ross*
Nancy G. Ross
Attorney for Defendants

Exhibit A

UNITED STATES DISTRICT COURT
Northern District of Texas

Barbara M.G. Lynn, Chief Judge
Karen Mitchell, Clerk of Court

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