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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

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

PLAINTIFFS' OPPOSITION TO DEFENDANTS' MOTION TO TRANSFER VENUE OR DISMISS

Date: April 8, 2021
Time: 10:00 a.m.
Judge: Hon. James Donato

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I. INTRODUCTION

This case is about AT&T retirees receiving pensions that are significantly less than what they are entitled to under federal law. Participants in ERISA-protected defined benefit plans are guaranteed a monthly pension benefit from retirement until death; this benefit is referred to as a single life annuity. Under ERISA,[1] any other form of pension benefit—such as a joint and survivor annuity for a married participant—must be the "actuarial equivalent" of, *e.g.* have the same value as, the single life annuity. The AT&T Pension Benefit Plan (the "Plan")—as sponsored by AT&T Inc. and administered by AT&T Services, Inc. ("AT&T Services")—violates ERISA because it does not provide actuarially equivalent benefits to retirees receiving a joint and survivor annuity. Specifically, Plaintiffs allege that Defendants violated ERISA's actuarial equivalence rules by creating and applying unreasonable and excessive "Reduction Factors" to calculate pension benefits for married Plan participants who take a joint and survivor annuity ("JSA"). As a result, participants like Plaintiffs are shortchanged by the Plan every month of their retirement.

Defendants do not dispute that the Reduction Factors reduce Plaintiffs' pension benefits below the actuarial equivalent value that ERISA guarantees them, but instead raise several procedural arguments that all fail. Defendants' Motion to Transfer Venue or Dismiss ("Motion" or "Mot.") should be denied in its entirety. Venue is proper in this District because the balance of factors do not favor transfer over the strong presumption that attaches to Plaintiffs' choice of forum. Further, Defendants' challenge to the adequacy of the California-based Plaintiffs as class representatives is misplaced at this stage of the litigation, and moreover irrelevant to the transfer analysis. It thus should be rejected.

Likewise, Plaintiffs' Amended Complaint states plausible claims for relief against both AT&T Inc. and AT&T Services. Defendants' limited Rule 12(b)(6) challenge is based on three arguments, each of which fails to persuade. First, Defendants' contention that the Plan Sponsor, AT&T Inc., is not a proper defendant is contrary to ERISA, which allows participants to bring suit to redress any act or practice which violates any provision of the statute. Second, Defendants' assertion that AT&T

[1] "ERISA" is the Employee Retirement Income Security Act, which was enacted to protect the retirement security of American workers by setting minimum standards of conduct for any private employer offering pension benefits to their employees. 29 U.S.C. § 1001, *et seq*.

Services is not a fiduciary overlooks the fact that AT&T Services indeed is the *sole* "named fiduciary" in the Plan Document. In addition, AT&T Services' discretionary authority over the Plan also renders it a functional fiduciary. Finally, Defendants' position that reformation as a remedy is unavailable ignores ample authority allowing participants to seek reformation under the instant circumstances.

II. LEGAL & FACTUAL BACKGROUND

Congress enacted ERISA to protect the retirement security of employees and their dependents. *Nachman Corp. v. Pension Benefit Guar. Corp.*, 446 U.S. 359, 361 (1980). To that end, it includes statutory provisions that specifically protect participants' pensions from forfeiture or reduction. Relevant here are ERISA's requirements concerning:

- **Non-forfeitability:** 29 U.S.C. § 1053(a) provides that "an employee's right to his normal retirement benefit is non-forfeitable[.]" The Treasury regulation, 26 C.F.R. § 1.401(a)-14(c), which "defines the term 'nonforfeitable' for purposes of these [non-forfeitability] requirements," states that "adjustments in excess of reasonable actuarial reductions, can result in rights being forfeitable."

- **Actuarial Equivalence:** 29 U.S.C. § 1054(c)(3) requires "if an employee's accrued benefit is to be determined as an amount other than an annual benefit commencing at normal retirement age. . .the employee's accrued benefit. . .shall be the actuarial equivalent of such benefit[.]"

- **Joint and Survivor Annuities:** 29 U.S.C. § 1055(a) requires that all plans shall provide benefits in the form of a "Qualified Joint and Survivor Annuity," and 29 U.S.C. § 1055(d)(1)(B) provides that it must be "the actuarial equivalent of a single annuity for the life of the participant."

Each of these provisions operates independently and thus must all be met. Plan participants may enforce these statutory provisions and seek broad remedies for failure to follow them. 29 U.S.C. § 1132(a)(3) (providing participant may "enjoin any act or practice which violates any provision of this subchapter or the terms of the plan, or … obtain other appropriate equitable relief (i) to redress such violations or (ii) to enforce any provisions of this subchapter or the terms of the plan."); 29 U.S.C. § 1132(a)(2) and 29 U.S.C. § 1109(a) (permitting all "other equitable or remedial relief as the court may deem appropriate" against a fiduciary who fails to comply with ERISA).

The relevant Plan is an "employee pension benefit plan" and a "defined benefit plan" under ERISA. Amended Complaint ("AC") ¶ 57, ECF No. 34. The terms according to which the Plan is established and maintained are set forth in the Plan Document (*id.* ¶ 39 n. 4), which Defendants

attached as Exhibits A-D to the Ross Declaration in support of their motion. ECF Nos. 36-2 to 36-5. The Plan provides retirement benefits to its participants, and Plaintiffs are all vested participants in the Plan. AC ¶¶ 2, 28-33. The default forms of benefit under the Plan turn on marriage status—an unmarried participant's default is a single life annuity, which provides a monthly payment from the time a participant retires until his death. *Id.* ¶¶ 11, 63. The default for a married participant is a 50% JSA, which provides a monthly payment that starts at the time a participant retires and continues to the spouse if the retiree pre-deceases the participant. *Id.* ¶¶ 11, 49. The percentage signifies the amount of the participant's benefit that the spouse will receive once the participant is deceased. The Plan offers 50%, 75%, and 100% JSA options. *See* Mot. at 4, ECF No. 36.

Regardless of the form of payment elected, ERISA requires that participants be paid a benefit that is the "actuarial equivalent" of the single life annuity. AC ¶¶ 41-53 (citing 29 U.S.C. § 1054(c)(3); 29 U.S.C. § 1056(a)(3)); *see also* 29 U.S.C. § 1055(d)(1); 26 U.S.C. § 417(b)(2). Converting the single life annuity into another form of benefit requires Defendants to perform an "actuarial equivalence" computation. *Id.* Actuarial equivalence ensures that the "present value" of all pension payments received through different forms of payment have the same economic value. *Id.* ¶¶ 6, 41, 64. This computation considers two assumptions: 1) an interest rate that discounts the value of future payments to reflect the time value of money; and 2) a mortality table that provides the expected duration of that future payment stream based on the statistical life expectancy of a person at a given age. *Id.* ¶ 7. ERISA requires that the actuarial equivalence assumptions used to convert various forms of benefits be "reasonable." *E.g.*, *id.* ¶¶ 51, 55; 26 C.F.R. § 1.401(a)-11(b)(2); 26 C.F.R. § 1.411(a)-4(a).

All Plaintiffs elected (or may elect) to receive a form of benefit other than a single life annuity. AC ¶¶ 28-33. In converting Plaintiffs' single life annuities into joint and survivor annuities, Defendants applied Joint and Survivor Reduction Factors to calculate such benefits. *Id.* ¶ 69. These Reduction Factors, based on outdated assumptions regarding life expectancies and interest rates, *id.* ¶¶ 76, 86, reduced pension payments 8-14% below the value that ERISA requires. *Id.* ¶ 69. As a consequence of the application of the unreasonable Reduction Factors, Plaintiffs were harmed while Defendants saved money. *Id.* ¶ 67.

III. ARGUMENT

Defendants' Motion to Transfer Venue or Dismiss should be denied in full. First, Defendants have not carried their burden to show that the fairness factors support transfer to a venue other than Plaintiffs' chosen venue. Moreover, Defendants' challenge to Plaintiffs' adequacy to serve as class representatives is not relevant to the issue of transfer, nor does it have any merit. Finally, Plaintiffs have adequately plead claims against AT&T Services and AT&T Inc. and for reformation of the Plan, so the remainder of Defendants' motion should be denied.

A. The Northern District of California is a Proper Venue and Defendants Have Not Satisfied Their Burden to Justify Transfer to Another Forum

Defendants move to transfer this action to the Northern District of Texas, not because it was improperly filed in the Northern District of California, but rather for their own convenience. But a transfer under § 1404 is not appropriate if it "would merely shift rather than eliminate the inconvenience." *Decker Coal Co. v. Commonwealth Edison Co.*, 805 F.2d 834, 843 (9th Cir. 1986). Rather, the party seeking transfer "bears the burden to show that the proposed transferee district is the more appropriate forum for the action." *Reyes v. Bakery and Confectionary Union and Indus. Int'l Pension Fund*, 2015 WL 1738269, at *2 (N.D. Cal. Apr. 9, 2015) (Tigar, J.) (citing *Jones v. GNC Franchising, Inc.*, 211 F.3d 495, 499 (9th Cir. 2000)). Courts considering a § 1404 motion evaluate several factors, including: (1) the location where the relevant agreements were negotiated and executed, (2) the state that is most familiar with the governing law, (3) the plaintiff's choice of forum, (4) the respective parties' contacts with the forum, (5) the contacts relating to the plaintiff's cause of action in the chosen forum, (6) the differences in the costs of litigation in the two forums, (7) the availability of compulsory process to compel attendance of unwilling non-party witnesses, and (8) access to sources of proof. *Id.*

Defendants do not carry their burden. While transfer to Texas may be more convenient for Defendants, that alone does justify transfer out of this District. Plaintiffs properly initiated this action in the Northern District of California, where a plurality of the Plaintiffs worked for AT&T, where those Plaintiffs currently reside, and where AT&T has offices. Plaintiffs' choice of forum—which all

parties agree is a permissible venue[2]—is entitled to deference, and Defendants' arguments concerning the fairness factors do not weigh in favor of transfer to a new venue.

1. The Fairness Factors Support the Action Remaining in this District

All relevant factors weigh in favor of the action remaining in this District. The first factor—where the agreement was negotiated and executed—is not relevant to this case because this ERISA action is not a contract dispute. Defendants argue that that the Plan document "has its situs in Texas," but the cited section 22.9 of the Plan document merely states that Plan provisions "will be construed in accordance with the laws of the State of Texas … except to the extent preempted by federal law." Mot. at Ex. A § 22.9, ECF No. 36-2. While section 22.9 arguably could be relevant to the second factor considered, the state most familiar with the governing law, it ultimately is immaterial because Plaintiffs only bring claims under ERISA, a federal statute, and any related state law issues would be preempted. ERISA § 514(a), 29 U.S.C. § 1144(a); *see also Norris v. Guardian Life Ins. Co. of Am.*, 8 F.3d 28 (9th Cir. 1993) (describing ERISA's broad preemption of all state laws related to employee benefit plans). Both California and Texas district courts are equally familiar with ERISA, which renders this second factor neutral and not supportive of Defendants' motion.

As to the third factor, Plaintiffs chose to file this action in the Northern District of California, the forum most readily available to the three Plaintiffs that reside in California. As this Court recognizes, "a plaintiff's choice of forum is accorded great deference in ERISA cases." *Reyes*, 2015 WL 1738269, at *3 (citing *Jacobson v. Hughes Aircraft Co.*, 105 F.3d 1288, 1302 (9th Cir. 1997), *rev'd on other grounds*, 525 U.S. 432 (1999)). Contrary to Defendants' argument (Mot. at 6), that deference is not diminished because Plaintiffs bring a putative class case, because the class is not yet certified, the named plaintiffs will bear all litigation responsibilities, and there is no indication that putative class members outside of the forum state must appear before the Court. *E.g.*, *Reyes*, 2015 WL 1738269, at *3 (giving deference to plaintiff's forum in class action where plaintiff lives and will bear the weight of litigation responsibility, and putative class members are otherwise scattered); *Hendricks*

[2] *See* Mot. at 4, stating that "this motion seeks a transfer of venue based on the inconvenience of Plaintiffs' chosen forum, not its outright unlawfulness." ERISA allows venue either "where the breach takes place" or "where a defendant resides or may be found." 29 U.S.C. § 1132(e)(2).

v. StarKist Co., 2014 WL 1245880, at *2-3 (N.D. Cal. Mar. 25, 2014) (similar); *Luchini v. CarMax, Inc.*, 2012 WL 2401530, at *3-4 (E.D. Cal. June 25, 2012) (similar).[3] Courts which have given little deference to a plaintiff's chosen forum do so only when the plaintiff files a class action *outside of the district he lives in*, which is not the case here. *E.g.*, *Lucas v. Daiichi Sankyo Co.*, 2011 WL 2020443, at *3 (N.D. Cal. May 24, 2011); *Rafton v. Rydex Series Funds*, 2010 WL 2629579, at *2-4 (N.D. Cal. June 29, 2010).

The fourth and fifth factors—relating to the parties' and the action's contacts with the chosen forum, respectively—weigh in favor of this District. The Northern District of California has a significant interest in this litigation because Plaintiffs and Defendants alike have significant contacts with this District. AT&T maintains multiple offices here and employed over 30,000 people in California overall as of 2019, many of whom are potential class members.[4] No Plaintiffs live in the Northern District of Texas,[5] while two live and worked for Defendant AT&T in this District. AC ¶¶ 28, 29. Similarly, a third Plaintiff lives in California outside of this District and worked for Defendant AT&T in the state. AC ¶ 30. These Plaintiffs will be the primary litigants before class certification, and if they are named as class representatives, they will "bear a fiduciary responsibility to lead the class" after class certification and are the individuals who will potentially need to appear in court. *See Imran*, 2019 WL 1509180, at *3 (citation omitted); *Bakhtiar v. Info. Res., Inc.*, 2018 WL 1014616, at *2 (N.D. Cal. Feb. 22, 2018). Further, several Plaintiffs and many putative class members receive their

[3] Defendants' cited cases do not support reduced deference to Plaintiffs' home forum. *Koster v. Lumbermens Mut. Cas. Co.*, 330 U.S. 518 (1947), decided 70 years ago, turned on the particularities of a derivative action and "phantom plaintiff[s]" that need not be personally present, which is not the case in a class action such as this one. *Koster*, 330 U.S. at 525. And in *Lou v. Belzberg*, 834 F.2d 730, 739 (9th Cir. 1987), significant factors under § 1404 weighed in favor of transfer that were sufficient to overcome the plaintiff's choice of forum. Neither of these cases support the same outcome here.

[4] *See* Kevin Smith, *AT&T to Hire 125 Full-Time Workers at Cerritos Call Center*, Los Angeles Daily News, (Feb. 16, 2021) https://www.dailynews.com/2019/02/25/att-to-hire-125-full-time-workers-at-cerritos-call-center/ (stating that AT&T employed 30,000 workers throughout California in 2019). Any argument that AT&T has greater contacts with another forum do not negate their significant contacts with this forum. *See Imran v. Vital Pharmaceuticals, Inc.*, 2019 WL 1509180, at *3 (N.D. Cal. Apr. 5, 2019) (party's argument that it had more substantial contacts with another forum did not negate consideration of its contacts with the instant forum for transfer).

[5] Defendants assert that Plaintiff Lawrence resides in Texas; this is likely a scriveners' error, as Ms. Lawrence was a dismissed named plaintiff in a prior filed, similar action. *See* Mot. at 7.

allegedly improper pension benefits here and thus the harm accrued in this District. AC ¶¶ 28-29, 30. Defendants have communicated information about the Plan to the participants—including options for joint and survivor annuity benefits—in this District. These contacts weigh in favor of this forum. *See Rafton*, 2010 WL 2629579, at *2-4 (finding significant connections where plaintiff lived, received relevant materials, and purchased relevant funds in the district); *Bakhtiar*, 2018 WL 1014616, at *2 (similar). The location where the Plan is administered is not relevant to whether the parties and the action have contacts with this forum. *Shultz v. Hyatt Vacation Mktg. Corp.*, 2011 WL 768735, at *5 (N.D. Cal. Feb. 28, 2011) (location of defendant's headquarters and human resources outside district did not negate the local impact of policies or compensation in the district where plaintiff resides).

The remaining factors, which center around costs and location of evidence, support Plaintiffs' choice of forum. As to the sixth factor—differences in costs of litigation in the two forums—the plurality of Plaintiffs reside in California, so this District is least costly for Plaintiffs. Defendants' argument that transferring the case to Texas will reduce litigation expenses because the Plan's witnesses are located there is unavailing. Transfer would reduce Defendants' costs but increase Plaintiffs' costs, which contravenes the principle that "corporations are better-equipped than individuals to absorb increased litigation costs." *Shultz*, 2011 WL 76835, at *6. Further, transfer "is inappropriate where it would merely shift rather than eliminate the inconvenience." *Hendricks*, 2014 WL 1245880, at *4 (citation omitted). Regarding the seventh factor—the availability of compulsory process to compel attendance of unwilling non-party witnesses—Defendants have not identified any non-party witnesses that will have to be compelled to testify. Defendants reference employees who administer the plan, but this is "entitled to little weight because litigants are able to compel their employees to testify at trial, regardless of forum." *Lax v. Toyota Motor Corp.*, 65 F. Supp. 3d 772, 779 (N.D. Cal. 2014) (citation omitted). This factor is therefore neutral. Finally, the eighth factor, concerning ease of access to sources of proof, does not support transfer. While documents related to the Plan may be in Texas, "transporting documents does not generally create a burden" sufficient for transfer, especially in a case like this that will largely rely on electronic production. *See Reyes*, 2015 WL 1738269, at *3 (citing *David v. Alphin*, 2007 WL 39400, at *3 (N.D. Cal. Jan. 4, 2007)).

2. Defendants' Adequacy Argument Fails

Because the fairness factors weigh against transfer, Defendants swipe at the California Plaintiffs' adequacy to serve as class representatives as a final effort to support their motion; however, this argument is both procedurally improper and irrelevant to a motion to transfer. Preliminarily, "compliance with Rule 23 is not to be tested by a motion to dismiss for failure to state a claim." *Gillibeau v. City of Richmond*, 417 F.2d 426, 432 (9th Cir. 1969); *see also Ritz Camera & Image, LLC v. SanDisk Corp.*, 2013 WL 3387817, at *4 (N.D. Cal. July 5, 2013) (determination of adequacy of a class representative is reserved for class certification rather than a motion to dismiss). Furthermore, as laid out in detail *supra*, the adequacy of the proposed class representatives is not one of the factors courts consider when determining whether to transfer a case, and Defendants provide no justification for why it should be considered here. Defendants' adequacy argument also completely relies on extrinsic material, which cannot be considered on a motion to dismiss. *See* Mot. at 7 (citing Stone Declaration and Exhibits AA and BB); *Warren v. Fox Family Worldwide, Inc.*, 328 F.3d 1136, 1141 n.5 (9th Cir. 2003).

But even assuming Defendants' challenge to the adequacy of certain Plaintiffs were procedurally proper, it is meritless. With respect to the release Mr. Klein signed, it specifically carves out "claims [relating] to 'vested pension...benefits'" (Mot. at 7), which is the claim Mr. Klein asserts here. *E.g.*, AC ¶ 30; *Smith v. Rockwell Automation, Inc.*, 2020 WL 620221, at *10 (E.D. Wis. Feb. 10, 2020) (explaining 29 U.S.C. § 1132(a)(3) is a proper vehicle for remedying claims relating to vested pension benefits). Defendants' interpretation of the release implies Mr. Klein traded his vested, ERISA-protected pension benefits for severance, which is prohibited by ERISA's anti-alienation requirement. 29 U.S.C. § 1056(d)(1) (providing pension benefits may not be assigned or alienated); *see also Licciardi v. Kropp Forge Div. Employees' Ret. Plan*, 990 F.2d 979, 982 (7th Cir. 1993) (questioning the enforceability of a release "broad enough to wipe out actual pension entitlements" under 29 U.S.C. § 1056(d)(1)).

And as to Ms. Gilchrist and Mr. Scott, Defendants have not shown their claims are time-barred. First, a statute of limitations defense is not properly considered on a motion to dismiss. *Michael*

Grecco Productions, Inc. v. Ziff Davis, LLC, 830 F. App'x 233 (9th Cir. 2020) (citing *Polar Bear Prods., Inc. v. Timex Corp.*, 384 F.3d 700, 707 (9th Cir. 2004)). The statute of limitations is an affirmative defense that is rarely credited on a 12(b)(6) motion, only when "the running of the statute is apparent on the face of the complaint." *Von Saher v. Norton Simon Museum of Art at Pasadena*, 592 F.3d 954, 969 (9th Cir. 2010) (citing *Huynh v. Chase Manhattan Bank*, 465 F.3d 992, 997 (9th Cir.2006)). None of Plaintiffs' allegations demonstrate that the applicable statute of limitations had run by the time of filing the complaint.

Even if considered, Plaintiffs' claims are not time-barred. While ERISA provides for a six-year statute of limitations for breach of fiduciary duty claims, 29 U.S.C. § 1113, ERISA is silent as to a statute of limitations for non-breach of fiduciary duty ERISA claims. In those instances, courts look to the "state statute of limitations that is most analogous to" the ERISA claim. *See Wise v. Verizon Commc'ns, Inc.*, 600 F.3d 1180, 1184 (9th Cir. 2010). Assuming that Texas law applies, as Defendants argue, the four-year statute of limitations does not begin until a claim "accrues." *E.g.*, Tex. Civ. Prac. & Rem. Code Ann. § 16.004(a) ("A person must bring suit on the following actions not later than four years after the day the cause of action accrues"). Courts apply the federal discovery rule to determine when a claim "accrues," which asks whether the plaintiff "had enough information to assure that he knew or reasonably should have known" that his monthly payments were not actuarially equivalent. *Osberg v. Foot Locker, Inc.*, 862 F.3d 198, 207 (2d Cir. 2017) (internal modifications omitted); *see also Kifafi v. Hilton Hotels Ret. Plan*, 701 F.3d 718, 729 (D.C. Cir. 2012) (similar). Similarly, for breach of fiduciary duty claims, ERISA's three-year limitations period for "actual knowledge" starts running when the "plaintiff has sufficient knowledge to be alerted to the particular claim." *Sulyma v. Intel Corp. Inv. Pol'y Comm.*, 909 F.3d 1069, 1075 (9th Cir. 2018), *aff'd*, 140 S. Ct. 768 (2020).

Here, for Ms. Gilchrist and Mr. Scott[6] to have known their monthly payments were not actuarially equivalent, they would need to understand a complicated actuarial equivalence calculation

[6] Mr. Scott began receiving his benefits in 2015, within four years from the filing of the original complaint. *See Eliason v. AT&T Inc.*, No. 3:19-cv-06232 (N.D. Cal.). In the *Eliason* motion to dismiss, Defendants did not argue that Mr. Scott's claims were time-barred. ECF No. 38. Under Texas law, the statute of limitations is suspended while the *Eliason* action was pending and between the dismissal for lack of jurisdiction and refiling in this suit. *See* Tex. Civ. Prac. & Rem. Code § 16.064 ("The period between the date of filing an action in a trial court and the date of a second filing of the same action

and divine actuarial assumptions that were not disclosed to them. AC ¶ 98. Moreover, although Defendants argue that they disclosed the relative value of the JSA to Plaintiffs, Plaintiffs allege that Defendants misrepresented the relative value of the JSA as much higher than it actually was, disguising the reduced value of Plaintiffs' benefits. AC ¶¶ 96-97. Defendants cannot show that Ms. Gilchrist and Mr. Scott—or any other named Plaintiff—knew or should have known their benefits were not actuarially equivalent at the time they began to receive their benefits, nor are there any allegations in the Amended Complaint establishing this knowledge at receipt of benefits. Their claims therefore are timely because they did not accrue outside of any limitations period. *See Osberg*, 862 F.3d at 209.

B. Plaintiffs Plead Plausible ERISA Claims Against Plan Sponsor AT&T Inc.

While indeed "[n]either ERISA nor the case law defines the universe of actors who may be subject to liability under § 502(a)(3)," 29 U.S.C. § 1132(a)(3), Mot. at 9, such silence is purposeful. As the Supreme Court explained, "[1132(a)(3)] makes no mention at all of which parties may be proper defendants—the focus, instead, is on redressing the *act or practice* which violates any provision of [ERISA Title I]." *Harris Tr. & Sav. Bank v. Salomon Smith Barney, Inc.*, 530 U.S. 238, 246-47 (2000) (noting that other provisions of ERISA do expressly address who may be a defendant) (emphasis original, internal quotation omitted).

Plaintiffs allege that AT&T Inc., as the Plan sponsor, established the Plan with terms that violated ERISA and is liable to correct those terms. *E.g.*, AC ¶ 117. In other words, the claims against AT&T Inc. are not about administration of the Plan—but rather setting the terms that violate ERISA in the first place. ERISA "does not confer boundless discretion" on a plan sponsor to impose plan terms that violate ERISA, *Laurent v. PricewaterhouseCoopers LLP*, 794 F.3d 272, 281 (2d Cir. 2015), nor does it "leave plans free to choose their own methodology for determining the actuarial equivalent of the accrued benefit; … '[i]f plans were free to determine their own assumptions and methodology,

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in a different court suspends the running of the applicable statute of limitations for the period if [...] the action is dismissed [for lack of jurisdiction]; and [...] the action is commenced in a court of proper jurisdiction [within 60 days]."). Mr. Scott's claims are tolled while the original action was pending and the short period of dismissal, so Defendants' time-bar challenge is frivolous because it relies on including the year during which *Eliason* was pending. But nevertheless, even if this action were first filed more than four years after Mr. Scott's receipt of benefits, Defendants' argument fails as discussed *supra*, because his claim did not accrue until recently.

they could effectively eviscerate the protections provided by ERISA's requirement of actuarial equivalence.'" *Id.* at 286 (quoting *Esden v. Bank of Bos.*, 229 F.3d 154, 164 (2d Cir. 2000)). Moreover, AT&T Inc. has the power and legal duty to bring the Plan into compliance with ERISA. *See* 29 U.S.C. §1102(b)(3). Thus, it is a proper defendant here, and Defendants provide no authority to the contrary.

Finally, Plaintiffs state a plausible claim for relief against AT&T Inc. *Contra* Mot. 9-10. ERISA requires no heightened pleading standard, only that the complaint contain a "short and plain statement of the claim showing that the pleader is entitled to relief." Fed. R. Civ. P. 8(a)(2). The Amended Complaint clears that bar, with factual allegations that AT&T established Plan terms that violated ERISA. AC ¶¶ 35 (AT&T Inc. is the Plan sponsor), 115 (the Plan does not calculate Joint and Survivor Annuities with reasonable assumptions for actuarial equivalence but rather preset Reduction Factors that reduce participants' benefit), 117 (AT&T Inc. as the Plan sponsor is responsible for maintaining Plan terms and has failed to update the Reduction Factors to conform with ERISA's actuarial equivalence requirement).

C. Plaintiffs State a Plausible Claim for Breach of Fiduciary Duty Against AT&T Services

Defendants inexplicably challenge Plaintiffs' breach of fiduciary duty claims against AT&T Services, the Plan Administrator, by stating that AT&T Services was not acting in a fiduciary capacity when calculating benefits. Mot. at 10-12. But AT&T Services, as the Plan Administrator named in the Plan document, is unavoidably a fiduciary subject to liability for Plaintiffs' claims. ERISA imposes duties on both "named" and "functional" fiduciaries. *Santomenno v. Transamerica Life Ins. Co.*, 883 F.3d 833, 837 (9th Cir. 2018); *IT Corp. v. Gen. Am. Life Ins. Co.*, 107 F.3d 1415, 1419 (9th Cir. 1997); 29 U.S.C. § 1102(a); § 1002(21)(A)(iii). Here, AT&T Services is both a named and a functional fiduciary to the Plan. AC ¶¶ 38-40.

ERISA requires that an employee benefit plan instrument "provide for one or more named fiduciaries who jointly or severally shall have authority to control and manage the operation and administration of the plan." 29 U.S.C. § 1102(a). The Plan document here names AT&T Services as the Plan Administrator, which renders it a "named fiduciary" of the Plan. AC ¶ 39. Courts have rejected Defendants' argument that a *named fiduciary*, such as AT&T Services, does not act as a fiduciary

when calculating benefits. *See Dawson-Murdock v. Nat'l Counseling Grp., Inc.*, 931 F.3d 269, 277 (4th Cir. 2019) (explaining that the analysis of functional fiduciary status should not be "unduly expanded to suggested that [...] the plan administrator and the named fiduciary for an ERISA-covered plan is *not* an ERISA fiduciary.") (emphasis in original). A participant is "not required to allege that the plan administrator and named fiduciary also satisfies the functional fiduciary test in order to state a plausible fiduciary breach claim against it under ERISA." *Id.* at 278. Serving as the named fiduciary is sufficient to render AT&T Services a fiduciary for purposes of a breach of fiduciary duty claim.

Nevertheless, AT&T Services *also* satisfies the functional fiduciary test. A functional fiduciary includes an entity that has "any discretionary authority or discretionary responsibility in the administration of such plan." 29 U.S.C. § 1002(21)(A)(iii). As the Plan Administrator responsible for the general administration of the Plan, AT&T Services has discretionary authority or discretionary responsibility to administer the Plan. AC ¶¶ 38-40. ERISA imposes functional fiduciary status on any person that has "any discretionary authority or discretionary responsibility in the administration of such plan." 29 U.S.C. § 1002(21)(A)(iii). Whether or not AT&T Services *exercised* that discretion is irrelevant; what matters is that AT&T Services *had* discretionary authority. 29 U.S.C. § 1002(21)(A)(iii); *Bouboulis v. Transp. Workers Union of Am.*, 442 F.3d 55, 63 (2d Cir. 2006) (ERISA provides that individuals who are "granted discretionary authority" over plan administration have fiduciary status, "regardless of whether such authority is ever exercised." (quoting *Olson v. E.F. Hutton & Co., Inc.*, 957 F.2d 622, 625 (8th Cir.1992)) (internal quotations omitted)).). AT&T Services is therefore a functional fiduciary, in addition to a named fiduciary.[7] Defendants' argument further highlights AT&T Services' functional fiduciary status—it did exercise discretionary authority in calculating benefits. Mot. at 2 (quoting the Plan provision that AT&T Services has "complete and absolute discretion to interpret the Plan"); Ross Decl. Ex. A §§ 17.1, 17.2, ECF No. 36-2 at 71.

[7] Defendants suggest AT&T Services' function is "purely ministerial." Mot. at 11. But they omit language from the cited regulation explaining that a function is only ministerial where the entity in question "ha[s] no power to make any decisions as to plan policy, interpretations, practices or procedures" 29 C.F.R. § 2509.75-8(D)(2). That is plainly not the case here because AT&T Services is the named fiduciary and was granted "all powers necessary … to interpret the Plan."

Defendants cannot sidestep AT&T's functional fiduciary status by contending that "merely" calculating benefits pursuant to Plan terms does not confer fiduciary status. *See* Mot. at 10. As an initial matter, AT&T Services—as the Plan Administrator—does far more for the Plan than calculate benefits. As the Plan Document states, AT&T Services has "all powers necessary … to accomplish its respective duties and obligations including, without limitation, complete and absolute discretion to interpret the Plan [Document][.]" Mot. at 10 (citing Ross Decl. Ex. A § 17.2). Moreover, ERISA requires that a fiduciary discharge his duties in accordance with the plan document, "insofar as such documents and instruments are consistent with [ERISA]." 29 U.S.C. § 1104(a)(1)(D). Critically, in "merely" calculating benefits and applying Reduction Factors in the Plan Document, AT&T Services followed Plan terms that *violated ERISA*, and thereby breached its fiduciary duties. *Id.*; *accord Fifth Third Bancorp v. Dudenhoeffer*, 573 U.S. 409, 421 (2014) (plan document cannot exculpate a fiduciary from ERISA's duties). If Defendants could avoid liability by following plan terms that do not comply with ERISA, 29 U.S.C. § 1104(a)(1)(D) would be surplusage because the plan document would supplant ERISA's requirements.

In any event, a party's fiduciary status generally is a fact-intensive determination that is not appropriate for resolution on a Rule 12(b)(6) motion. *Ramos v. Banner Health*, 2017 WL 4337598, at *5 (D. Colo. Sept. 29, 2017) (finding dismissal inappropriate due to the "fact-driven analysis regarding the scope and extent of a defendant's fiduciary duties"); *see also Woods v. S. Co.*, 396 F. Supp. 2d 1351, 1365 (N.D. Ga. 2005) (similar); *accord Steen v. John Hancock Mut. Life Ins. Co.*, 106 F.3d 904, 913 (9th Cir. 1997) (ERISA fiduciary status is a factual inquiry). Defendants' averment that AT&T Services is not a fiduciary should be rejected.

Finally, Plaintiffs adequately plead that they are entitled to relief under 29 U.S.C. § 1132(a)(2) for AT&T Services' failure to comply with ERISA's provisions. *E.g.*, AC ¶¶ 67, 81, 83, 116, 127, 141, 147-58. Failure to comply with ERISA is sufficient to state a claim for fiduciary breach under 29 U.S.C. § 1104(a)(1)(D), which "impose[s] a general fiduciary duty to comply with ERISA." *Kendall v. Emps. Ret. Plan of Avon Prods.*, 561 F.3d 112, 120 (2d Cir. 2009), *abrogated on other grounds by Lexmark Int'l, Inc. v. Static Control Components, Inc.*, 572 U.S. 118, 127 (2014).

D. Plaintiffs' Request for Reformation is Properly Supported

Finally, contrary to Defendants' suggestion, ERISA allows for reformation of a plan without allegations of *scienter*-based fraud where, as here, the plan document to be reformed contains provisions that violate ERISA. *Laurent v. PricewaterhouseCoopers LLP*, 945 F.3d 739, 748 (2d Cir. 2019); *see also* AC ¶¶ 14-15 (Defendants' Plan terms violate ERISA); *contra* Mot. at 12-13 (arguing reformation is unavailable because Plaintiffs do not allege fraud under the Rule 9(b) standard).

Laurent is instructive; it addressed participants' allegations that the plan document contained provisions that violated ERISA. 945 F.3d at 743. The Second Circuit rejected defendants' argument that "ERISA did not authorize … reformation of the Plan to bring it into compliance with ERISA and the recalculation of benefits in accordance with the reformed Plan," and vacated the district court's decision denying the request for reformation. *Id.* at 742. The court went on to hold that 29 U.S.C. § 1132(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." *Id.* at 748.[8] Likewise here, Plaintiffs do not allege fraud—they allege that Plan Document terms violate ERISA. Accordingly, like in *Laurent*, reformation is an appropriate remedy under 29 U.S.C. § 1132(a)(3) in the absence of mistake or fraud.

None of the cases Defendants cite concern plan terms that violated ERISA. In *Skinner v. Northrop Grumman Retirement Plan B*, the plaintiff sought to replace a provision of a plan document with a more favorable term stated in a summary plan description, but did not allege that the relevant provision violated the statute. 673 F.3d 1162, 1164-65 (9th Cir. 2012). Similarly, in *Morales v. Intelsat Global Services Corp,* retirees claimed they should not be bound by a plan provision because they were not given "clear notice" of the provision. 181 F. Supp. 3d 64, 65 (D.D.C. 2012), *aff'd on other grounds sub nom. Morales v. Intelsat Glob. Serv. LLC*, 554 F. App'x 4 (D.C. Cir. 2014). Similarly, in *Cross v. Bragg* there was no claim that the Plan violated ERISA; rather the plan administrator attempted to change a benefit formula that was the result of a "scrivener's error." 329 F. App'x 443,

[8] The court specifically stated that leaving employees who prove an ERISA violation with no remedy as "inconsistent with the "maxim of equity ... that '[e]quity suffers not a right to be without a remedy.'" *Id.* at 748 (citing *CIGNA Corp. v. Amara*, 563 U.S. 421, 439 (2011)).

447-48 (4th Cir. 2009). That these courts discussed allegations of fraud for reformation is simply irrelevant here, where Plaintiffs seek to supplant *illegal* Plan terms with ERISA-compliant ones.

Even if fraud were required to seek the remedy of reformation, *scienter*-based fraud is not.[9] *Sec. & Exch. Comm'n v. Capital Gains Research Bureau, Inc.*, 375 U.S. 180, 193–94 (1963); *contra* Mot. at 13 (contending allegations of the "who, what, when, where and how" of the fraud are necessary). In *Capital Gains Research Bureau*, the Supreme Court explained that fraud has a broader meaning in equity, and "intention to defraud or to misrepresent is not a necessary element." 375 U.S. at 193 (internal quotation omitted). Instead, in equity actions, fraud "properly includes *all acts, omissions and concealments which involve a breach of legal or equitable duty, trust, or confidence*." *Id*. at 194 (emphasis added, internal quotation omitted); *see also Pearce v. Chrysler Grp. LLC Pension Plan*, 893 F.3d 339, 348-49 (6th Cir. 2018) (quoting *Capital Gains Research Bureau* and explaining "constructive fraud in the ERISA context" may be found when "the defendant misrepresents the benefits to which the plaintiff is entitled"); *Osberg v. Foot Locker, Inc.*, 138 F. Supp. 3d 517, 557 (S.D.N.Y. 2015), *aff'd*, 862 F.3d 198 (2d Cir. 2017) (similar).[10] Under this standard, Plaintiffs have adequately alleged equitable fraud by describing how Defendants breached their legal and equitable duties by applying illegal Plan terms. AC ¶¶ 65-66. For these reasons, Plaintiffs are entitled to reformation of the Plan Document to bring it into compliance with ERISA.

IV. CONCLUSION

Plaintiffs respectfully request that Defendants' Motion to Transfer Venue or Dismiss be denied.

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[9] And even if courts may not reform a plan document absent *scienter*-based fraud, as Defendants contend (Mot. at 13), this would not divest the Court of its equitable authority to enjoin *Defendants* to bring the Plan Document into compliance with the law. *McDonald ex rel Prendergast v. Pension Plan of the NYSA-ILA Pension Tr. Fund*, 450 F.3d 91, 95 (2d Cir. 2006) (affirming ordered reformation of plan); *DeVito v. Pension Plan of Local 819 I.B.T. Pension Fund*, 975 F. Supp. 258, 267 (S.D.N.Y. 1997), *abrogated on other grounds by Strom v. Goldman, Sachs & Co.*, 202 F.3d 138 (2d Cir.1999).

[10] Defendants misstate the *Pearce*'s court's analysis of the fraud requirement for reformation, to which the court stated only "roughly mirrors the fraud element of equitable estoppel" which provides "helpful factors to consider." *See* Mot. at 13; *Pearce v. Chrysler Group LLC Pension Plan*, 893 F.3d 339, 348 (6th Cir. 2018). *Pearce* ultimately reversed the district court's grant of summary judgment to defendants on plaintiff's request for reformation. 893 F.3d at 349.

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Respectfully submitted,

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